

## SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 (“**Effective Date**”), by and between the CITY OF ALAMEDA, a municipal corporation (“the **City**”), and **ECAST Engineering, Inc.**, a California corporation, whose address is **1901 34<sup>th</sup> avenue, Oakland, CA 94601** (“**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: **pothole maintenance and repair**. City staff issued an RFP on July 25, 2023 and after a submittal period of 15 days received three (3) 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 is specially trained, experienced and competent to perform the special services which will be required by this Agreement.
- D. Whereas, the City Council authorized the City Manager to execute this agreement on September 5, 2023.
- E. The City and Provider desire to enter into an agreement for pothole maintenance and repair, upon the terms and conditions herein.

### AGREEMENT

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

#### 1. **TERM:**

The term of this Agreement shall commence on the 6 day of September 2023 and shall terminate on the 6 day of September 2028, unless terminated earlier as set forth herein.

The parties may agree to extend the term of this Agreement on a year-by-year basis, for up to 4 additional years. Any extension shall be documented in a signed amendment. In the event that the parties agree to extend the Agreement, all provisions of the Agreement shall remain unchanged with the exception that the compensation shall be adjusted by 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.

#### 2. **SERVICES TO BE PERFORMED:**

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

### **3. COMPENSATION TO PROVIDER:**

a. By the 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 A 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 A.

Compensation for work done under this Agreement, shall not exceed as follows:

FY 23-24 total compensation shall not exceed \$300,000  
 FY 24-25 total compensation shall not exceed \$315,000  
 FY 25-26 total compensation shall not exceed \$330,000  
 FY 26-27 total compensation shall not exceed \$347,288  
 FY 27-28 total compensation shall not exceed \$364,652

Total five-year compensation shall not exceed **\$1,656,940** with no contingency.

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

### **4. TIME IS OF THE ESSENCE:**

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

### **5. STANDARD OF CARE:**

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

### **6. INDEPENDENT PARTIES:**

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

## **7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

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

## **8. NON-DISCRIMINATION:**

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

## **9. HOLD HARMLESS:**

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

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

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

## **10. INSURANCE:**

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Sections 10.b. (1) through (5). The Certificate Holder should be The City of Alameda, 2263 Santa Clara,

Ave., Alameda, CA 94501. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement:

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

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



Provider Initials

b. COVERAGE REQUIREMENTS:

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

(1) Workers' Compensation:

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

(2) Liability:

Commercial general liability coverage in the following minimum limits:

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

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

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

(3) Automotive:

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

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

or

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

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 INSUREDS:

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

f. **SUFFICIENCY OF INSURANCE:**

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

g. **EXCESS OR UMBRELLA LIABILITY:**

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

**11. CONFLICT OF INTEREST:**

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

**12. PROHIBITION AGAINST TRANSFERS:**

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

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

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

a. Only those persons and/or businesses whose names and resumés are attached to this Agreement shall be used in the performance of this Agreement. However, if after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider



shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in their sole and absolute discretion.

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

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

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

#### **14. PERMITS AND LICENSES:**

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

#### **15. REPORTS:**

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

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

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

#### **16. RECORDS:**

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

b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of the City or its designees during regular business hours upon reasonable prior notice. The City has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and

activities related to this Agreement. Such Records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.

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

## **17. NOTICES:**

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

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

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

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

City of Alameda  
Public Works Department  
950 West Mall Square, Room 110  
Alameda, CA 94501  
ATTENTION: Cristela Soto, Project Manager  
Phone: (510) 274-7003 / email: [csoto@alamedaca.gov](mailto:csoto@alamedaca.gov)

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

ECAST Engineering, Inc.  
P.O. Box 7572  
Oakland, CA 94601  
ATTENTION: Jose Cuevas, President  
Phone: (510) 833-0907 / email: [jmcuevas@ecastengineering.com](mailto:jmcuevas@ecastengineering.com)



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, Room 110  
Alameda, CA 94501  
ATTENTION: Mirna Moreno, Senior Clerk  
Phone: (510) 747-7930 / email: [mmoreno@alamedaca.gov](mailto:mmoreno@alamedaca.gov)

**18. SAFETY:**

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

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

**19. TERMINATION:**

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

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

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

**20. ATTORNEYS' FEES:**

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

**21. HEALTH AND SAFETY REQUIREMENTS.**

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

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

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

**23. CONFLICT OF LAW:**

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

**24. WAIVER:**

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

**25. INTEGRATED CONTRACT:**

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

modification of this Agreement will be effective only by written execution signed by both the City and Provider.

