

**SERVICE PROVIDER AGREEMENT**

This SERVICE PROVIDER AGREEMENT (“**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“**Effective Date**”), by and between the CITY OF ALAMEDA, a municipal corporation and **ARBORICULTURAL SPECIALTIES, INC. dba THE PROFESSIONAL TREE CARE COMPANY** whose address is **2828 8<sup>th</sup> STREET, BERKELEY CA 94710** (“**Provider**”), in reference to the following facts and circumstances:

**RECITALS**

- A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. The City is in need of the following services: Tree Planting. City staff issued an RFP on JANUARY 24, 2025, and after a submittal period of 13 days received 6 of timely submitted proposals. Staff reviewed the proposals, interviewed qualified firms and selected the service provider that best meets the City’s needs
- 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. Whereas, the City Council authorized the City Manager to execute this Agreement on March 18, 2025.
- E. The City and Provider desire to enter into an agreement for five years, upon the terms and conditions herein.

**AGREEMENT**

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

**1. TERM:**

The term of this Agreement shall commence on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, and shall terminate on the 30<sup>th</sup> day of June 2029, unless terminated earlier as set forth herein.

With the exception that the compensation shall be adjusted by the Construction Cost Index for the San Francisco Bay Area as reported in the Engineering News Record for the previous calendar year for the trade(s) associated with the services or tasks.

**SERVICES TO BE PERFORMED:**

Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included

in Exhibit A as requested. Provider acknowledges that the work plan included in Exhibit A is tentative and does not commit the City to request Provider to perform all tasks included therein.

**2. COMPENSATION TO PROVIDER:**

a. By the 7<sup>th</sup> day of each month, Provider shall submit to the City an invoice for the total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedule as set forth in Exhibit B and incorporated herein by this reference. Extra work must be approved in writing by the City Manager or their designee prior to performance and shall be paid on a Time and Material basis as set forth in Exhibit B.

b. If you wish to encumber department funds for the aggregate amount of the contract compensation, then state: The total five-year compensation for this Agreement shall not exceed \$951,198.05. Use of contingency shall be for items of work outside the original scope and requires prior written authorization by the City.

If the compensation is to be encumbered annually, but in different amounts because of an escalator then state: Compensation for work done under this Agreement, shall not exceed as follows:

- FY 24-25 total compensation shall not exceed \$ 179,162.50
- FY 25-26 total compensation shall not exceed \$ 184,537.38
- FY 26-27 total compensation shall not exceed \$ 190,073.50
- FY 27-28 total compensation shall not exceed \$ 195,755.70
- FY 28-29 total compensation shall not exceed \$ 201,648.97
- Total five-year compensation shall not exceed **\$ 951,198.05**

Use of contingency shall be for items of work outside the original scope and requires prior written authorization by the City.

**3. TIME IS OF THE ESSENCE:**

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

**4. STANDARD OF CARE:**

Provider shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Provider represents that it is skilled in the professional calling necessary to perform all services contracted for in this Agreement. Provider further represents that all of its employees and subcontractors shall have sufficient skill and experience to perform the duties assigned to them pursuant to and in furtherance this Agreement. Provider further represents that it (and its employees and subcontractors) have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the services (including a City Business License, as needed); and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Provider shall perform (at its own cost and expense and without reimbursement from the City) any services necessary to correct errors or omissions which are

caused by Provider's failure to comply with the standard of care provided for herein. Any employee of the Provider or its sub-providers who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of any services under this Agreement, or a threat to the safety of persons or property (or any employee who fails or refuses to perform the services in a manner acceptable to the City) shall be promptly removed by the Provider and shall not be re-employed to perform any further services under this Agreement.

**5. INDEPENDENT PARTIES:**

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

**6. IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

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

**7. NON-DISCRIMINATION:**

Consistent with the City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider and its employees, contractors, and agents shall not harass or discriminate against any job applicant, City employee, or any other person on the basis of any kind of any statutorily (federal, state or local) protected class, including but not limited to: race, religious creed, color, national origin, ancestry, disability (both mental and physical) including HIV and AIDS, medical condition (e.g. cancer), genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, pregnancy, political affiliation, military and veteran status or legitimate union activities. Such non-discrimination shall include but not be limited to all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination. Provider agrees that any violation of this provision shall constitute a material breach of this Agreement.

**8. HOLD HARMLESS:**

a. To the fullest extent permitted by law, Provider shall indemnify, defend (with counsel acceptable to the City) and hold harmless the City, its City Council, boards, commissions, officials, employees, agents and volunteers ("Indemnitees") from and against any and all loss,

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

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

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

## 9. INSURANCE:

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Sections 10.b. (1) through (3). The Certificate Holder should be The City of Alameda, 2263 Santa Clara, Ave., Alameda, CA 94501. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement:

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

Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company licensed to offer insurance business in the State of California with a current A.M. Best's rating of no less than A:VII or Standard & Poor's Rating (if rated) of at least BBB unless otherwise acceptable to the City. Provider shall deliver updated insurance certificates to the City at the address described in Section 17.f. prior to the expiration of the existing insurance certificate for the duration of the term of Agreement. Endorsements naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers as additional insured shall be submitted with the insurance certificates.

  
Provider Initials

b. COVERAGE REQUIREMENTS:

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

(1) Workers' Compensation:

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

(2) Liability:

Commercial general liability coverage in the following minimum limits:

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

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

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

(3) Automotive:

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

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

or

Combined Single Limit: \$2,000,000 each occurrence

Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required.

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

c. SUBROGATION WAIVER:

Provider hereby agrees to waive rights of subrogation that any insurer of Provider may acquire from Provider by virtue of the payment of any loss. Provider agrees to obtain any endorsement that

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

d. FAILURE TO SECURE:

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

e. ADDITIONAL INSURED(S):

The City, its City Council, boards, commissions, officials, employees, agents, and volunteers shall be named as additional insured(s) under all insurance coverages, except workers' compensation and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy. Additional Insured coverage under Provider's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured(s).

f. SUFFICIENCY OF INSURANCE:

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

g. EXCESS OR UMBRELLA LIABILITY:

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

10. CONFLICT OF INTEREST:

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

**11. PROHIBITION AGAINST TRANSFERS:**

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

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

**12. APPROVAL OF SUB-PROVIDERS:**

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

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

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

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

**13. PERMITS AND LICENSES:**

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City business license that may be

required in connection with the performance of the services and tasks hereunder.

**14. REPORTS:**

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

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

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

**15. RECORDS:**

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

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

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

**16. NOTICES:**

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

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is



deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

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

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

City of Alameda  
Public Works Department  
950 West Mall Square, Suite 110  
Alameda, CA 94501  
Attention: Jesse Barajas, Project Manager II  
Ph: (510) 747-7900 / FAX (510) 769-6030

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

The Professional Tree Care Company, Inc.  
2828 8<sup>th</sup> Street  
Berkeley, CA 94710  
ATTENTION: Charles Slesinger, Bid Coordinator

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

City of Alameda  
Public Works Department  
950 West Mall Square, Suite 110  
Alameda, CA 94501  
ATTENTION: Jeannette Navarro, Executive Assistant  
Ph: (510) 747-7930 / jnavarro@alamedaca.gov

**17. SAFETY:**

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

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

**18. TERMINATION:**

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

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

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

**19. ATTORNEYS' FEES:**

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

**20. HEALTH AND SAFETY REQUIREMENTS.**

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

**21. COMPLIANCE WITH ALL APPLICABLE LAWS:**

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

same. Provider shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by the City. Provider shall defend, indemnify, and hold City (including its officials, directors, officers, employees, and agents) free and harmless from any claim or liability arising out of any failure or alleged failure to comply with such laws and regulations pursuant to the indemnification provisions of this Agreement.

**22. CONFLICT OF LAW:**

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

**23. WAIVER:**

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

**24. INTEGRATED CONTRACT:**

Subject to the language of Section 33, the Recitals and exhibits are a material part of this Agreement and are expressly incorporated herein. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both the City and Provider.

**26. PREVAILING WAGES:**

Provider is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq. as well as California Code of Regulations, Title 8, Section 1600, et seq., (“Prevailing Wage Laws”) which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. Provider agrees to fully comply with such Prevailing Wage Laws if the services are being performed as part of an applicable “public works” or “maintenance” project as defined by the Prevailing Wage Laws and if the total compensation is \$1,000 or more. City, upon Provider’s request, shall provide Provider with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Provider shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the services available to interested parties upon request; and shall post copies at the Provider’s principal place of business and at the project site. Provider shall defend, indemnify, and hold the City (its elected officials, officers, employees, and agents) free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

a. For purposes of Sections 27 through 29 of this Agreement, the terms “claim”, “contractor”, “public works project” and “subcontractor” shall have the same meanings set forth in Public Contract Code Section 9204.

b. No contractor or subcontractor may be listed on a bid proposal for a public works project, nor engage in the performance of any public work contract, unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 (with the limited exceptions for certain bids pursuant to Labor code Section 1771.1(a)). Registration instructions may be found at the following website: <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

c. All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner at the following website: <https://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>

d. Contractor is required to all post job site notices as prescribed by State law. (See 8 Cal. Code Regs, § 16451(d).)

e. In executing this Agreement, Contractor acknowledges and agrees that

f. the work authorized by this Agreement may be subject to compliance monitoring and enforcement by the Department of Industrial Relations.

**28. REGISTRATION OF CONTRACTORS:**

Before submitting bids for any work authorized by this Agreement, contractors shall be licensed in accordance with the provisions of Chapter 9, Division 3, of the Business and Professions Code of the State of California.

**29. PUBLIC CONTRACT CODE SECTION 9204 SUMMARY:**

Notwithstanding anything else to the contrary stated in the Information For Bidders (IFB) or other documents associated with this Agreement, all claims, regardless of dollar amount, submitted between January 1, 2017 and January 1, 2027 related to work performed or scheduled to be performed pursuant to this Agreement shall be governed by Public Contract Code Section 9204 and this section. The following provisions and procedures shall apply:

a. Contractor shall submit each Claim (whether for a time extension, payment for money or damages) in writing and in compliance with Public Contract Code Section 9204. Contractor must include reasonable documentation to support each claim.

b. Upon receipt of a claim, the City shall conduct a reasonable review and respond in writing within 45 days of receipt and shall identify in a written statement what portions of the claim are disputed and undisputed. Undisputed portions of the claim shall be process and paid

within 60 days of the written statement. Undisputed amounts not paid in a timely manner shall bear interest at 7% per annum. The City and Contractor may mutually agree to extend the 45 day response time.

c. If the City needs approval from the City Council to provide a written statement, the 45 days may be extended to 3 days following the next duly noticed public meeting pursuant to Public Contract Code Section 9204(d)(1)(C).

d. If the City fails to timely respond to a claim or if Contractor disputes the City's response, Contractor may submit a written demand for an informal meet and confer conference with the City to settle the issues in dispute. The demand must be sent via registered or certified mail, return receipt requested. Upon receipt, the City shall schedule the conference within 30 days.

e. Within 10 business days following the informal meet and confer conference, the City shall submit to Contractor a written statement describing any issues remaining in dispute and that portion which is undisputed. Undisputed portions of the claim shall be processed and paid within 60 days of the written statement. Undisputed amounts not paid in a timely manner shall bear interest at 7% per annum. The issues remaining in dispute shall be submitted to non-binding mediation. If the City and Contractor mutually agree on a mediator, each party shall pay equal portions of all associated costs. If within 10 business days, the City and Contractor cannot agree on a mediator, each party shall select a mediator (paying all costs associated with their selected mediator), and those mediators shall select a qualified neutral third party to mediate the disputed issues. The City and Contractor shall pay equal portions of all associated costs of such third party mediator.

f. Unless otherwise agreed by the City and Contractor, any mediation conducted hereunder shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has commenced.

g. The City reserves all rights and remedies that it has pursuant to this Agreement, any associated plans and specifications, or at law or in equity which are not in conflict with Public Contract Code 9204.

**30. 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.

**31. COUNTERPARTS:**

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

**32. SIGNATORY:**

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

**33. CONTROLLING AGREEMENT:**

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

**34. MULCH PROCUREMENT REQUIREMENTS**

Providers of landscaping maintenance, renovation, and construction shall:

a. Use compost and SB 1383 eligible mulch, as practicable, produced from recovered organic waste, for all landscaping renovations, construction, or maintenance performed for the City, whenever available, and capable of meeting quality standards and criteria specified. SB 1383 eligible mulch used for land application shall comply with [14 CCR, Division 7, Chapter 12, Article 12](#) and must meet or exceed the physical contamination, maximum metal concentration and pathogen density standards specified in [14 CCR Section 17852\(a\)\(24.5\)\(A\)\(1\) through \(3\)](#).

b. Maintain the following records for compost and SB 1383 eligible mulch and submit to the City upon request:

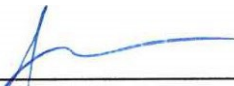
- (1) General description of how and where the product was used and applied;
- (2) Source of product, including name, physical location, and contact information for each entity, operation, or facility from whom the compost and/or SB 1383 eligible mulch were procured;
- (3) Type of product
- (4) Quantity of each product; and,

Invoice or other record demonstrating purchase or procurement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

ARBORICULTURAL  
SPECIALTIES, INC.  
dba THE PROFESSIONAL  
TREE CARE COMPANY a  
California Inc.,




Justin Park  
Bid Coordinator & Authorized  
Signer

CITY OF ALAMEDA,  
a municipal corporation

Jennifer Ott  
City Manager

RECOMMENDED FOR APPROVAL

Signed by:



325158B32737491...