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

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

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

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

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

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

## **27. REGISTRATION OF CONTRACTORS:**

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

## **28. PCC SECTION 9204 SUMMARY - CLAIMS SUBMITTED BETWEEN 01-01-2017 AND 01-01-2027.:**

Notwithstanding anything else to the contrary stated in the Information For Bidders (IFB) or the Contract Documents, all claims, regardless of dollar amount, submitted between January 1, 2017 and January 1, 2027 shall be governed by PCC Section 9204 and this section.

The following provisions and procedures shall apply:

A. For the purposes of this section, the term “Claim”, “Contractor”, “mediation”, “Public Entity” “Public works project” and “Subcontractor” shall have the meaning provided for in PCC Section 9204.

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

C. 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.

D. 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 PCC Section 9204(d)(1)(C).

E. 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.

F. 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 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 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.

G. 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.

H. The City reserves all rights and remedies that it has pursuant to the Construction Contract, plans and specification, at law or in equity which are not in conflict with PCC 9204.

This Section shall be automatically extended if legislation is lawfully passed which extends the terms of Public Contract Code Section 9204 beyond January 1, 2027.

## **29. 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.

## **30. 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.

**31. 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.


**32. 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.

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

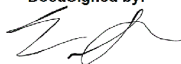
ECAST Engineering, Inc.  
a California corporation

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\_\_\_\_\_  
Jose Cuevas  
President & Secretary


CITY OF ALAMEDA  
a municipal corporation

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Jenn Ott  
City Manager

RECOMMENDED FOR APPROVAL

DocuSigned by:  
  
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Erin Smith  
Public Works Director

APPROVED AS TO FORM:  
City Attorney

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Len Aslanian  
Assistant City Attorney

**APPENDIX C****PROJECT PRICING****2023 POTHOLE MAINTENANCE AND REPAIRS PROJECT**

Contractor shall at minimum provide unit prices for each item listed below. Contractor can, based on their experience, provide additional items and unit pricing to accomplish Pothole and Repair Service. We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the following service:

<b>2023 POTHOLE MAINTENANCE AND REPAIR PROJECT</b>					
<b>PRICING SCHEDULE</b>					
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>QTY</b>	<b>UNITS</b>	<b>UNIT COST</b>	<b>ITEM COST</b>
1	HMA	154	TONS	\$122	\$18,788
2	CMA	N/A	TONS	N/A	N/A
3	POTHOLE PREPARATION & PLACEMENT	3,916	SF	\$68	\$266,288
4	MOBILIZATION & TRAFFIC CONTROL (Entire Project)	1	LS	\$14,902	\$14,902
5	Road Patch Installation	1	SF	\$22	\$22
6					
7					
<b>TOTAL PROPOSED PRICE:</b>				<b>\$</b>	<b>300,000.00</b>

All work must be done in accordance with the General Conditions and Technical Specifications included in the Request for Proposal for Pothole Maintenance and Repair, issued July 25, 2023, and incorporated herein.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/4/2022

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> Fryar Insurance and Risk Management, Inc 1290 B Street, Suite #309 Hayward CA 94541	<b>CONTACT NAME:</b> Pamela Sowder <b>PHONE (A/C, No, Ext):</b> (510) 583-2203 <b>FAX (A/C, No):</b> (510) 583-2204 <b>E-MAIL ADDRESS:</b> Pamela@4thefirminc.com														
<b>INSURED</b> Ecact Engineering, Inc PO Box 7572 Oakland CA 94601	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: AXA Insurance Company</td> <td></td> </tr> <tr> <td>INSURER B: STATE COMPENSATION INS FUND</td> <td></td> </tr> <tr> <td>INSURER C: Great American Insurance Company</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: AXA Insurance Company		INSURER B: STATE COMPENSATION INS FUND		INSURER C: Great American Insurance Company		INSURER D:		INSURER E:		INSURER F:	
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INSURER E:															
INSURER F:															

## COVERAGES

CERTIFICATE NUMBER: CL2210404590

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	ADOL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	X		NRC100634000	8/17/2022	8/17/2023	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO. JECT <input type="checkbox"/> LOC						PRODUCTS - COMPIOPAGG \$ 2,000,000
	<input type="checkbox"/> OTHER						\$
A	AUTOMOBILE LIABILITY			MBA100498901	8/17/2022	8/17/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident) \$
							Uninsured motorist combined single \$ 1,000,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			NRC600657801	8/17/2022	8/17/2023	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 5,000,000
	<input type="checkbox"/> DEO <input type="checkbox"/> RETENTION \$						\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	N/A	9239224	10/3/2022	10/3/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY UNIT \$ 1,000,000
C	Leased or Rented Equipment			IMP880016	8/17/2022	8/17/2023	Unit \$ 300,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Alameda, its City Council, boards, commissions, officers, employees, agents and volunteers are added as Additional Insureds as respects all work performed at Services Related to Placement of Barriers and Other As Needed Work to Deter Reckless Driving at Alameda Point, Alameda, CA. This insurance is primary. Waiver of Subrogation included.

\*subject to the actual terms and conditions of the policy\* \*10 days for non-payment of premium\*

## CERTIFICATE HOLDER

## CANCELLATION

City of Alameda 2263 Santa Clara Avenue Alameda, CA 94501	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE WALTER FRYAR/PAMELA <i>Walter C L Fryar</i>
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POLICY NUMBER NPC100634000

COMMERCIAL GENERAL LIABILITY  
CG 20 10 12 19**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS - SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Blanket as required by written contract.	Blanket 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:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

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 additional exclusions apply:

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

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

C. 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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.



POLICY NUMBER: NPC100634000

COMMERCIAL GENERAL LIABILITY  
CG 20 37 12 19**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS- COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Blanket as required by written contract.	Blanket 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" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

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;
- whichever is less.

This endorsement shall not increase the applicable limits of insurance.

COMMERCIAL GENERAL LIABILITY  
CG 20 01 12 19

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

**PRIMARY AND NONCONTRIBUTORY –  
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

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

## ENDORSEMENT #

This endorsement, effective 12:01 a.m. , forms a part of

Policy No. issued to

by

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

### **XL Plus Endorsement**

This endorsement modifies insurance provided under the following:

#### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**GENERAL DESCRIPTION OF COVERAGE** - This endorsement broadens coverage. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read this endorsement carefully to determine rights, duties, and what is and is not covered.

**A. Reasonable Force – Bodily Injury or Property Damage**

**B. Damage To Premises Rented To You Extension**

- Perils of fire, lightning, explosion, smoke, aircraft or vehicles, riot or civil commotion, vandalism, leakage from fire extinguishing equipment or water damage
- Limit increased to \$300,000

**C. Aircraft Chartered with Crew**

**D. Non-Owned Watercraft**

**E. Personal and Advertising Injury – Assumed by Insured Contract**

**F. Increased Supplementary Payments**

- Cost for bail bonds increased to \$5,000
- Loss of earnings increased to \$1,000 per day

**G. Broadened Named Insured**

**H. Blanket Additional Insured – Managers or Lessors of Premises**

**I. Blanket Additional Insured – Lessor of Leased Equipment**

**J. Injury to Co-Employees and Co-Volunteer Workers**

**K. Knowledge and Notice of Occurrence or Offense**

**L. Unintentional Omission**

**M. Liberalization**

**N. Blanket Waiver of Subrogation**

**O. Incidental Medical Malpractice Injury**

**P. Extension of Coverage – Bodily Injury**

**Q. Coverage Territory**



**A. REASONABLE FORCE – BODILY INJURY OR PROPERTY DAMAGE**

Exclusion a. Expected Or Intended Injury of Part 2., Exclusions of Coverage A. Bodily Injury And Property Damage Liability of Section I – Coverages is deleted in its entirety and replaced by the following:

[This insurance does not apply to:]

**Expected or Intended Injury or Damage**

"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. DAMAGE TO PREMISES RENTED TO YOU EXTENSION**

1. The last paragraph of 2. Exclusions of Coverage A. Bodily Injury And Property Damage Liability of Section I - Coverages is deleted in its entirety and replaced by the following:

Exclusions c. through n. do not apply to damages to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by fire, lightning, explosion, smoke, aircraft or vehicles, riot or civil commotion, vandalism, leakage from fire extinguishing equipment or water damage. A separate limit of insurance applies to this coverage as described in Section III- Limits of Insurance.

2. This insurance does not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:
  - a. Rupture, bursting, or operation of pressure relief devices;
  - b. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water; or
  - c. Explosion of steam boilers, steam pipes, steam engines, or steam turbines.
3. Paragraph 6. of Section III- Limits of Insurance is deleted in its entirety and replaced by the following:
  - 6.a. Subject to Paragraph 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 temporarily occupied by you with permission of the owner, caused by fire, explosion, lightning, smoke, aircraft or vehicle, riot or civil commotion, vandalism, leakage from fire extinguishing equipment or water damage. The Damage To Premises Rented To You Limit will apply to all damage proximately caused by the same "occurrence", whether such damage results from fire, explosion, lightning, smoke, aircraft or vehicle or riot or civil commotion, vandalism, leakage from fire extinguishing equipment or water damage or any combination of any of these.
  - b. The Damage to Premises Rented to You Limit will be the higher of:
    - (1) \$300,000; or
    - (2) The amount shown on the Declarations for Damage to Premises Rented to You Limit.



4. Paragraph **9.a.** of the definition of "insured contract" under Section **V- Definitions**, is deleted in its entirety and replaced by the following:

["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, explosion, smoke, aircraft or vehicle, riot or civil commotion, vandalism, leakage from fire extinguishing equipment or water damage to premises while rented to you, or temporarily occupied by you with the permission of the owner is not an "insured contract".
5. This Article **B.** does not apply if coverage for Damage to Premises Rented to You of Coverage **A. Bodily Injury And Property Damage Liability** of Section **I – Coverages** is excluded by endorsement.

#### **C. AIRCRAFT CHARTERED WITH CREW**

1. The following is added to the exceptions contained in Exclusion **g.**, Aircraft, Auto or Watercraft in Part **2.**, Exclusions of Coverage **A. Bodily Injury And Property Damage** of Section **I – Coverages**:

[This exclusion does not apply to:]

Aircraft chartered with crew to any insured.

2. This Article **C.** does not apply if the chartered aircraft is owned by any insured.
3. The insurance provided by this Article **C.** shall be excess over any valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by you to be excess of this policy.

#### **D. NON-OWNED WATERCRAFT**

1. The exception contained in Subparagraph **(2)** of Exclusion **g.** Aircraft, Auto or Watercraft in Part **2.**, Exclusions of Coverage **A. Bodily Injury And Property Damage Liability** of Section **I – Coverages** is deleted in its entirety and replaced by the following:

**(2)** A watercraft you do not own that is:

**(a)** 50 feet long or less; and

**(b)** Not being used to carry persons or property for a charge;

2. This Article **D.** applies to any person who, with your expressed or implied consent, either uses or is responsible for the use of the watercraft.
3. This insurance provided by this Article **D.** shall be excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by you to be excess of this policy.

#### **E. PERSONAL AND ADVERTISING INJURY – ASSUMED BY INSURED CONTRACT**

1. Exclusion **e.** Contractual Liability in Part **2.**, Exclusions of Coverage **B. Personal And Advertising Injury Liability** of Section **I – Coverages** is deleted in its entirety and replaced by the following:

[This insurance does not apply to:]

**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:

1. That the insured would have in the absence of the contract or agreement; or
  2. Assumed in a written contract or agreement that is an "insured contract"; provided the "personal and advertising injury" is caused by an offense which occurs subsequent to the execution of the contract or agreement.
2. Subparagraph **f.** of the definition of "insured contract" Section **V.- Definitions** is deleted in its entirety and replaced by the following:
- f. That part of any other contract or agreement pertaining to your business, including an indemnification of a municipality in connection for work performed for a municipality, under which you assume the tort liability of another party to pay for "bodily injury", "property damage" or "personal and advertising injury" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
2. This Article **E.** does not apply if Coverage **B. Personal And Advertising Injury Liability** is excluded by endorsement.