Erin Smith  
Public Works Director

APPROVED AS TO FORM:  
City Attorney

Signed by:



5603710AC04544F  
Len Aslanian

Assistant City Attorney

## **EXHIBIT A**

### **SCOPE OF SERVICES - CITY OF ALAMEDA TREE PLANTING**

#### **WORK TO BE DONE**

Contractor will provide labor, materials, services, skills, supervision, and necessary tools and equipment to plant and provide initial tree watering for new trees in existing vacant sites throughout Alameda. Contractor shall have the capability to perform and complete the services in all respects in accordance with the solicitation documents. Contractor hereby warrants that all services shall be performed in a timely and first-class workmanlike manner. Contractor shall keep the property free and clear at all times of excess materials, debris and equipment. Contractor shall provide the following services within the boundaries of each facility. The scope of work in this section includes, but is not limited to, the following:

1. Locate, purchase, deliver and install all specified trees.
2. Water all specified plants.
3. Mulch, fertilize, stake, and prune all specified trees.
4. Maintenance of all specified Trees until the beginning of the warranty period.
5. Plant warranty.
6. Clean up and disposal of all excess and surplus material.
7. Maintenance of all specified trees during the warranty period.
8. Correction of Work
9. Protection of Work, Property and Person.
10. Project Management
  - a. Changes in Work
  - b. Stakeholder Management
  - c. Risk Management

#### **1. Locate, Purchase, Deliver and Install all Specified Trees**

##### **Locate**

It is the responsibility of the contractor to notify the Underground Service Alert (USA) and administer the Master Street Tree Plan 2009 Appendix 3 Preferred Distances between City Infrastructure and Replacement Trees (page 138). Notify the Owner's Representative, in writing, of any circumstances that would negatively impact the health of plantings. Do not proceed with work until unsatisfactory conditions have been corrected.

##### **Purchase**

The City will procure/provide the required trees and have them delivered to the agreed venue. The contractor, along with the Project Manager, will receive the trees and secure them, label them and maintain them during the staging period.

All other tree planting supplies will be the responsibility of the contractor, including the following:

1. Tree stakes- 2" by 8' treated lodge poles, two per tree.
2. Tree ties/straps- Recycled tire straps or equivalent
3. Root Barrier- 6' by 1' Deep Root poly panels or equivalent/tree



4. Loamy Sand Planting Soil- Planting soil for all trees to fill twice the width of the nursery tree container.
5. Fertilizer Starter Tablets- Per manufacturer recommendations per tree at newly planting site.
6. Gator Bags- One per tree 15-gal volume.
7. Mulch - Top dressing and berm development for watering post tree planting.
8. 3' corrugated pipe with gravel- Vertical installation to promote deep watering and root development, installed with pea gravel.
9. Tree Trunk Guard- Install on all trees to protect from mower/mechanical damage.

#### Delivery and Installation of all Specified Trees

In coordination with the Project Manager the tree delivery will be received and managed by the contractor. It is the responsibility of the contractor to ensure that trees are earmarked/labeled to the approved address and species.

#### **2. Water all Specified Plants**

Water trees immediately after tree planting and installation of Gator Water bags or equivalents thereafter to be filled at every site visit in addition to filling the water berm. Water is to take place at a minimum of once per week following the process note above and filling the water bag at every visit.

#### **3. Mulch, Fertilize, Stake, and Prune all Specified Trees**

Install two tree stakes per tree parallel and below tree canopy with proper adjusted ties to keep vertical. Post or Pre-planting install tree tablets per manufacturer directions while only removing/pruning damaged lateral branches.

#### **4. Maintenance of All Specified Trees until Warranty Period**

Warranty period is to commence once all trees are planted and the Project Manager has accepted all conditions including but not limited to stakeholder feedback, damage corrections and risk mitigations. Corrective work will also be addressed prior to the beginning of the warranty period. Pre-Maintenance including watering, stake adjustments, site and debris removal.

#### **5. Plant Warranty**

One year of tree replacement warranty is required at the contractor's cost. Dead or declining or poor performing trees are warranty for full replacement including labor, purchase and all materials required to plant new trees.

#### **6. Clean up and Disposal of all excess and surplus material**

During installation, keep the site free of trash, pavements reasonably clean and work area in an orderly condition at the end of each day. Remove trash and debris in containers from the site no less than once a week.

- a) Immediately clean up any spilled or tracked soil, fuel, oil, trash or debris deposited by the Contractor from all surfaces within the project or on public right of ways and neighboring property.

Once installation is complete, wash all soil from pavements and other structures. Ensure that mulch is confined to planting beds and that all tags and flagging tape are removed from the site.

- b) Make all repairs to grades, ruts, and damage by the plant installer to the work or other work at the site.
- c) Remove and dispose of all excess planting soil, subsoil, mulch, plants, packaging, and other material brought to the site by the Contractor.

### **7. Maintenance of all Specified Trees during the warranty period**

During the warranty period, provide all maintenance for all plantings to keep the plants in a healthy state and the planting areas clean and neat.

- a. General requirements:
  - 1. All work shall be undertaken by trained planting crews under the supervision of a foreman with a minimum of 5 years' experience supervising commercial plant maintenance crews.
  - 2. All chemical and fertilizer applications shall be made by licensed applicators for the type of chemicals to be used. All work and chemical use shall comply with all applicable local, provincial and federal requirements.
  - 3. Assure that hoses and watering equipment and other maintenance equipment do not block paths or be placed in a manner that may create tripping hazards. Use standard safety warning barriers and other procedures to maintain the site in a safe manner for visitors at all times.
  - 4. All workers shall wear required safety equipment and apparel appropriate for the tasks being undertaken.
  - 5. The Contractor shall not store maintenance equipment at the site at times when they are not in use unless authorized in writing by the Project Manager.
  - 6. Maintain a detailed log of all maintenance activities including types of tasks, date of task, types and quantities of materials and products used, watering times and amounts, and number of each crew. Periodically review the logs with the Project Manager and submit a copy of the logs at the end of each year of the maintenance agreement.
  - 7. Meet with the Project Manager a minimum of three times a year to review the progress and discuss any changes that are needed in the maintenance program. At the end of the warranty period attend a handover meeting to formally transfer the responsibilities of maintenance to the Owner's Representative.

Provide all information on past maintenance activities and provide a list of critical tasks that will be needed over the next 12 months.

- b. Provide the following maintenance tasks:
  - 1. Watering: Provide all water required to keep soil within and around the root balls at optimum moisture content for plant growth.
    - a. Maintain all watering systems and equipment and keep them operational.
    - b. Monitor soil moisture to provide sufficient water. Check soil moisture and root ball moisture with a soil moisture meter on a regular basis and record moisture readings. Do not over water.
  - 2. Plant pruning: Remove cross over branching, shorten or remove developing co dominant leaders, dead wood and winter-damaged branches. Unless directed by the Project Manager, do not shear plants or make heading cuts.
  - 3. Restore plants: Reset any plants that have settled or are leaning as soon as the

condition is noticed.

4. Staking: Remove tree staking after the first full growing season unless directed by Owner's Representative.
5. Weed control: Keep all beds free of weeds. Hand-remove all weeds and any plants that do not appear on the planting plan. Chemical weed control is permitted only with the approval of the Owner's Representative. Schedule weeding as needed but not less 12 times per year.
6. Trash removal: Remove all trash and debris from all planting beds and maintain the beds in a neat and tidy appearance. The number of trash and debris removal visits shall be *no less than 12 times per year* and may coincide with other maintenance visits.
7. Tree replacement: Replace all Trees that are defective as defined in the warranty provisions, as soon as the plant decline is obvious and in suitable weather and season for planting as outlined in above sections. Trees that become defective during the maintenance period shall be covered and replaced under the warranty provisions.
8. Mulch: Refresh mulch once a year to maintain complete coverage but do not over mulch. At no time shall the overall mulch thickness be greater than 4 inches. Do not apply mulch within 6 inches of the trunks or stems of any plants. Replacement mulch shall meet the requirements of the original approved material. Mulch shall be no more than one inch on top of the root ball surface.
9. Damage from site use: Repair of damage by site visitors and events, beyond normal wear, are not part of this maintenance. The Owner's Representative may request that the Contractor repair damaged beds or plantings for an additional cost. All additional work shall be approved in advance by the Owner's Representative.

## **8. Correction of Work**

The Contractor, at their own cost, shall re-execute any work that fails to conform to the requirements of the contract and shall remedy defects due to faulty materials or workmanship upon written notice from the Project Manager, at the soonest possible time that can be coordinated with other work and seasonal weather demands.

## **9. Protection of Work, Property and Person**

The Contractor shall adequately protect the work, adjacent property, and the public, and shall be responsible for any damages or injury due to his/her actions.

## **10. Project Management, Changes in Work, Stakeholder, Risk Management**

- a. The Director of Public Works may order changes in the work, and the contract sum should be adjusted accordingly. All such orders and adjustments plus claims by the Contractor for extra compensation must be made and approved in writing before executing the work involved.
- b. All changes in the work, notifications and contractor's request for information (RFI) shall conform to the contract general condition requirements.
- c. Stakeholder Management is a vital responsibility of the contractor, in coordination with the Project Manager stakeholders will receive communication accordingly.

- d. Risk Management will be addressed in cooperation with the Project Manager but the responsibility to mitigate the issues related to work performed is the responsibility of the contractor.

**END OF WARRANTY FINAL ACCEPTANCE I MAINTENANCE OBSERVATION**

At the end of the Warranty and Maintenance period the Project Manager shall observe the work and establish that all provisions of the contract are complete, and the work is satisfactory.

- i. If the work is satisfactory, the maintenance period will end on the date of the final observation.
- ii. If the work is deemed unsatisfactory, the maintenance period will continue at no additional expense to the Owner until the work has been completed, observed, and approved by the Owner's Representative.

**FAILURE TO PASS OBSERVATION:** If the work fails to pass final observation, any subsequent observations must be rescheduled as per above

**EXHIBIT B: Pricing Schedule- Tree Planting**

The following outlines the pricing structure for the City of Alameda Tree Planting project, encompassing tree planting, maintenance, and optional tree purchase.

| Item #  | Description   | Unit Price | Quantity | Total               |
|---|---|------------|----------|---------------------|
| 1   | Tree Planting: Planting of 350,15-Gallon Nursery Stock (City Provided - ANSI Z60.1 - 2004). Includes all conditions, warranties, and work outlined in Appendix A, site preparation, weekly watering, and site maintenance.                          | \$395.00   | 350      | \$138,250.00        |
| 2   | Supplemental Tree Watering: Site maintenance, post-planting stake adjustments, and weekly watering for 350, 15-Gallon Nursery Trees (12 additional months of total watering). Includes all conditions, warranties, and work outlined in Appendix A. | \$70.00    | 350      | \$24,500.00         |
|   | Add Alternate 1: Single – Cost 15-Gallon Nursery Stock Tree Purchase (ANSI Z60.1-2004)  |            |          |                     |
| 3   | Per Tree  | \$125.00   | 1        | \$125.00            |
|   | <b>TOTAL BID</b>  |            |          | <b>\$162,875.00</b> |
| TOTAL BID Written In Words One Hundred, Sixty-Two Thousand Eight Hundred and Seventy-Five Dollars |   |            |          |                     |



A Division of Arboricultural Specialties, Inc.

Minutes  
06/01/2024  
meeting  
Arboricultural Specialties, Inc.  
dba The Professional Tree Care Co.

Present: Brian Fenske - President, Gregory Park - Director of Finance

The board of Directors of ARBORICULTURAL SPECIALTIES, INC.  
Held a special meeting on June 01, 2024 at 10 a.m. at Berkeley, California.

The following Director was present at the meeting:

BRIAN FENSKE

The following Director was absent: none. Also present was Director of Finance, Gregory Park.

To Reaffirm Bid Coordinator as Authorized Signer per Resolution

The Board unanimously adopted the following resolution authorizing the Bid Manager to execute contract documents and to execute quotes in the process of bidding work.

RESOLVED that Justin Park, as Bid Coordinator of this corporation, is authorized to sign and execute contract documents and quotes in the process of bidding work at the direction of the President of the corporation.

Closing of Meeting

There being no further business to come before the meeting, on motion, it was adjourned.

BRIAN FENSKE  
Secretary





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/13/2025

**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).**

| <b>PRODUCER</b><br>Cook, Disharoon & Greathouse, Inc.<br>16 Bryson Drive<br>Sutter Creek CA 95685                                     | <b>CONTACT NAME:</b> Danielle Kaiser<br><b>PHONE (A/C No. Ext):</b> (510)437-1900<br><b>FAX (A/C No):</b> (510)437-1979<br><b>E-MAIL ADDRESS:</b> dkaiser@cdginsurance.com<br><hr/> <table style="width: 100%;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td><b>INSURER A:</b> Hartford Fire Insurance Company</td> <td>19682</td> </tr> <tr> <td><b>INSURER B:</b> MS Transverse Specialty Insurance Comp</td> <td>41807</td> </tr> <tr> <td><b>INSURER C:</b> HDI Specialty Insurance Company</td> <td>16131</td> </tr> <tr> <td><b>INSURER D:</b> Cypress Insurance Company</td> <td>10855</td> </tr> <tr> <td><b>INSURER E:</b> Gotham Insurance Company</td> <td>25569</td> </tr> <tr> <td><b>INSURER F:</b> Endurance American Specialty</td> <td>10641</td> </tr> </table> | INSURER(S) AFFORDING COVERAGE | NAIC # | <b>INSURER A:</b> Hartford Fire Insurance Company | 19682 | <b>INSURER B:</b> MS Transverse Specialty Insurance Comp | 41807 | <b>INSURER C:</b> HDI Specialty Insurance Company | 16131 | <b>INSURER D:</b> Cypress Insurance Company | 10855 | <b>INSURER E:</b> Gotham Insurance Company | 25569 | <b>INSURER F:</b> Endurance American Specialty | 10641 |
|---|--|-------------------------------|--------|---|-------|--|-------|---|-------|---|-------|--|-------|--|-------|
| INSURER(S) AFFORDING COVERAGE   | NAIC #   |                               |        |   |       |  |       |   |       |   |       |  |       |  |       |
| <b>INSURER A:</b> Hartford Fire Insurance Company   | 19682  |                               |        |   |       |  |       |   |       |   |       |  |       |  |       |
| <b>INSURER B:</b> MS Transverse Specialty Insurance Comp  | 41807  |                               |        |   |       |  |       |   |       |   |       |  |       |  |       |
| <b>INSURER C:</b> HDI Specialty Insurance Company   | 16131  |                               |        |   |       |  |       |   |       |   |       |  |       |  |       |
| <b>INSURER D:</b> Cypress Insurance Company   | 10855  |                               |        |   |       |  |       |   |       |   |       |  |       |  |       |
| <b>INSURER E:</b> Gotham Insurance Company  | 25569  |                               |        |   |       |  |       |   |       |   |       |  |       |  |       |
| <b>INSURER F:</b> Endurance American Specialty  | 10641  |                               |        |   |       |  |       |   |       |   |       |  |       |  |       |
| <b>INSURED</b><br>Arboricultural Specialties, Inc.<br>DBA: The Professional Tree Care Company<br>2828 8th Street<br>Berkeley CA 94710 |  |                               |        |   |       |  |       |   |       |   |       |  |       |  |       |

**COVERAGES** **CERTIFICATE NUMBER: CL248817904** **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"/> <b>COMMERCIAL GENERAL LIABILITY</b><br><br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR                                 | X  |          | 57UUNSR2GCT     | 8/4/2024                | 8/4/2025                | EACH OCCURRENCE \$ 1,000,000  |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC<br>OTHER:                                      |  |          |                 |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000                            |
| B        | <b>AUTOMOBILE LIABILITY</b><br><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS                           | X  | X        | TSRSCA000013100 | 8/4/2024                | 8/4/2025                | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000                                |
|          | <input checked="" type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> NON-OWNED AUTOS  |  |          |                 |                         |                         | BODILY INJURY (Per person) \$   |
| C        | <b>UMBRELLA LIAB</b><br><input checked="" type="checkbox"/> EXCESS LIAB   |  |          | XLXD6131001S    | 6/6/2024                | 8/4/2025                | EACH OCCURRENCE \$ 5,000,000  |
|          | <input type="checkbox"/> OCCUR<br><input type="checkbox"/> CLAIMS-MADE<br><br>DED RETENTION \$  |  |          |                 |                         |                         | AGGREGATE \$ 5,000,000  |
| D        | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N<br><input checked="" type="checkbox"/> Y | N/A      | ARWC556657      | 8/4/2024                | 8/4/2025                | <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        | <b>Excess Liability</b>   |  |          | EX202400005079  | 8/4/2024                | 2/5/2025                | Each Occ & Aggregate \$5,000,000  |
|          | <b>Excess Liability Auto</b>  |  |          |                 |                         |                         | EXT30065753400  |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Re: Urban Forest Tree Planting Services.

Initial

LC

2/24/2025

**CERTIFICATE HOLDER**

jnavarro@alamedaca.gov

**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

Danielle Kaiser/DK

## COMMENTS/REMARKS

City of Alameda, its City Council, boards and commissions, officials, employees, agents & volunteers are listed as additional insureds with respects to General Liability, including Primary and Non Contributory policy forms #HG0001 0916 & #CG2026. Auto Liability policy form #CA2048 1013. Waiver of Subrogation applies to Workers Compensation Liability policy form #WC9904 10C, as per written contract between Named Insured & Additional Insured. Excess coverage follows form. 30 day cancellation notice applies.



POLICY NUMBER: Policy # TSRSCA000013100

COMMERCIAL AUTO  
CA 20 48 10 13

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE**

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 this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

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

|  |
|--|
| <p><b>Named Insured:</b></p> <p><b>Endorsement Effective Date:</b></p> |
|--|

### **SCHEDULE**

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

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.



# 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 stock insurance company member of The Hartford 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 those sums that the insured becomes legally obligated to pay as damages because of "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" during or after the policy period 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 because of 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 because of "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".
- e. **Incidental Medical Malpractice And Good Samaritan Coverage**  
"Bodily injury" arising out of the rendering of or failure to render the following health care services by any "employee" or "volunteer worker" shall be deemed to be caused by an "occurrence" for:

- (1) Professional health care services such as:
- (a) Medical, surgical, dental, laboratory, x-ray or nursing services or treatment, advice or instruction, or the related furnishing of food or beverages;
  - (b) Any health or therapeutic service, treatment, advice or instruction; or
  - (c) The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances; or
- (2) First aid services, which include:
- (a) Cardiopulmonary resuscitation, whether performed manually or with a defibrillator; or
  - (b) Services performed as a Good Samaritan.

For the purpose of determining the limits of insurance, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

However, this Incidental Medical Malpractice And Good Samaritan Coverage provision applies only if you are not engaged in the business or occupation of providing any of the services described in this provision.

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" 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. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### 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 even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of 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:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) 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;

(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"; or

(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 because of "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 51 feet long; and
  - (b) Not being used to carry persons 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;
- (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 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"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

**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 any 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. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) 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
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**j. Damage To Property**

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement,

enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

- (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 seven 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) and (4) of this exclusion do not apply to "property damage" arising from the use of elevators.

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

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at the job site.

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

**k. Damage To Your Product**

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

**l. 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.

**m. 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.

**n. 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.

**o. Personal And Advertising Injury**

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

**p. Access or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

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.

**q. Employment-Related Practices**

"Bodily injury" to:

- (1) A person arising out of any "employment-related practices"; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

- (1) Whether the injury-causing event described in the definition of "employment-related practices" occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**r. Asbestos**

- (1) "Bodily injury" or "property damage" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
  - (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
  - (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
  - (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating,

detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

**s. Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**Damage To Premises Rented To You - Exception For Damage By Fire, Lightning Or Explosion**

Exclusions c. through h. and j. through n. do not apply to damage by fire, lightning or explosion 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 those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising 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 "personal and advertising 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 "personal and advertising 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. Knowing Violation Of Rights Of Another

"Personal and advertising injury" arising out of an offense committed by, at the direction or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

### b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral, written or electronic publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

### c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral, written or electronic publication, in any manner, of material whose first publication took place before the beginning of the policy period.

### d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

### e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

### f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement".

### g. Quality Or Performance Of Goods - Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

## h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services.

## i. Infringement Of Intellectual Property Rights

- (1) "Personal and advertising injury" arising out of any actual or alleged infringement or violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, trade dress, service mark or other designation of origin or authenticity; or
- (2) Any injury or damage alleged in any claim or "suit" that also alleges an infringement or violation of any intellectual property right, whether such allegation of infringement or violation is made by you or by any other party involved in the claim or "suit", regardless of whether this insurance would otherwise apply.

However, this exclusion does not apply if the only allegation in the claim or "suit" involving any intellectual property right is limited to:

- (1) Infringement, in your "advertisement", of:
  - (a) Copyright;
  - (b) Slogan; or
  - (c) Title of any literary or artistic work; or
- (2) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

## j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. of the definition of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

## k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the



insured hosts, owns, or over which the insured exercises control.

**I. Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers.

**m. Pollution**

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

**n. 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".

**o. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) 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
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**p. Internet Advertisements And Content Of Others**

"Personal and advertising injury" arising out of:

- (1) An "advertisement" for others on your web site;
- (2) Placing a link to a web site of others on your web site;
- (3) Content, including information, sounds, text, graphics, or images from a web site of others displayed within a frame or border on your web site; or

(4) Computer code, software or programming used to enable:

- (a) Your web site; or
- (b) The presentation or functionality of an "advertisement" or other content on your web site.

**q. Right Of Privacy Created By Statute**

"Personal and advertising injury" arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act.

**r. Violation Of Anti-Trust law**

"Personal and advertising injury" arising out of a violation of any anti-trust law.

**s. Securities**

"Personal and advertising injury" arising out of the fluctuation in price or value of any stocks, bonds or other securities.

**t. Recording And Distribution Of Material Or Information In Violation Of Law**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**u. Employment-Related Practices**

"Personal and advertising injury" to:

- (1) A person arising out of any "employment-related practices"; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

- (1) Whether the injury-causing event described in the definition of "employment-related practices" occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**v. Asbestos**

- (1) "Personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
  - (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
  - (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
  - (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

**w. Access Or Disclosure Of Confidential Or Personal Information**

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

**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:
  - (1) The accident takes place in the "coverage territory" and during the policy period;
  - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
  - (3) 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.

**SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**

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

- a. All expenses we incur.
- b. Up to \$1,000 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.
- c. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. 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 \$500 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, such costs do not include attorneys' fees, attorneys' expenses, witness or expert fees, or any other expenses of a party taxed to the insured.
- f. 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.
- g. 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.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been

assumed by the insured in the same "insured contract";

- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
  - (1) Agrees in writing to:
    - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
    - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
    - (c) Notify any other insurer whose coverage is available to the indemnitee; and
    - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (2) Provides us with written authorization to:
    - (a) Obtain records and other information related to the "suit"; and
    - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

**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. Employees And Volunteer Workers**

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" or "personal and advertising 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 that

"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 because of the injury described in Paragraphs (1)(a) or (1)(b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services:

- (a) Subparagraphs (1)(a), (1)(b) and (1)(c) above do not apply to any "employee" or "volunteer worker" providing first aid services; and
- (b) Subparagraph (1)(d) above does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such 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. Real Estate Manager**

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

**c. Temporary Custodians Of Your Property**

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. Legal Representative If You Die**

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.

**e. Unnamed Subsidiary**

Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which such insured is also a named insured under another policy or would be a named insured under such policy but for its termination or the exhaustion of its limits of insurance.

**3. Newly Acquired Or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**5. Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

**a. Vendors**

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor 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 that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Sub-paragraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

**b. Lessors Of Equipment**

(1) Any person(s) or organization(s) from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

(2) With respect to the insurance afforded to these additional insureds this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

**c. Lessors Of Land Or Premises**

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

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

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to lease that land; or
2. Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**d. Architects, Engineers Or Surveyors**

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or

omissions of those acting on your behalf:

(1) In connection with your premises; or

(2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

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", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

**e. Permits Issued By State Or Political Subdivisions**

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

**f. Any Other Party**

Any other person or organization who is not an additional insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In the performance of your ongoing operations;

- (2) In connection with your premises owned by or rented to you; or
- (3) In connection with "your work" and included within the "products-completed operations hazard", but only if
  - (a) The written contract or agreement requires you to provide such coverage to such additional insured; and
  - (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

However:

- (1) The insurance afforded to such additional insured only applies to the extent permitted by law; and
- (2) If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the 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, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

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", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

The limits of insurance that apply to additional insureds is described in Section III - Limits Of Insurance.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section IV - Commercial General Liability Conditions.

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.

### SECTION III - LIMITS OF INSURANCE

#### 1. The Most We Will Pay

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. General Aggregate Limit

The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- c. Damages under Coverage B.

#### 3. Products-Completed Operations Aggregate Limit

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

#### 4. Personal And Advertising Injury Limit

Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

#### 5. Each Occurrence Limit

Subject to 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 because of all "bodily injury" and "property damage" arising out of any one "occurrence".

#### 6. Damage To Premises Rented To You Limit

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

**7. Medical Expense Limit**

Subject to 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.

**8. How Limits Apply To Additional Insureds**

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

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

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

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. Notice Of Occurrence Or Offense**

You or any additional insured 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. Notice Of Claim**

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

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

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

**c. Assistance And Cooperation Of The Insured**

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 because of injury or damage to which this insurance may also apply.

**d. Obligations At The Insureds Own Cost**

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.

**e. Additional Insureds Other Insurance**

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

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

**f. Knowledge Of An Occurrence, Offense, Claim Or Suit**

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or the additional insured is a partnership;



- (3) Any manager, if you or the additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or the additional insured is a corporation;
- (5) Any trustee, if you or the additional insured is a trust; or
- (6) Any elected or appointed official, if you or the additional insured is a political subdivision or public entity.

This duty applies separately to you and any additional insured.

### 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 **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

#### b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

##### (1) Your Work

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

##### (2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

### (3) Tenant Liability

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;

### (4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

### (5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion j. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

### (6) When You Are Added As An Additional Insured To Other Insurance

Any other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

### (7) When You Add Others As An Additional Insured To This Insurance

Any other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

#### (a) Primary Insurance When Required By Contract

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

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

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

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

When this insurance is excess, we will have no duty 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.

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

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

We will share the remaining loss, if any, 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. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- 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**

**a. When You Accept This Policy**

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and
- (3) We have issued this policy in reliance upon your representations.

**b. Unintentional Failure To Disclose Hazards**

If unintentionally you should fail to disclose all hazards relating to the conduct of your business that exist at the inception date of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

**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 Of Rights Of Recovery Against Others To Us**

**a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, 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.

**b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

**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 the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. **(1)** Radio;
- (2)** Television;
- (3)** Billboard;
- (4)** Magazine;
- (5)** Newspaper; or

b. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

**2. "Advertising idea"** means any idea for an "advertisement".

**3. "Asbestos hazard"** means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

**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 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

sustained by a person and, if arising out of the above, mental anguish or death at any time.

**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 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 a. above;
- (2)** The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
- (3)** "Personal and advertising 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 the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory or in a settlement we agree to.

**7. "Employee"** includes a "leased worker". "Employee" does not include a "temporary worker".

**8. "Employment-Related Practices"** means:

- a. Refusal to employ that person;
- b. Termination of that person's employment; or
- c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person.