**F. INCREASED SUPPLEMENTARY PAYMENTS**

Subparagraphs **1. b.** and **d.** of Supplementary Payments – Coverages **A And B** of Section **I - Coverages** are amended as follows:

1. In Subparagraph **b.**, the amount we will pay for the cost of bail bonds is increased up to \$5,000.
2. In Subparagraph **d.**, the amount we will pay for a loss of earnings is increased up to \$1,000 a day.

**G. BROADENED NAMED INSURED**

1. The Named Insured in Item **1.** of the Declarations is as follows:

The person or organizations named in Item **1.** of the Declarations and any organization, other than a partnership or joint venture, over which you maintain ownership or majority interest on the effective date of the policy. However, coverage for any such organization will cease as of the date that you no longer maintain ownership of, or majority interest in, such organization.

2. This Article **G.** does not apply to any person or organization for which coverage is excluded by endorsement.



**H. BLANKET ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES**

1. Section II-Who Is An Insured is amended to include as an insured any person or organization with whom you have agreed in a written contract executed prior to loss (an "additional insured"), but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you, subject to the following provisions:
  - a. Limits of Insurance. The Limits of Insurance afforded to the "additional insured" shall be the limits you agreed to provide, or the limits shown on the Declarations, whichever is less.
  - b. The insurance afforded to the "additional insured" does not apply to:
    - (1) Any "occurrence" that takes place after you cease to be a tenant in that premises;
    - (2) Any premises for which coverage is excluded by endorsement; or
    - (3) Structural alterations, new construction or demolition operations performed by or on behalf of such "additional insured".
2. The insurance afforded to the "additional insured" is excess over any valid and collectible insurance available to such "additional insured", unless you have agreed in a written contract for this insurance to apply on a primary or contributory basis.

**I. BLANKET ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT**

1. Section II-Who Is An Insured is amended to include an "additional insured" (as defined in Article H. above), but only with respect to their liability arising out of maintenance, operation or use by you of equipment leased to you by such "additional insured", subject to the following provisions:
  - a. Limits of Insurance. The Limits of Insurance afforded to the "additional insured" shall be the limits which you agreed to provide, or the limits shown on the Declarations, whichever is less.
  - b. The insurance afforded to the "additional insured" does not apply to:
    - (1) Any "occurrence" that takes place after the equipment lease expires; or
    - (2) "Bodily injury" or "property damage" arising out of the sole negligence of such additional insured.
2. The insurance provided to the "additional insured" is excess over any valid and collectible insurance available to such "additional insured", unless you have a written contract for this insurance to apply on a primary or contributory basis.

**J. INJURY TO CO-EMPLOYEES AND CO-VOLUNTEER WORKERS**

1. Section II- Who Is An Insured is amended to include your "employees" as insureds with respect to "bodily injury" to a co-"employee" in the course of the co-"employee's" employment by you, or to your "volunteer workers" while performing duties related to the conduct of your business, provided that this coverage for your "employees" does not apply to acts outside the scope of their employment by you or while performing duties unrelated to the conduct of your business.

2. Section II – Who Is An Insured is amended to include your “volunteer workers” as insureds with respect to “bodily injury” to a co-“volunteer worker” while performing duties related to the conduct of your business, or to your “employees” employment by you, provided that this coverage for your “volunteer workers” does not apply while performing duties unrelated to the conduct of your business.

#### **K. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE**

The following is added to Paragraph 2., Duties In The Event of Occurrence, Offense, Claim or Suit of the Section IV - Commercial General Liability Conditions:

Notice of an “occurrence” or of an offense which may result in a claim under this insurance shall be given as soon as practicable after knowledge of the “occurrence” or offense has been reported to any insured listed under Paragraph 1. of Section II-Who Is An Insured or any “employee” (such as insurance, loss control, risk manager or administrator) designated by you to give such notice.