**9. "Executive officer"** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

**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, lightning or explosion on premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage to

Premises Rented To You Limit described in Section III - Limits of Insurance;

- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement 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, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement 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, road-beds, tunnel, underpass or crossing.

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

- (1) 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
- (2) 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 (1) above and supervisory, inspection, architectural or engineering activities.

**13. "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".

**14. "Loading or unloading"** means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. 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".

**15. "Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in 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:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in 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":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) 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 vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law 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".

**16. "Occurrence"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

**17. "Personal and advertising injury"** means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person or organization occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral, written or electronic publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral, written or electronic publication, in any manner, of material that violates a person's right of privacy;
- f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement"; or
- g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement".

**18. "Pollutants"** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**19. "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.

**20. "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.

As used in this definition, computerized or electronically stored data, programs or software are not tangible property. Electronic data means information, facts or programs:

- a. Stored as or on;
- b. Created or used on; or
- c. 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.

**21. "Suit"** means a civil proceeding in which damages because of "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.

**22. "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.

**23. "Volunteer worker"** means a person who

- a. Is not your "employee";
- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

**24. "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.

**25. "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.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA  
BLANKET BASIS**

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

The additional premium for this endorsement shall be calculated by applying a factor of 2% to the total manual premium, with a minimum initial charge of \$350, then applying all other pricing factors for the policy to this calculated charge to derive the final cost of this endorsement.

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

**Schedule**

**Blanket Waiver**

**Person/Organization**                      Blanket Waiver – Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

| <b>Job Description</b> | <b>Waiver Premium (prior to adjustments)</b> |
|------------------------|--|
| All CA Operations      | 11396.00                                     |

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.  
**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective: 08/04/2024

Policy No.: ARWC556657

Endorsement No.:

Insured:

Premium \$

Insurance Company: Cypress Insurance Company

Countersigned by \_\_\_\_\_

POLICY NUMBER: 57UUNSR2GCT

COMMERCIAL GENERAL LIABILITY  
CG 20 26 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s): AS REQUIRED BY WRITTEN CONTRACT

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



SIGNATURE PAGE

**In witness whereof**, Gotham Insurance Company has caused this policy to be signed by its Chief Executive Officer and Secretary.



Jonathan Ritz  
Chief Executive Officer



Erin Brennan Bagley  
Secretary

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Named Insured: Arboricultural Specialties, Inc. (Corp)  
Policy #: EX202400005079  
Policy Period: 06-06-2024 to 08-04-2025

IL 0001 (0122)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**POLICY CHANGES**

**Policy Change  
Number 1**

|   |   |  |
|---|---|--|
| <p><b>POLICY NUMBER</b><br/>EX202400005079</p>                          | <p><b>POLICY CHANGES EFFECTIVE</b><br/>08/04/2024<br/>Processed on date:<br/>08/16/2024</p> | <p><b>COMPANY</b><br/>Gotham Insurance Company</p>             |
| <p><b>NAMED INSURED</b><br/>Arboricultural Specialties, Inc. (Corp)</p> |   | <p><b>AUTHORIZED REPRESENTATIVE</b><br/>RSG Specialty, LLC</p> |
| <p><b>COVERAGE PARTS AFFECTED</b><br/>Commercial Excess Liability</p>   |   |  |

**CHANGES**

**In consideration of the additional premium shown, it is understood and agreed that the policy is amended as follows:**

The following policy limits are amended:

Each Occurrence Limit:\$5,000,000

General Aggregate Limit:\$5,000,000

The following underlying coverage exposure is deleted:

Employers Liability

The following underlying Business Auto policy is amended:

Policy Number: TSRSCA0000131-00

Description: AL

Carrier Name: MS Transverse Specialty Insurance Company

Effective Date: 08/04/2024

Expiration Date: 08/04/2025

The following underlying Commercial General Liability policy is amended:

Policy Number: 57UUNSR2GCT

Description: GL

Carrier Name: Hartford Fire Insurance Company

Effective Date: 08/04/2024

Expiration Date: 08/04/2025

The following underlying Excess Liability policies are amended:

Policy Number: EXT30065753400

Description: UL - Endurance American Specialty Insurance Company

Carrier Name: Endurance American Specialty Insurance Company

Effective Date: 08/04/2024

Expiration Date: 08/04/2025

Policy Number: XLXD6131001S

Description: Controlling UL - HDI Specialty Insurance Company

Carrier Name: HDI Specialty Insurance Company

Effective Date: 08/04/2024

Expiration Date: 08/04/2025

**All other terms and conditions remain unchanged.**

# HDI SPECIALTY INSURANCE COMPANY

AN ILLINOIS CORPORATION

161 NORTH CLARK STREET, 48TH FLOOR

CHICAGO, IL 60601

312-580-1900

## COMMERCIAL LINES POLICY

FOR

Arboricultural Specialties, Inc.

POLICY # XLXD6131001S

POLICY PERIOD: 8/4/2024 to 8/4/2025

**Underwriting Team:**

**Evan Friel – Underwriter**

**Tiffany Schuld – Underwriting Assistant**

**Loss Notification**

To report a claim 24 hours a day, 7 days a week, please contact us as soon as practicable for further assistance:

Telephone: 1-866-484-2053

Fax: 1-866-477-8502

Email: [newclaims@us.hdi.global](mailto:newclaims@us.hdi.global)

**POLICY JACKET, DECLARATIONS PAGE, FORMS AND ENDORSEMENTS COMPLETE THIS POLICY**



**POLICY NUMBER: XLXD6131001S**

## COMMERCIAL EXCESS LIABILITY DECLARATIONS

|                          |   |  |  |
|--------------------------|---|--|--|
| <b>Company Name:</b>     | HDI Specialty Insurance Company   |  |  |
| <b>Producer Name:</b>    | RT Specialty<br>44 Montgomery Street<br>Suite 2000<br>San Francisco, CA 94104                               |  |  |
| <b>Named Insured(s):</b> | Arboricultural Specialties, Inc.  |  |  |
| <b>Mailing Address:</b>  | 2828 8 <sup>th</sup> Street<br>Berkeley, CA 94710   |  |  |
| <b>Policy Period</b>     |   |  |  |
| <b>From:</b>             | 8/4/2024  |  |  |
| <b>To:</b>               | 8/4/2025 <span style="float: right;">At 12:01 AM (Standard Time at your mailing address shown above)</span> |  |  |

**IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE TO PROVIDE YOU WITH THE INSURANCE AS STATED IN THIS POLICY.**

| Excess Policy – Limits Of Insurance             |              |
|---|--------------|
| Each Occurrence Limit                           | \$ 5,000,000 |
| Aggregate Limit                                 | \$ 5,000,000 |
| Products – Completed Operations Aggregate Limit | \$ 5,000,000 |

| Excess Policy – Premium   |   |
|---|---|
| Premium (including premium subject to audit)  | \$ 487,500  |
| TRIA Premium (if applicable)  | \$ Rejected   |
| <b>Premium Shown Is Payable:</b>  |   |
| <b>At Inception</b>   | \$ 487,500  |
| <b>At Each Anniversary</b> (if policy period is more than one year and premium is paid in annual installments.) | \$ N/A  |
| <b>Audit Period (If Applicable)</b>   | <input type="checkbox"/> <b>Annually</b> <input type="checkbox"/> <b>Semiannually</b> <input type="checkbox"/> <b>Quarterly</b> <input type="checkbox"/> <b>Policy Period</b> |



POLICY NUMBER: XLXD6131001S

| Endorsements Attached To The Excess Policy         |   |
|--|---|
| Refer to the Forms and Endorsements Schedule       |   |
| Schedule Of Controlling Underlying Insurance       |   |
| Commercial<br>General<br>Liability                 | Type Of Coverage: <input checked="" type="checkbox"/> Occurrence <input type="checkbox"/> Claims-made   |
|  | Company:                     Hartford Casualty Insurance Company  |
|  | Policy Number:        57UUNSR2GCT   |
|  | Policy Period:        From: 8/4/2024    To: 8/4/2025  |
|  | Limits Of Insurance:<br>Each Occurrence     \$ 1,000,000<br>General Aggregate     \$ 2,000,000<br>Products-completed Operations Aggregate    \$ 2,000,000<br>Personal And Advertising Injury                                 \$ 1,000,000 Any one person or organization<br><br>Defense Expenses: <input type="checkbox"/> Inside Limits <input checked="" type="checkbox"/> Outside Limits |
| Excess<br>Liability –<br>Auto<br>Liability<br>Only | Type Of Coverage: <input checked="" type="checkbox"/> Occurrence <input type="checkbox"/> Claims-made   |
|  | Company:                     Endurance American Specialty Insurance Company   |
|  | Policy Number:        EXT30065753400  |
|  | Policy Period:        From: 8/4/2024    To: 8/4/2025  |
|  | Limits Of Insurance:<br>Each Occurrence Limit     \$ 1,000,000<br>Aggregate Limit     \$ 1,000,000<br>Defense Expenses: <input type="checkbox"/> Inside Limits <input checked="" type="checkbox"/> Outside Limits   |

# COMMERCIAL EXCESS 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 the "controlling underlying insurance".

Other words and phrases that appear in quotation marks in this Coverage Part have special meaning. Refer to Section IV – Definitions. Other words and phrases that are not defined under this Coverage Part but defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance".

The insurance provided under this Coverage Part will follow the same provisions, exclusions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this insurance. To the extent such provisions differ or conflict, the provisions of this Coverage Part will apply. However, the coverage provided under this Coverage Part will not be broader than that provided by the applicable "controlling underlying insurance".

There may be more than one "controlling underlying insurance" listed in the Declarations and provisions in those policies conflict, and which are not superseded by the provisions of this Coverage Part. In such a case, the provisions, exclusions and limitations of the "controlling underlying insurance" applicable to the particular "event" for which a claim is made or suit is brought will apply.

## SECTION I – COVERAGES

### 1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which insurance provided under this Coverage Part applies.

We will have the right and duty to defend the insured against any suit seeking damages for such "injury or damage" when the applicable limits of "controlling underlying insurance" have been exhausted in accordance with the provisions of such "controlling underlying insurance".

When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other suit seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any suit seeking damages for which insurance under this policy does not apply.

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or suit, for which we have the duty to defend.

But:

- (1) The amount we will pay for "ultimate net loss" is limited as described in Section II – 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 this Coverage Part. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of defense expenses, judgments or settlements under this Coverage Part.
- b. This insurance applies to "injury or damage" that is subject to an applicable "retained limit". If any other limit, such as, a sublimit, is specified in the "controlling underlying insurance", this insurance does not apply to "injury or damage" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "controlling underlying insurance".
- c. If the "controlling underlying insurance" requires, for a particular claim, that the "injury or damage" occur during its policy period in order for that coverage to apply, then this insurance will only apply to that "injury or damage" if it occurs during the policy period of this Coverage Part. If the "controlling underlying insurance" requires that the "event" causing the particular "injury or damage" takes place during its policy period in order for that coverage to apply, then this insurance will apply to the claim only if the "event" causing that "injury or damage" takes place during the policy period of this Coverage Part.

d. Any additional insured under any policy of "controlling underlying insurance" will automatically be an additional insured under this insurance. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance required by the contract, less any amounts payable by any "controlling underlying insurance".

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "controlling underlying insurance".

**2. Exclusions**

The following exclusions, and any other exclusions added by endorsement, apply to this Coverage Part. In addition, the exclusions applicable to any "controlling underlying insurance" apply to this insurance unless superseded by the following exclusions, or superseded by any other exclusions added by endorsement to this Coverage Part.

Insurance provided under this Coverage Part does not apply to:

**a. Medical Payments**

Medical payments coverage or expenses that are provided without regard to fault, whether or not provided by the applicable "controlling underlying insurance".

**b. Auto**

Any loss, cost or expense payable under or resulting from any of the following auto coverages:

- (1) First-party physical damage coverage;
- (2) No-fault coverage;
- (3) Personal injury protection or auto medical payments coverage; or
- (4) Uninsured or underinsured motorists coverage.

**c. Pollution**

- (1) "Injury or damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, 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.

This exclusion does not apply to the extent that valid "controlling underlying insurance" for the pollution liability risks described above exists or would have existed but for the exhaustion of underlying limits for "injury or damage".

**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.

**SECTION II – 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 number of vehicles involved;
- c. Persons or organizations making claims or bringing suits; or
- d. Limits available under any "controlling underlying insurance".

2. The Limits of Insurance of this Coverage Part will apply as follows:

- a. This insurance only applies in excess of the "retained limit".
- b. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss", for all "injury or damage" covered under this Coverage Part. However, this Aggregate Limit only applies to "injury or damage" that is subject to an aggregate limit of insurance under the "controlling underlying insurance".
- c. Subject to Paragraph 2.b. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this insurance because of all "injury or damage" arising out of any one "event".
- d. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.



3. If any "controlling underlying insurance" has a policy period that is different from the policy period of this Coverage Part then, for the purposes of this insurance, the "retained limit" will only be reduced or exhausted by payments made for "injury or damage" covered under this insurance.

The Aggregate Limit of this Coverage Part applies separately to each consecutive annual period of this Coverage Part and to any remaining period of this Coverage Part 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 III – CONDITIONS**

The following conditions apply. In addition, the conditions applicable to any "controlling underlying insurance" are also applicable to the coverage provided under this insurance unless superseded by the following conditions.

**1. Appeals**

If the "controlling underlying insurer" or insured elects not to appeal a judgment in excess of the amount of the "retained limit", we may do so at our own expense. We will also pay for taxable court costs, pre- and postjudgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in Section II – Limits Of Insurance.

**2. Bankruptcy**

**a. Bankruptcy Of Insured**

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

**b. Bankruptcy Of Controlling Underlying Insurer**

Bankruptcy or insolvency of the "controlling underlying insurer" will not relieve us of our obligations under this Coverage Part.