Knowledge of any other “employee(s)” of an “occurrence” or of an offense does not imply that you also have such knowledge.

Notice shall be deemed prompt if given in good faith as soon as practicable to your workers compensation insurer. This applies only if you subsequently give notice to us as soon as practicable after any insured listed under Paragraph 1. of Section II – Who Is An Insured or an “employee” (such as an insurance, loss control, or risk manager or administrator) designated by you to give such notice discovers that the “occurrence”, offense or claim may involve this policy.

#### **L. UNINTENTIONAL OMISSION**

The following is added to Paragraph 6., Representations, of Section IV- Commercial General Liability Conditions:

The unintentional omission of, or unintentional error in, any information provided by you shall not prejudice your rights under this insurance. However, this Article L. does not affect our right to collect additional premium or to exercise our right of cancellation or nonrenewal in accordance with applicable state insurance laws or regulations.

#### **M. LIBERALIZATION**

The following is added to Section IV-Commercial General Liability Conditions:

##### **Liberalization**

After the issuance of this policy, if we adopt a change in our forms or rules which would broaden the coverage provided by any form that is a part of this policy without a premium charge, the broader coverage will apply to this policy. This extension is effective upon the approval of such broader coverage in your state.



**N. BLANKET WAIVER OF SUBROGATION**

The following is added to Section IV-Commercial General Liability Conditions:

**Waiver of Subrogation**

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of premises owned or occupied or rented or loaned to you; ongoing operations performed by you or on your behalf, done under a contract with that person or organization; "your work"; or "your products". We waive this right where you have agreed to do so as part of a written contract, executed by you prior to loss.

**O. INCIDENTAL MEDICAL MALPRACTICE INJURY**

1. For insurance applicable to this Article O, the definition of "bodily injury" in Section V - Definitions is amended to include, "Incidental Medical Malpractice Injury".
2. The following definition is added to Section V- Definitions:
 

"Incidental medical malpractice injury" means "bodily injury", mental anguish, sickness or disease sustained by a person, including death resulting from any of these at any time, arising out of the rendering of, or failure to render, the following services:

  - a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages;
  - b. The furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances;
  - c. First aid; or
  - d. "Good Samaritan Services". As used in this Article O., "Good Samaritan Services" are those medical services rendered or provided in an emergency and for which no remuneration is demanded or received.
3. Paragraph 2.a.(1)(d) of Section II -Who Is An Insured does not apply to any registered nurse, licensed practical nurse, emergency medical technician or paramedic employed by you, but only while performing the services described in Paragraph 2. above and while acting within the scope of their employment by you. Any "employees" rendering "Good Samaritan Services" will be deemed to be acting within the scope of their employment by you.
4. The following exclusion is added to Paragraph 2. Exclusions of Coverage A. – Bodily Injury And Property Damage Liability of Section I – Coverages:
 

[This insurance does not apply to:]

**Willful Violation of Penal Statute**

Liability arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals by or with the knowledge or consent of the insured.
5. For the purposes of determining the applicable Limits of Insurance, any act or omission, together with all related acts or omissions in the furnishing of services described in Paragraph 2.a. through 2.d. above to any one person, will be considered one "occurrence".
6. This Article O. does not apply if you are in the business or occupation of providing any of the services described in Paragraph 2. above.

7. The insurance provided by this Article O. shall be excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by you to be excess of this policy.

**P. EXTENSION OF COVERAGE – BODILY INJURY**

The definition of "bodily injury" Section V- Definitions is deleted in its entirety and replaced by the following:

3. "Bodily injury" means bodily injury, mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

**Q. COVERAGE TERRITORY**

The definition of "coverage territory" Section V- Definitions is deleted in its entirety and replaced by the following:

4. "Coverage territory" means anywhere in the world.