However, insurance provided under this Coverage Part will not replace any "controlling underlying insurance" in the event of bankruptcy or insolvency of the "controlling underlying insurer". The insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect and recoverable.

**3. Duties In The Event Of An Event, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this insurance. To the extent possible, notice should include:

- (1) How, when and where the "event" 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 "event".

- 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 insured involved 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 because of "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.

**4. First Named Insured Duties**

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other Named Insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.

At our request, the first Named Insured will furnish us, as soon as practicable, with a complete copy of any "controlling underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Coverage Part.

## 5. Cancellation

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. 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.
- c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

## 6. Changes

This Coverage Part contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms of this Coverage Part with our consent. This Coverage Part's terms can be amended or waived only by endorsement.

## 7. Maintenance Of/Changes To Controlling Underlying Insurance

Any "controlling underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of aggregate limits in accordance with the provisions of such "controlling underlying insurance" that results from "injury or damage" to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "controlling underlying insurance". Failure to maintain "controlling underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect.

The first Named Insured must notify us in writing, as soon as practicable, if any "controlling underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "controlling underlying insurance" is changed.

## 8. Other Insurance

a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, if no other insurer defends, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

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

## 9. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. If this policy is auditable, the premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premium is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

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.

## 10. Loss Payable

Liability under this Coverage Part does not apply to a given claim unless and until:

- a. The insured or insured's "controlling underlying insurer" has become obligated to pay the "retained limit"; and
- b. The obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant, "controlling underlying insurer" (or a representative of one or more of these) and us.

## 11. 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, "controlling underlying insurer" and the claimant or the claimant's legal representative.

## 12. Transfer Of Defense

### a. Defense Transferred To Us

When the limits of "controlling underlying insurance" have been exhausted, in accordance with the provisions of "controlling underlying insurance", we may elect to have the defense transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

### b. Defense Transferred By Us

When our limits of insurance have been exhausted our duty to provide a defense will cease.

We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Coverage Part of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Coverage Part, we will cooperate in the transfer of control to the insured and its designated representative.

## 13. 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 IV – DEFINITIONS

The definitions applicable to any "controlling underlying insurance" also apply to this insurance. In addition, the following definitions apply.

1. "Controlling underlying insurance" means any policy of insurance or self-insurance listed in the Declarations under the Schedule of "controlling underlying insurance".
2. "Controlling underlying insurer" means any insurer who provides any policy of insurance listed in the Declarations under the Schedule of "controlling underlying insurance".
3. "Event" means an occurrence, offense, accident, act, or other event, to which the applicable "controlling underlying insurance" applies.
4. "Injury or damage" means any injury or damage, covered in the applicable "controlling underlying insurance" arising from an "event".
5. "Retained limit" means the available limits of "controlling underlying insurance" applicable to the claim.
6. "Ultimate net loss" means the total sum, after reduction for recoveries, or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:
  - a. Settlements, judgments, binding arbitration; or
  - b. Other binding alternate dispute resolution proceeding entered into with our consent.

"Ultimate net loss" includes defense expenses if the "controlling underlying insurance" specifies that limits are reduced by defense expenses.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)**

This endorsement modifies insurance provided under the following:

### COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2.,  
**Exclusions:**

#### **2. Exclusions**

##### **NUCLEAR ENERGY LIABILITY**

**a.** Under any Liability Coverage, to "injury or damage":

- (1)** With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2)** Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(b)** the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**b.** Under any Liability Coverage, to "injury or damage" resulting from "hazardous properties" of "nuclear material", if:

- (1)** The "nuclear material" **(a)** is at any "nuclear facility" owned by, or operated by or on behalf of, an insured or **(b)** has been discharged or dispersed therefrom;
- (2)** The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an insured; or

**(3)** The "injury or damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion **(3)** applies only to property damage to such "nuclear facility" and any property thereat.

**c.** As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

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

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

"Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a)** Any "nuclear reactor";
- (b)** Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

- (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

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

"Injury or damage" includes all forms of radioactive contamination of property.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – EXTERIOR INSULATION AND FINISH SYSTEMS**

This endorsement modifies insurance provided under the following:

### COMMERCIAL EXCESS LIABILITY COVERAGE PART

**A.** The following exclusion is added to Paragraph 2.  
**Exclusions of Section I – Coverages:**

#### **2. Exclusions**

Insurance provided under this Coverage Part does not apply to "injury or damage" arising out of, caused by, or attributable to, whether in whole or in part, the following:

- a.** The design, manufacture, construction, fabrication, preparation, distribution and sale, installation, application, maintenance or repair, including remodeling, service, correction or replacement, of any "exterior insulation and finish system" or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system; or
- b.** Your product or your work with respect to any exterior component, fixture or feature of any structure if an "exterior insulation and finish system", or any substantially similar system, is used on the part of that structure containing that component, fixture or feature.

**B.** The following definition is added to the **Definitions** section:

"Exterior insulation and finish system" means a non-load bearing exterior cladding or finish system, and all component parts therein, used on any part of any structure, and consisting of:

- 1.** A rigid or semi-rigid insulation board made of expanded polystyrene and other materials;
- 2.** The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
- 3.** A reinforced or unreinforced base coat;
- 4.** A finish coat providing surface texture to which color may be added; and
- 5.** Any flashing, caulking or sealant used with the system for any purpose.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – COMMUNICABLE DISEASE**

This endorsement modifies insurance provided under the following:

### COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2.  
**Exclusions of Section I – Coverages:**

#### **2. Exclusions**

Insurance provided under this Coverage Part does not apply to:

##### **Communicable Disease**

"Injury or damage" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;

- b. Testing for a communicable disease;
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION OF CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

### COMMERCIAL EXCESS LIABILITY COVERAGE PART

Any endorsement addressing acts of terrorism (however defined) in any "controlling underlying insurance" does not apply to this excess insurance. The following provisions addressing acts of terrorism apply with respect to this excess insurance:

**A.** The following exclusion is added:

This insurance does not apply to:

**TERRORISM**

"Injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

**B.** The following definition is added:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

- a.** The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

- b.** The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- C.** The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for "injury or damage" that is otherwise excluded under this Coverage Part.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES (PFAS)**

This endorsement modifies insurance provided under the following:

### COMMERCIAL EXCESS LIABILITY COVERAGE PART

- A.** The following exclusion is added to Paragraph 2. **Exclusions of Section I – Coverages:**
- 2. Exclusions**
- Insurance provided under this Coverage Part does not apply to:
- Perfluoroalkyl And Polyfluoroalkyl Substances**
- a.** "Injury or damage" which would not have occurred, in whole or in part, but for the actual, alleged, threatened or suspected inhalation, ingestion, absorption, consumption, discharge, dispersal, seepage, migration, release or escape of, contact with, exposure to, existence of, or presence of, any "perfluoroalkyl or polyfluoroalkyl substances".
- b.** Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "perfluoroalkyl or polyfluoroalkyl substances", by any insured or by any other person or entity.
- B.** The following definition is added to the **Definitions** Section:
- "Perfluoroalkyl or polyfluoroalkyl substances" means any:
1. Chemical or substance that contains one or more alkyl carbons on which hydrogen atoms have been partially or completely replaced by fluorine atoms, including but not limited to:
    - a.** Polymer, oligomer, monomer or nonpolymer chemicals and their homologues, isomers, telomers, salts, derivatives, precursor chemicals, degradation products or by-products;
    - b.** Perfluoroalkyl acids (PFAA), such as perfluorooctanoic acid (PFOA) and its salts, or perfluorooctane sulfonic acid (PFOS) and its salts;
    - c.** Perfluoropolyethers (PFPE);
    - d.** Fluorotelomer-based substances; or
    - e.** Side-chain fluorinated polymers; or
  2. Good or product, including containers, materials, parts or equipment furnished in connection with such goods or products, that consists of or contains any chemical or substance described in Paragraph **B.1.**

POLICY NUMBER: XLXD6131001S

COMMERCIAL EXCESS LIABILITY  
CX 24 33 11 16

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

### **SCHEDULE**

**Name Of Additional Insured Person(s) Or Organization(s):**

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Paragraph 8. of **Section III – Conditions** is replaced by the following:

#### **8. Other Insurance**

a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. However:

- (1) This condition will not apply to other insurance specifically written as excess over this Coverage Part.
- (2) The insurance provided under this Coverage Part will not seek contribution from any other insurance available to an additional insured, provided that:
  - (a) The additional insured is a Named Insured under such other insurance;
  - (b) The additional insured is shown in the Schedule; and

(c) You have agreed in writing in a contract or agreement that this insurance would not seek contribution from any other insurance available to the additional insured.

When this insurance is excess, 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.

- b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:
  - (1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and
  - (2) The total of all deductible and self-insured amounts under all that other insurance.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **SANCTION LIMITATION AND EXCLUSION CLAUSE**

The Company shall not be deemed to provide coverage and the Company shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such coverage, payment of such claim or provision of such benefit would expose the Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **SERVICE OF SUIT**

This endorsement modifies this policy with the addition of the following:

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Company hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the Statute, or his successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured(s) or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the below named as the person whom the said officer is authorized to mail process or a true copy thereof.

It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, HDI Specialty Insurance Company, 161 N. Clark Street, 48<sup>th</sup> Floor, Chicago, IL 60601, or his or her representative, and that in any suit instituted against any one of them upon this policy, the Company will abide by the final decision of such Court or any Appellate Court in the event of an appeal.

NOTHING HEREIN SHALL VARY, ALTER, WAIVE, OR EXTEND ANY OF THE TERMS, PROVISIONS, REPRESENTATIONS, CONDITIONS OR AGREEMENTS OF THE POLICY OTHER THAN AS STATED ABOVE.

All other terms and conditions of this Policy remain unchanged



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

## LIMITS OF INSURANCE - FOLLOWING FORM UNDERLYING AGGREGATES

This endorsement modifies insurance provided under the following:

### COMMERCIAL EXCESS LIABILITY COVERAGE PART

**SECTION II – LIMITS OF INSURANCE** is deleted in its entirety and replaced with the following:

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 number of vehicles involved;
  - c. Persons or organizations making claims or bringing suits; or
  - d. Limits available under any "controlling underlying insurance".
2. The Limits of Insurance of this Coverage Part will apply as follows:
  - a. This insurance only applies in excess of the "retained limit".
  - b. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss", for all "injury or damage" covered under this Coverage Part, except "ultimate net loss" because of "injury or damage":
    - i. That is not subject to an aggregate limit of insurance under the "controlling underlying insurance";  
or
    - ii. Included in the products-completed operations hazard.
  - c. The Products-Completed Operations Aggregate Limit shown in the Declarations is the most we will pay for the sum of all "ultimate net loss" under this insurance because of "injury or damage" included in a products-completed operations hazard.
  - d. Subject to Paragraph **2.b. or 2.c.** above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this insurance because of all "injury or damage" arising out of any one "event".
  - e. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.
3. If any "controlling underlying insurance" has a policy period that is different from the policy period of this Coverage Part then, for the purposes of this insurance, the "retained limit" will only be reduced or exhausted by payments made for "injury or damage" covered under this insurance.



The Aggregate Limit shown in Declarations page shall apply in the same manner as the aggregate limits shown in the Schedule of Controlling Underlying Insurance.

The Products-Completed Operations Aggregate Limit shown in the Declarations shall apply in the same manner as the Products-Completed Operations Aggregate Limit shown in the Schedule of Controlling Underlying Insurance.

All other terms and conditions of this Policy remain unchanged.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **ISSUANCE OF POLICY PRIOR TO RECEIPT OF CONTROLLING UNDERLYING INSURANCE**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE PART**

**SECTION III – CONDITIONS** is amended by the addition of the following:

#### **Issuance Prior To Receipt Of Controlling Underlying Insurance Policy**

This policy, except where inconsistent with or supplementary to the "controlling underlying insurance" shall follow all terms and conditions of the "controlling underlying insurance", provided that such "controlling underlying insurance" is consistent with the bound coverage agreed to, in accordance with the warranties, terms, conditions, exclusions, and limitations as contained in the binder for the "controlling underlying insurance".

Following the issuance of such "controlling underlying insurance" as set forth above, a copy of such policy shall be forwarded to us for review and agreement by us. If, upon review, we conclude that there are any differences and/or inconsistencies in coverage between the binder and the "controlling underlying insurance", such differences and/or inconsistencies shall not be binding upon us unless:

- a. We agree in writing; and
- b. If we so require, the insured agrees to any additional premium and/or amendments to the provisions of such "controlling underlying insurance" related to such differences and/or inconsistencies.

All other terms and conditions of this Policy remain unchanged.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

## **WAIVER OF SUBROGATION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE PART**

This policy is amended as follows:

If prior to the time of an “event”, you and the insurer(s) of the “controlling underlying insurance” waived the right of recovery against a specific person or organization in a written insured contract, we hereby also agree to waive our right of recovery in the same manner. This waiver shall apply only with respect to a “injury or damage” occurring due to operations undertaken as per the specific contract in which you waived the right of recovery.

All other terms and conditions of this Policy remain unchanged.





THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

## **AMENDMENT – AGGREGATE LIMITS OF INSURANCE**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE PART**

**SECTION II – LIMITS OF INSURANCE** is deleted in its entirety and replaced with the following:

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 number of vehicles involved;
  - c. Persons or organizations making claims or bringing suits; or
  - d. Limits available under any "controlling underlying insurance".
2. The Limits of Insurance of this Coverage Part will apply as follows:
  - a. This insurance only applies in excess of the "retained limit".
  - b. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss", for all "injury or damage" covered under this Coverage Part, except "ultimate net loss" because of "injury or damage":
    - i. that is not subject to an aggregate limit of insurance under the "controlling underlying insurance"; or
    - ii. included in the products-completed operations hazard.
  - c. The Products-Completed Operations Aggregate Limit shown in the Declarations is the most we will pay for the sum of all "ultimate net loss" under this insurance because of "injury or damage" included in a products-completed operations hazard.
  - d. Subject to Paragraph **2.b. or 2.c.** above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this insurance because of all "injury or damage" arising out of any one "event".
  - e. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.
3. If any "controlling underlying insurance" has a policy period that is different from the policy period of this Coverage Part then, for the purposes of this insurance, the "retained limit" will only be reduced or exhausted by payments made for "injury or damage" covered under this insurance.

All other terms and conditions of this Policy remain unchanged



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **FLAT PREMIUM**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE PART**

The Premium shown in the Declarations is amended to be a FLAT PREMIUM (NOT SUBJECT TO AUDIT). This amount is not auditable. The Premium Audit Condition, Paragraph 9. of Section III – Conditions is deleted in its entirety.

In the case of cancellation, the applicable pro rata share (if cancelled by us) or customary short rate proportion (if cancelled by the first Named Insured) of the FLAT PREMIUM will apply. However, if any other endorsement attached to this policy amends Paragraph 5.e. of the Cancellation provisions of Section III – Conditions, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to cancellation provision do not apply.

All other terms and conditions of this Policy remain unchanged.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## MINIMUM EARNED PREMIUM

This endorsement modifies the following:

### COMMERCIAL EXCESS LIABILITY COVERAGE PART

In consideration of the premium for this Policy, it is hereby understood and agreed that Paragraph **5.e.** of the **Cancellation** provisions of **Section III - Conditions** is replaced by the following:

#### 5. Cancellation

e. If this policy is cancelled, we will send the first Named Insured any premium refund due:

(1) If we cancel, the refund will be pro-rata.

(2) Cancellation at the request of the first Named Insured:

This Policy is subject to a Minimum Earned Premium which is 25% of the premium for this Policy as shown in the applicable Coverage Part(s) Declarations unless scheduled here otherwise N/A%. This Minimum Earned Premium is the least amount of premium we shall retain as earned premium, regardless of the term. If the first Named Insured cancels, the refund will be determined as follows:

(a) If at the time of cancellation the earned premium is greater than the Minimum Earned Premium, the refund will be 90% of the pro-rata return.

(b) If at the time of cancellation the earned premium is equal to or less than the Minimum Earned Premium, the refund will be premium paid in excess of the Minimum Earned Premium.

(c) If the Policy is a project specific policy with a policy term in excess of one year, the pro-rata return premium will be calculated based on the number of days for which the policy was in force, divided against the date when the policy becomes fully earned.

Cancellation for non-payment of premium will be considered cancellation at the request of the first Named Insured.

All other terms and conditions of this Policy remain unchanged



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CYBER LIABILITY EXCLUSION

This endorsement modifies insurance provided under the following:

### COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages**:

#### 2. Exclusions

Insurance provided under this Coverage Part does not apply to:

#### Cyber Liability

- (1) The “injury or damage” or alteration of any electronic data, electronic information, computer applications software, computer operations software or any other similar data, information or software in any computer hardware, computer system, computer network, or the “internet”; or
- (2) Damage to any computer hardware, computer system, computer network, or the “internet” as result of “injury or damage” or alteration of any electronic data, electronic information, computer applications software, computer operations software or any similar data, information or software.

It is further agreed that in no event shall this policy recognize or be impacted by the erosion or exhaustion of any “controlling underlying insurance” by payment of “ultimate net loss” arising out of or in connection with any “injury or damage” excluded by this endorsement.

B. The following definition is added to **Section IV - Definitions**:

“Internet” shall mean the worldwide public network of computers as it currently exists or may be manifested in the future, including the “internet”, an intranet, an extranet or a virtual public network.

All other terms and conditions of this Policy remain unchanged.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **EXCLUSION – ALL PROJECTS SUBJECT TO A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE PART**

**A.** The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages**:

#### **2. Exclusions**

Insurance provided under this Coverage Part does not apply to:

#### **Consolidated Insurance Program**

- (1)** This insurance does not apply to “injury or damage” arising out of any current or completed operation performed by you or on your behalf which is or was insured under a “consolidated (wrap-up) insurance program”.
- (2)** This exclusion applies whether or not the “consolidated (wrap-up) insurance program”:
  - a. provides coverage identical to that provided by this Coverage part;
  - b. has limits adequate to cover all claims; or
  - c. remains in effect.

**B.** The following definition is added to **Section IV - Definitions**:

“Consolidated (wrap-up) insurance program” means a construction, erection or demolition project for which the prime contractor/project manager or owner of the project has secured general liability insurance covering some or all of the contractors or subcontractors involved in the project. “Consolidated (wrap-up) insurance program” includes an Owner Controlled Insurance Program (O.C.I.P.) or a Contractor Controlled Insurance Program (C.C.I.P.).

All other terms and conditions of this Policy remain unchanged.



## Exclusion – Wildfire

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages**:

### **2. Exclusions**

This policy does not apply to any bodily injury, property damage, personal and advertising injury or any other loss, cost, defense fee, expense, injury, damage, claim, dispute or suit in whole or in part arising out of, directly or indirectly resulting from or in any way related to “wildfire”.

For purposes of this exclusion, “wildfire” means any uncontrolled fire in any area of vegetation of any type, including, but not limited to, brush fire, bush fire, desert fire, escaped prescribed fire, forest fire, grass fire, ground fire, hill fire, range fire, wildland fire or wildland urban interface fire. “Wildfire” also includes all smoke, heat, soot or fumes associated with or resulting in any way from such “wildfire”.

All other terms and conditions of this policy remain unchanged.



## **EXCLUSION - CARE, CUSTODY OR CONTROL – REAL OR PERSONAL PROPERTY**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages**:

### **2. Exclusions**

Any property damage to real or personal property in the care, custody or control of any insured, or loaned to any insured, or used, rented, or occupied by any insured, or as to which any insured is for any purpose exercising physical control.

All other terms and conditions of this policy remain unchanged.

POLICY NUMBER: XLXD6131001S

**COMMERCIAL EXCESS LIABILITY  
HS XS EX 3016 07 22**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ERISA EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **SECTION 1 – COVERAGES**:

### **ERISA**

Insurance provided under this coverage part does not apply to:

Any obligation of the insured under the Employment Retirement Income Security Act (E.R.I.S.A), and any amendments thereto or any similar federal, state or local statute.





POLICY NUMBER: XLXD6131001S

COMMERCIAL EXCESS LIABILITY  
HS XS EX 3017 07 22

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **SUB-LIMITED COVERAGE EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

It is agreed that this insurance policy shall not apply in excess of any sub-limited coverages(s) that are included within, or are a part of, any "controlling underlying insurance" scheduled in this policy. Sub-limited coverage(s) are defined as any coverage(s) having limits of insurance less than the limit(s) of any "controlling underlying insurance" included in the schedule of underlying policies.



POLICY NUMBER: XLXD6131001S

**COMMERCIAL EXCESS LIABILITY  
HS XS EX 3018 07 22**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WAR LIABILITY EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

This insurance does not apply to any liability arising out of any war, invasion, acts of foreign or domestic enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property including loss of access, by or under the order of any government, local authority or risks of contraband, illegal transportation or trade.



COMMERCIAL EXCESS LIABILITY  
HS XS EX 3029 01 23

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PENDING AND PRIOR LITIGATION AND KNOWN LOSSES EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

**SECTION I – COVERAGES, 2. Exclusions** is amended by the addition of the following:

Insurance provided under this Coverage Part does not apply to:

1. Damages, loss, cost or expense arising out of any claim, suit, litigation, arbitration, alternative dispute resolution or other judicial or administrative proceeding which has commenced or is pending prior to the effective date of this policy, as well as all future damages, loss, cost or expense arising out of said pending or prior litigation; or
2. Any bodily injury, property damage, personal injury, advertising injury, or any other injury or damage of which any insured had knowledge prior to the effective date of this policy.

This exclusion applies whether or not:

- a. Damages continue or progress during this policy period; or
- b. Ultimate liability for the final amount of damages, loss, cost or expense has been established.



**COMMERCIAL EXCESS LIABILITY  
HS XS EX 3035 05 23**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CROSS SUITS LIABILITY EXCLUSION**

This endorsement modifies insurance provided under the following:

Commercial Excess Liability Coverage Form

The following exclusion is added to Paragraph **2. Exclusions** of **SECTION 1 – COVERAGES**:

### **Cross Suits**

Insurance provided under this Coverage Part does not apply to "injury or damages" for which any Named Insured or its employees is legally liable and costs or expenses of any Named Insured or its employees arising out of, caused, or contributed to by any injury or damage claimed by any other Named Insured or its employees.



COMMERCIAL EXCESS LIABILITY  
HS XS EX 3534 03 24

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – VIOLATION OF LAW ADDRESSING DATA PRIVACY**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following is added to **SECTION I – COVERAGES, 2. Exclusions**:

Insurance provided under this Coverage Part does not apply to:

### **Violation Of Law Addressing Data Privacy**

“Injury or damage” arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a.** Any federal, state or local statute, ordinance, regulation or other law that addresses, prohibits, or limits access to, use of or the printing, dissemination, disposal, obtaining, collecting, storing, safeguarding, recording, retention, sending, transmitting, communicating, selling or distribution of any person's or organization's confidential or personal material or information, including financial, health, biometric or other nonpublic material or information.

Any such federal, state or local statute, ordinance, regulation or other law includes but is not limited to:

- (1)** The Illinois Biometric Information Privacy Act (BIPA), including any amendment of or addition to such law; or
  - (2)** The California Consumer Privacy Act (CCPA), including any amendment of or addition to such law; or
- b.** Any law of a jurisdiction other than the United States of America (including its territories and possessions) or Puerto Rico that is similar to any statute, ordinance, regulation or other law described in Paragraph **a.** above, including but not limited to the European Union's General Data Protection Regulation.

All other terms and conditions remain unchanged.



**SOMPO  
INTERNATIONAL**  
INSURANCE

# Sompo International

## Excess Liability Coverage Follow Form (Short Form)

**Policy Number:** EXT30065753400  
**Effective Dates:** August 04, 2024 To: August 04, 2025  
**Endurance American Specialty Insurance Company**

**Issuing Office:**  
3780 Mansell Road  
Suite 400  
Alpharetta, GA 30022  
[www.sompo-intl.com](http://www.sompo-intl.com)

## **SURPLUS LINES NOTICE**

### **CALIFORNIA**

#### **IMPORTANT NOTICE:**

- 1. The insurance policy that you have purchased is being issued by an insurer that is not licensed by the State of California. These companies are called “nonadmitted” or “surplus line” insurers.**
- 2. The insurer is not subject to the financial solvency regulation and enforcement that apply to California licensed insurers.**
- 3. The insurer does not participate in any of the insurance guarantee funds created by California law. Therefore, these funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised.**
- 4. The insurer should be licensed either as a foreign insurer in another state in the United States or as a non-United States (alien) insurer. You should ask questions of your insurance agent, broker, or “surplus line” broker or contact the California Department of Insurance at the toll-free number 1-800-927-4357 or internet website [www.insurance.ca.gov](http://www.insurance.ca.gov). Ask whether or not the insurer is licensed as a foreign or non-United States (alien) insurer and for additional information about the insurer. You may also visit the NAIC’s internet website at [www.naic.org](http://www.naic.org). The NAIC--the National Association of Insurance Commissioners--is the regulatory support organization created and governed by the chief insurance regulators in the United States.**
- 5. Foreign insurers should be licensed by a state in the United States and you may contact that state’s department of insurance to obtain more information about that insurer. You can find a link to each state from this NAIC internet website: [https://naic.org/state\\_web\\_map.htm](https://naic.org/state_web_map.htm).**

## **SURPLUS LINES NOTICE**

- 6. For non-United States (alien) insurers, the insurer should be licensed by a country outside of the United States and should be on the NAIC's International Insurers Department (IID) listing of approved nonadmitted non-United States insurers. Ask your agent, broker, or "surplus line" broker to obtain more information about that insurer.**
  
- 7. California maintains a "List of Approved Surplus Line Insurers (LASLI)." Ask your agent or broker if the insurer is on that list, or view that list at the internet website of the California Department of Insurance: [www.insurance.ca.gov/01-consumers/120-company/07-lasli/lasli.cfm](http://www.insurance.ca.gov/01-consumers/120-company/07-lasli/lasli.cfm).**
  
- 8. If you, as the applicant, required that the insurance policy you have purchased be effective immediately, either because existing coverage was going to lapse within two business days or because you were required to have coverage within two business days, and you did not receive this disclosure form and a request for your signature until after coverage became effective, you have the right to cancel this policy within five days of receiving this disclosure. If you cancel coverage, the premium will be prorated and any broker's fee charged for this insurance will be returned to you.**

**D-2 (Effective January 1, 2020)**





# Endurance American Specialty Insurance Company (Wilmington, Delaware)

Policy No. EXT30065753400  
Renewal of: New

## COMMERCIAL EXCESS LIABILITY DECLARATIONS PAGE

- |  |   |
|--|---|
| <p><b>1. NAMED INSURED AND ADDRESS:</b><br/>Arboricultural Specialties, Inc. dba.<br/>Professional Tree Care Company<br/>Per Underlying Insurance<br/>2828 8th Street<br/>Berkeley, CA 94710</p> | <p><b>2. POLICY PERIOD:</b><br/>12:01 a.m. Standard Time at the address of the<br/>Insured shown at the left<br/><b>From:</b> 08/04/2024      <b>To:</b> 08/04/2025</p> |
|--|---|

|  |   |
|--|---|
| <p><b>IN RETURN FOR PAYMENT OF THE PREMIUM AND SUBJECT TO ALL TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.</b></p> | <p><b>PRODUCER'S NAME AND ADDRESS:</b><br/>RSG Specialty Insurance Services, LLC<br/>650 California Street<br/>Suite 2900<br/>San Francisco, CA 94108</p> |
|--|---|

|                       |  |                       |            |  |  |                |     |                   |            |       |     |               |          |           |     |  |  |       |            |  |  |
|-----------------------|--|-----------------------|------------|--|--|----------------|-----|-------------------|------------|-------|-----|---------------|----------|-----------|-----|--|--|-------|------------|--|--|
| <b>3. PREMIUM:</b>    | <table border="0"> <tr><td>Total Advance Premium</td><td>\$ 110,000</td><td></td><td></td></tr> <tr><td>Service Charge</td><td>N/A</td><td>Surplus Line Tax:</td><td>\$3,300.00</td></tr> <tr><td>Taxes</td><td>N/A</td><td>Stamping Fee:</td><td>\$198.00</td></tr> <tr><td>Surcharge</td><td>N/A</td><td></td><td></td></tr> <tr><td>Total</td><td>\$ 110,000</td><td></td><td></td></tr> </table> | Total Advance Premium | \$ 110,000 |  |  | Service Charge | N/A | Surplus Line Tax: | \$3,300.00 | Taxes | N/A | Stamping Fee: | \$198.00 | Surcharge | N/A |  |  | Total | \$ 110,000 |  |  |
| Total Advance Premium | \$ 110,000   |                       |            |  |  |                |     |                   |            |       |     |               |          |           |     |  |  |       |            |  |  |
| Service Charge        | N/A  | Surplus Line Tax:     | \$3,300.00 |  |  |                |     |                   |            |       |     |               |          |           |     |  |  |       |            |  |  |
| Taxes                 | N/A  | Stamping Fee:         | \$198.00   |  |  |                |     |                   |            |       |     |               |          |           |     |  |  |       |            |  |  |
| Surcharge             | N/A  |                       |            |  |  |                |     |                   |            |       |     |               |          |           |     |  |  |       |            |  |  |
| Total                 | \$ 110,000   |                       |            |  |  |                |     |                   |            |       |     |               |          |           |     |  |  |       |            |  |  |

**BASIS OF PREMIUM:** Non-Auditable (X)    Auditable ()

In the event of cancellation by the Named Insured, the company will receive and retain no less than \$ 27,500 as a policy minimum earned premium.

- |                                |  |              |                       |              |                                    |
|--------------------------------|--|--------------|-----------------------|--------------|------------------------------------|
| <b>4. LIMITS OF INSURANCE:</b> | <table border="0"> <tr><td>\$ 1,000,000</td><td>Each Occurrence Limit</td></tr> <tr><td>\$ 1,000,000</td><td>Aggregate Limit (Where Applicable)</td></tr> </table> | \$ 1,000,000 | Each Occurrence Limit | \$ 1,000,000 | Aggregate Limit (Where Applicable) |
| \$ 1,000,000                   | Each Occurrence Limit  |              |                       |              |                                    |
| \$ 1,000,000                   | Aggregate Limit (Where Applicable)   |              |                       |              |                                    |

These Limits of Insurance apply in excess of the "underlying limits of insurance" indicated in Item 5. of the Declarations.

- |                                 |                       |
|---------------------------------|-----------------------|
| <b>5. UNDERLYING INSURANCE:</b> | See attached schedule |
|---------------------------------|-----------------------|

- 6. FORMS AND ENDORSEMENTS** applicable to all Coverage Forms and made part of this policy at time of issue are listed on the attached Forms and Endorsements Schedule EXL 0101.

Authorized Representative

**ISSUING OFFICE:**  
3780 Mansell Road, Suite 400  
Alpharetta, GA 30022

**NOTE: SEE ENCLOSED NOTICE FOR "SURPLUS LINES NOTIFICATION"**

## **CALIFORNIA FRAUD STATEMENT**

For your protection, California law requires the following to appear on this form: Any person who knowingly presents false or fraudulent information to obtain or amend insurance coverage or to make a claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

## CLAIM NOTICE

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

In the event of claim to which this policy may apply, please give immediate notice in any of the following ways, to:

U.S. Insurance - Claims  
1221 Avenue of the Americas  
New York, NY 10020  
E-Mail addressed to: [insuranceclaims@sompo-intl.com](mailto:insuranceclaims@sompo-intl.com)

E-mail is the preferred method of receiving claim notice information, but any of the above methods of notification will generate an acknowledgement of receipt of claim with a claim number and all of the claim adjusters' contact information.

## SCHEDULE OF UNDERLYING POLICIES

| Carrier, Policy Number and Period  | Type of Coverage     | Limits of Insurance                |
|--|----------------------|------------------------------------|
| MS Transverse Specialty Insurance Company<br>On File with Company<br>08/04/2024 - 08/04/2025 | Automobile Liability | \$ 1,000,000 Combined Single Limit |

## **ABSOLUTE ASBESTOS EXCLUSION**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

This insurance does not apply to:

Any liability, including, but not limited to “property damage”, “bodily injury”, settlements, judgments, costs, charges, expenses, costs of investigations, or the fees of attorneys, experts, or consultants arising out of or related in any way, either directly or indirectly, to:

1. asbestos, asbestos products, asbestos-containing materials or products, asbestos fibers or asbestos dust, including, but not limited to, manufacture, mining, use, sale, installation, removal, or distribution activities;
2. exposure to, testing for, monitoring of, cleaning up, removing, containing or treating of asbestos, asbestos products, asbestos-containing materials or products, asbestos fibers or asbestos dust; or
3. any obligation to investigate, settle or defend, or indemnify any person against any claim or “suit” arising out of or related in any way, either directly or indirectly, to asbestos, asbestos products, asbestos-containing materials or products, asbestos fibers or asbestos dust.

This endorsement does not change any other provision of the policy.

## **ABSOLUTE COMMUNICABLE DISEASE EXCLUSION**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This insurance does not apply to any “loss”, liability, “bodily injury”, “property damage”, or “personal and advertising injury” expense or other form of damages and costs arising, in whole or in part, arising out of or involving the actual or alleged transmission of a “communicable disease.”

**1.** This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a.** Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a “communicable disease”;
- b.** Testing for a “communicable disease”;
- c.** Failure to prevent the spread of the disease; or
- d.** Failure to report the disease to authorities.

“Communicable disease”, as used in this endorsement, means any sickness or malady capable of being transmitted.

This endorsement does not change any other provision of the policy.

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## **CARE, CUSTODY OR CONTROL EXCLUSION**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

This insurance does not apply to property damage to:

- A. Real or personal property owned, rented or occupied by you;
- B. Real or personal property used by or loaned to you;
- C. Real or personal property in your care, custody or control, or real and personal property over which you exercise physical control.

This endorsement does not change any other provision of the policy.

## **CYBER LIABILITY EXCLUSION**

**This endorsement changes the policy, please read it carefully.**

This insurance does not apply to:

1. "Bodily injury", "property damage", "personal and advertising injury" arising, directly or indirectly, out of the loss of or alteration of any electronic data, electronic information, computer applications software, computer operations software or any other similar data, information or software in any computer hardware, computer system, computer network, or the "Internet"; or
2. "Bodily injury", "property damage", "personal and advertising injury" arising directly or indirectly out of damage to any computer hardware, computer system, computer network, or the "internet" as a result of 1. above.

"Internet" shall mean the worldwide public network of computers as it currently exists or may be manifested in the future, including the "internet", an intranet, an extranet or a virtual public network.

This endorsement does not change any other provision of the policy.



## **EMPLOYMENT RELATED PRACTICES EXCLUSION**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

This insurance does not apply to any liability arising out of:

- A. refusal to employ or promote;
- B. termination of employment
- C. coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, molestation, humiliation, discrimination or other employment related practices, policies, acts or omissions; or
- D. consequential injury as a result of A. through C.

This exclusion applies whether the insured may be held 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.

This endorsement does not change any other provision of the policy.

## **EXCLUSION FOR MOLD AND OTHER NATURALLY-OCCURRING CONTAMINANTS**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

It is agreed that the insurance afforded by this policy shall not apply to any demand, claim, "occurrence", "bodily injury", "property damage", "loss", cost, "suit" or expense of any nature whatsoever, including but not limited to any other claims, caused by, arising out of or relating in any way directly, indirectly, in concurrence or in any sequence, with a cause for which coverage may be afforded under this coverage part, based upon or arising out of mold, mildew, "fungi", spores, viruses, bacteria, or any of their byproducts, or any other biological, etiological or other naturally occurring contaminant, or any of their byproducts.

This exclusion excludes, by way of example and not limitation:

- A. any duty to defend or other defense obligation associated with such mold, mildew, "fungi", spores, viruses, bacteria, or any of their byproducts, or any other biological, etiological or other naturally occurring contaminant, or any of their byproducts;
- B. any damages, obligations, claim, injury or expense associated with a request, demand or order from any body or individual, including but not limited to, any governmental body or action, 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 any mold, mildew, "fungi", spores, viruses, bacterial, or any of their byproducts, or any other biological, etiological or other naturally occurring contaminant, or any of their byproducts;
- C. any damages, obligations, claim or injury associated with any material, products, building component, building or structure that contain, harbors, nurtures or acts as a medium for any such mold, mildew, "fungi", spores, viruses, bacteria, or any of their byproducts, or any other biological, etiological or other naturally occurring contaminant, or any of their by products, regardless of any other cause, event, material, product or building component that contributed directly, indirectly, concurrently or in any sequence to the damages obligations, claim, injury or expense.

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by "fungi".

This endorsement does not change any other provision of the policy.

## **EXCLUSION-VIOLATION OF INFORMATION STATUTES**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

This insurance does not apply to:

### **DISTRIBUTION OF MATERIAL IN VIOLATION OF STATUTES**

"Bodily injury" or "property damage" or "personal and advertising injury" arising directly or indirectly out of any act or omission that violates or is alleged to violate:

- A. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- B. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- C. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- D. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

This endorsement does not change any other provision of the policy.

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## LEAD EXCLUSION

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

This insurance does not apply to

- A. “bodily injury”, “property damage”, “personal and advertising injury” arising out of the actual, alleged or threatened;
  - 1. absorption, ingestion or inhalation of lead in any form by any person; or
  - 2. existence of lead in any form.
- B. any “loss”, cost or expense arising out of any request, demand, order or statutory or regulatory requirement
  - 1. that any Insured or others;
    - a. test for, monitor, clean up, remove, contain, treat, detoxify or neutralize lead in any form;
    - b. respond to, or assess, in any way the effects of lead in any form.

Because lead, and any other such irritant or contaminant, are pollutants, this exclusion applies in addition to any of the following exclusion that apply:

- A. the pollution exclusion in this policy; or
- B. any other pollution-related exclusion made part of this policy.

This endorsement does not change any other provision of the policy.

## NUCLEAR ENERGY LIABILITY EXCLUSION

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

This policy does not apply to:

A. Any liability, injury or damage:

1. with respect to which any insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its Limits of Insurance; or
2. resulting from the “hazardous properties” of “nuclear material” and with respect to which (a) a person or organization is required to maintain financial protection pursuant to the Atomic energy Act of 1954, or any law amendatory thereof, or (b) any insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Any injury or “nuclear property damage” resulting from the “hazardous properties” of “nuclear material”, if:

1. the “nuclear material” (a) is at any “nuclear facility” owned by, or operated by or on behalf of, any insured or (b) has been discharged or dispersed therefrom;
2. the “nuclear material” is contained in “spent fuel” or “nuclear waste” at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of any insured; or
3. the injury or “nuclear property damage” arises out of the furnishing by any insured of services, materials, parts of equipment in connection with the planning, construction, maintenance, operation or use of any “nuclear facility”, but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion B.3. applies only to “nuclear property damage” to such “nuclear facility” and any property therein.

C. As used in this exclusion:

1. “Hazardous properties” includes radioactive, toxic or explosive properties.
2. “Nuclear facility” means:
  - (a) any “nuclear reactor”;

- (b) any equipment or device designed or used for:
    - (1) separating the isotopes of uranium or plutonium;
    - (2) processing or utilizing “spent fuel”; or
    - (3) handling processing or packaging “nuclear waste”;
  - (c) any equipment or device used for the processing, fabricating or alloying of “special nuclear material” if at any time the total amount of such material in the custody of any insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; or
  - (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of, “nuclear waste”, and includes the site on which any of the foregoing is located, all operations considered on such site and all premises used for such operations.
3. “Nuclear material” means “source material”, “special nuclear material” or by-product material.
  4. “Nuclear property damage” includes all forms of radioactive contamination of property.
  5. “Nuclear reactor” means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
  6. “Nuclear waste” means any “nuclear waste” material (a) containing “by-product material” other than the tailings of “nuclear waste” produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its “source material” content, and (b) resulting from the operation by any person or organization of any “nuclear facility” included within the definition of “nuclear facility” under Paragraph C.2.
  7. “Source material”, “special nuclear material”, and “by-product material” have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
  8. “Spent fuel” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a “nuclear reactor.”

This endorsement does not change any other provision of the policy.

## **SILICA, SILICA-RELATED OR MIXED DUST EXCLUSION**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

This insurance does not apply to any “loss”, liability, “bodily injury”, “property damage”, expense or other form of damages and costs arising, in whole or in part, arising out of or involving “mixed dust”, “silica”, “silica-related dust”, or any product containing “silica” or “silica-related dust”.

It is further agreed that this insurance does not apply to:

- A. Any “loss”, cost or expense, arising in whole or in part, out of the abating, testing, monitoring, remediating, neutralizing, removing or cleaning up of “mixed dust”, “silica”, “silica-related dust” or products and materials containing “silica” or “silica-related dust” by any insured or by any other person or entity;
- B. The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of “mixed dust”, “silica”, “silica-related dust” or products and materials containing “silica” or “silica-related dust”;
- C. The cost of disposal of “silica” substances or taking of such other action as may be necessary to temporarily or permanently prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result by any insured or by any other person or entity; or
- D. The cost of compliance with any law or regulation regarding “mixed dust”, “silica” or “silica-related dust”.

"Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), “silica” particles, “silica-related dust” or silica compounds.

"Silica-related dust" means a mixture or combination of “silica” and other dust or particles.

“Mixed dust” means inorganic or organic dusts that have harmful effects on natural persons.

This endorsement does not change any other provision of the policy.

## **SUB-LIMITED COVERAGE EXCLUSION**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

It is agreed that this insurance policy shall not apply in excess of any “sub-limited” coverage(s) that are included within, or are a part of, any “underlying insurance” scheduled in this policy. “Sub-limited” coverage(s) are defined as any coverage(s) having limits of insurance less than the limit(s) of any “underlying insurance” included in the schedule of underlying policies.

This endorsement does not change any other provision of the policy.



## **UNINSURED / UNDERINSURED MOTORIST EXCLUSION**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

This insurance does not apply to any obligation of the insured under a No Fault, Uninsured Motorist or Supplementary Uninsured/Underinsured Motorist Law, or under any similar law, regulation or ordinance.

This endorsement does not change any other provision of the policy.

## **WAR LIABILITY EXCLUSION**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

This insurance does not apply to any liability arising out of any war, invasion, acts of foreign or domestic enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property including loss of access, by or under the order of any government, local authority or risks of contraband, illegal transportation or trade.

This endorsement does not change any other provisions of the policy.

## **BANKRUPTCY OR INSOLVENCY CONDITION**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

The **Conditions** Section is amended to add the following **Condition**:

### **Bankruptcy or Insolvency**

In the event of the bankruptcy or insolvency of any underlying insurer, the insurance afforded by this policy will not replace such “underlying insurance” or drop down to attach at a lower level, but will continue to apply as if the “underlying insurance” was available and collectible.

This endorsement does not change any other provision of the policy.

## **BROKER LIABILITY EXCLUSION**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

This insurance does not apply to “bodily injury”, “property damage”, or “personal and advertising injury” arising out of the operations of a “broker”, including truck and freight “brokers”.

“Broker” operations occur when a person or an entity arranges for the transportation of property of others or property in care, custody and control, by a motor carrier and is compensated for doing so.

As defined by the Federal Motor Carrier Safety Administration and as used in this endorsement:

- A motor carrier transports passengers or property for compensation.
- A “broker” is a person or an entity which arranges for the transportation of property by a motor carrier for compensation. A “broker” does not transport the property and does not assume responsibility for the property.

This endorsement does not change any other provision of the policy.

Nothing herein contained shall vary, alter, waive, or extend any of the terms, representations, conditions or agreements of the policy other than as above stated.

## ENDORSEMENT

**Named Insured:** Arboricultural Specialties, Inc. dba.  
Professional Tree Care Company

**Policy Number:** EXT30065753400

**Endorsement**

**Endorsement**

**Effective Date:** August 04, 2024

**Number:** N/A

(12:01 AM Standard Time at the address of the **Named Insured** as shown in the Declarations)

### **EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND EXCLUSION OF OTHER ACTS OF TERRORISM COMMITTED OUTSIDE THE UNITED STATES**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

It is agreed that:

A. This insurance does not apply to:

Terrorism

“Any injury or damage” arising directly or indirectly, out of a “certified act of terrorism” or out of an “other act of terrorism” that is committed outside of the United States (including its territories and possessions and Puerto Rico), but within the “coverage territory”. However, with respect to an “other act of terrorism”, this exclusion applies only when one or more of the following are attributed to such act.

1. The total of insured damage to all types of property exceeds \$ 25,000,000 (valued in US dollars). In determining whether the \$ 25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
2. fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
  - a. physical injury that involves a substantial risk of death; or
  - b. protracted and obvious physical disfigurement; or
  - c. protracted loss of or impairment of the function of a bodily member or organ; or
3. the terrorism involves the use or release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
4. the terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
5. pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

## ENDORSEMENT

With respect to this exclusion, Paragraph 1. and 2. describe the thresholds used to measure the magnitude of an Incident of an “other act of terrorism” and the circumstances in which the threshold will apply for the purpose of determining whether this exclusion will apply to that incident.

B. The following definitions are added:

1. For the purposes of this endorsement, “any injury or damage” means any injury or damage covered under this policy, or “underlying insurance” to which this endorsement is applicable, and includes but is not limited to any Loss, Claim or injury as may be defined in any applicable policy, or “underlying insurance”.
2. “Certified act of terrorism” means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a “certified act of terrorism” include the following:
  - a. The act resulted in insured losses in excess of \$ 5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
  - b. The act resulted in damage:
    - i. Within the United States (including its territories and possessions and Puerto Rico); or
    - ii. Outside of the United States in the case of:
      - (a) An air carrier (as defined in Section 40102 of title 49, United States Code) or United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; or
      - (b) The premises of any United States mission; and
  - c. the act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
3. “Other act of terrorism” means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not a “certified act of terrorism”. Multiple incidents of an “other act of terrorism” which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.
4. “Coverage territory” means anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanctions or embargo by the United States of America.

## ENDORSEMENT

- C. In the event of any incident of a “certified act of terrorism” or an “other act of terrorism” that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this policy.



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Authorized Representative

This endorsement does not change any other provision of the Policy. The title and any headings in this endorsement are solely for convenience and do not affect its meaning.

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## **SERVICE OF SUIT ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

In the event of failure of the Company to pay any amount claimed to be due under the terms of this policy, the Company, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. In any suit instituted against the Company upon this policy, the Company will abide by the final decision of such court or of any appellate court in the event of appeal.

It is further agreed that service of process in such suit may be made upon the Senior Vice President - Claims, 1221 Avenue of the Americas New York, NY 10020.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the Company hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, as its true and lawful attorney upon whom service may be made of any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this policy of insurance and hereby designates the above named Senior Vice President - Claims as the person to whom the said officer is authorized to mail such process or a true copy thereof.

This endorsement does not change any other provision of the policy.



# ENDORSEMENT

**Named Insured:** Arboricultural Specialties, Inc. dba.  
Professional Tree Care Company

Policy Number: EXT30065753400

Endorsement

Endorsement

Effective Date: August 04, 2024

Number: N/A

12:01 AM Standard Time at the address of the  
**Named Insured** as shown in the Declarations.

## DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT - REJECTION OF OFFER

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

It is agreed that:

**THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

**A. Rejection of Offer**

You have rejected the offer of terrorism coverage for Acts of Terrorism that are certified under the Terrorism Risk Insurance Act as reauthorized and amended, as an Act of Terrorism. An exclusion of terrorism losses has been made a part of this policy.

**B. Disclosure of Federal Participation in Payment of Terrorism Losses**

The United States government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 80% of that portion of the amount of such insured losses that exceeds the applicable insurer retention.

**You have rejected this offer of coverage.**



Authorized Representative

This endorsement does not change any other provision of the Policy. The title and any headings in this endorsement are solely for convenience and do not affect its meaning.

Includes copyrighted material of Insurance Services Office, Inc. with its permission.

## **EXCESS LIABILITY COVERAGE FOLLOW FORM (SHORT FORM)**

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. The words “we”, “us” and “our” refer to the Company providing this insurance. The word “insured” means any person or organization qualifying as such in the “first underlying insurance” which is the controlling policy listed in Item 5 of the Declarations, unless designated otherwise in the Declarations. Other words and phrases that appear in quotation marks have special meaning and can be found in the **DEFINITIONS** Section or the specific policy provision where they appear.

In consideration of the payment of the premium and in reliance upon the statements in the Declarations, we agree with you to provide coverage as follows:

### **INSURING AGREEMENTS**

#### **I. COVERAGE**

We will pay on behalf of the insured the amount of “loss” covered by this insurance in excess of the “underlying limits of insurance” subject to the **LIMITS OF INSURANCE** Section. This policy will follow form to the terms, conditions, definitions, and exclusions of the "first underlying insurance" in effect the first day of the Policy Period, except to the extent that the terms, conditions, definitions, and exclusions of this policy differ from the "first underlying insurance." In no event shall this policy provide broader coverage than is provided by any policy in the “underlying insurance” shown in Item 5. of the Declarations, except if specifically provided otherwise by endorsement.

#### **II. LIMITS OF INSURANCE**

- A. The Each Occurrence limit stated in Item 4. of the Declarations is the most we will pay for all “loss” arising out of any one occurrence to which this policy applies.
- B. The aggregate limit shown in Item 4. of the Declarations is the most we will pay for all “loss” that is subject to an aggregate limit provided by the “first underlying insurance” and shall apply in the same manner as the aggregate limits provided by the “first underlying insurance”.
- C. This policy applies only in excess of the “underlying limits of insurance” and only after the “underlying limits of insurance” have been exhausted.

#### **III. DEFENSE**

We will follow the Defense provisions of the “first underlying insurance”. In the event there are no Defense provisions contained in the “first underlying insurance”, we will have the right, but not the duty to be associated with you or your underlying insurer or both in the investigation of any claim or defense of any suit which in our opinion may create liability to our policy for “loss.” If we exercise such right, we will do so at our own expense, but we will have no such expense obligation or liability once the Limits of Insurance are exhausted.

#### **IV. PREMIUM**

If any additional premium charge is made to the “underlying insurance” during the Policy Period or if there is an increase in the risk assumed by us, our premium may be adjusted.

#### **V. DEFINITIONS**

- A. “Loss” means those sums actually paid in the settlement or satisfaction of a claim which you are legally obligated to pay as damages, including but not limited to “bodily injury” and “property damage”, after making proper deductions for all recoveries and salvage.

- B. “Underlying limits of insurance” means the sum of the limits of all applicable “underlying insurance” listed in Item 5. of the Declarations, including self-insured retentions (SIRs), deductibles or other forms of insurance or self-insurance applicable to a given claim or occurrence.

## **VI. CONDITIONS**

### **A. Changes**

This policy can only be changed by a written endorsement signed by one of our authorized representatives that becomes a part of this policy.

### **B. First Named Insured Duties**

The person or organization first named in Item 1. of the Declarations is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other Named Insureds for the giving and receiving of notice of cancellation or the receipt of any return premium that become payable.

### **C. Maintenance of “Underlying Insurance”**

During the period of this policy, you agree to keep all “underlying insurance” in full force and effect and that the “underlying limits of insurance” will be maintained, except to the extent such limits may be reduced or exhausted by payment for “loss” covered by “underlying insurance.” If you fail to comply with these requirements, we will only be liable to the same extent that we would have been had you fully complied with these requirements.

### **D. Notice of Occurrence**

You must see to it that we are notified as soon as practicable of an occurrence which may result in a claim or suit which may involve this policy. If a claim or suit against any insured is reasonably likely to involve this policy you must notify us in writing as soon as practicable.

If the “underlying limits of insurance” are exhausted solely by payment of “loss”, no insured will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our written consent.

### **E. Other Insurance**

If other insurance applies to a “loss” that is also covered by this policy, this policy will apply excess of the other insurance. However, this provision will not apply if the other insurance is specifically written to be excess of this policy. Other insurance includes any type of self-insurance or other mechanism by which an insured arranges for funding of legal liabilities.

### **F. Conformity to Statute**

Any terms of this policy which are in conflict with the terms of any applicable law or regulation governing this policy are hereby amended to conform to such laws and regulations.

### **G. When “Loss” is Payable**

Coverage under this policy will not apply unless and until the insured or the insured’s “underlying insurance” is obligated to pay the full amount of the “underlying limits of insurance.”

When the amount of “loss” has finally been determined, we will promptly pay on behalf of the insured the amount of “loss” falling within the terms of this policy.

If the insured has rights to recover all or part of any payment we have made under this policy, then those rights are transferred to us and the insured must do nothing to impair those rights. At our request the insured will bring suit or transfer those rights to us to enforce them.



**Endurance American Specialty Insurance Company  
1221 Avenue of the Americas  
New York, NY 10020**

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its President and Senior Vice President and countersigned where required by law on the Declarations page by its duly authorized representative.

A handwritten signature in black ink that reads "Richard M. Appel".

**Senior Vice President**

A handwritten signature in black ink that reads "Christopher Spans".

**President**

## POLICYHOLDER NOTICE

### U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website - <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

# City of Alameda



## Signature Approval Form

Date: February 19, 2025

To: Jennifer Ott, City Manager

From: Erin Smith, Public Works Director

Re: Signature Request

Signed by:  
*Erin Smith*  
 325158B32737491...

Please check one of the following boxes

- Service Provider Agreement or Contractor Agreement
- Accounts Payable
- Other - If other box is checked, explain:

### 5-year Compensation for Tree Planting Agreement with Arboricultural Specialist, Inc.

Following a competitive selection process, staff recommend City Council authorize the City Manager to execute a five-year agreement with Arboricultural Specialist, Inc. to provide tree planting services for Alameda's Urban Forest. The proposed agreement includes services for watering and young tree care to best preserve the health and integrity of Alameda's Urban Forest.

Is this going to Council? Y When? March 18 2025

or provide the following Council details

|   |
|---|
| Per Council Action:   |
| Date:   |
| Resolution #:   |
| Original Contract Amount:<br><b>Total five-year compensation shall not exceed \$ 951,198.05</b> |
| Budget Balance:   |
| Other Pertinent Information:  |