This insurance does not apply to:

- a. "bodily injury" or "property damage" that takes place; or
- b. "personal and advertising injury" caused by an offense committed outside the United States of America (including its possessions and territories), Canada and Puerto Rico, unless a "suit" on the merits (to determine the insured's responsibility to pay damages to which this insurance applies) is brought in the United States of America (including its possessions and territories), Canada or Puerto Rico.

This insurance does not apply to damage, loss, cost or expenses in connection with any "suit" brought outside the United States of America (including its possessions and territories), Canada or Puerto Rico.



POLICY NUMBER:

XIC 421 1013

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****XL PLUS BUSINESS AUTO EXTENSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

## COVERAGE DESCRIPTION

- A. Temporary Substitute Auto Physical Damage**
- B. Who Is An Insured**
  - 1. Broad Form Insured
  - 2. Employees As Insureds
  - 3. Additional Insured By Contract, Agreement or Permit
  - 4. Employee Hired Autos
- C. Supplementary Payments**
- D. Amended Fellow Employee Exclusion**
- E. Physical Damage Coverage**
  - 1. Rental Reimbursement
  - 2. Extra Expense – Broadened Coverage
  - 3. Personal Effects Coverage
  - 4. Lease Gap
  - 5. Glass Repair – Waiver Of Deductible
- F. Physical Damage Coverage Extensions**
  - 1. Additional Transportation Expense
  - 2. Hired Auto Physical Damage
- G. Business Auto Conditions**
  - 1. Notice Of Occurrence
  - 2. Waiver Of Subrogation
  - 3. Unintentional Failure To Disclose Hazards
  - 4. Primary Insurance
- H. Bodily Injury Redefined**
- I. Extended Cancellation Condition**



**A. Temporary Substitute Auto Physical Damage**

**SECTION I – COVERED AUTOS, C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos** is changed by adding the following:

If Physical Damage coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Physical Damage coverage:

1. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. "Loss"; or
  - e. Destruction.

**B. Who Is An Insured**

**SECTION II – COVERED AUTOS LIABILITY COVERAGE, A. Coverage, 1. Who Is An Insured** is changed by adding the following:

**1. Broad Form Insured**

For any covered "auto", any subsidiary, affiliate or organization, other than a partnership or joint venture, as may now exist or hereafter be constituted over which you assume active management or maintain ownership or majority interest, provided that you notify us within ninety (90) days from the date that any such subsidiary or affiliate is acquired or formed and that there is no similar insurance available to that organization. However, coverage does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

**2. Employees As Insureds**

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

**3. Additional Insured By Contract, Agreement Or Permit**

Any person or organization with whom you have agreed in writing in a contract, agreement or permit, to provide insurance such as is provided under this policy, provided that the "bodily injury" or "property damage" occurs subsequent to the execution of the written contract, agreement or permit.

**4. Employee Hired Autos**

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

**SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance, b.**  
is replaced with the following:

- b.** For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**C. Supplementary Payments**

**SECTION II – COVERED AUTOS LIABILITY COVERAGE, A. Coverage, 2. Coverage Extensions, a. Supplementary Payments** is changed as follows:

Item (2) is deleted and replaced by the following:

- (2) Up to \$3,500 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

Item (4) is deleted and replaced by the following:

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

**D. Amended Fellow Employee Exclusion**

**SECTION II – COVERED AUTOS LIABILITY COVERAGE, B. Exclusions, 5. Fellow Employee** does not apply.

The insurance provided under this Provision D. is excess over any other collectible insurance.

**E. Physical Damage Coverage**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage** is changed by adding the following:

**1. Rental Reimbursement**

- a. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.
- b. We will pay only for those expenses incurred during the policy period beginning twenty-four (24) hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:



(1) The number of days reasonably required to repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you.

(2) Thirty (30) days.

c. Our payment is limited to the lesser of the following amounts:

(1) Necessary and actual expenses incurred.

(2) \$50 any one day per private passenger "auto";  
\$100 any one day per truck;  
\$1,500 any one period per private passenger "auto";  
\$3,000 any one period per truck; or  
Higher limits if shown elsewhere in this policy.

d. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

e. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the Physical Damage Coverage Extension.

## 2. Extra Expense – Broadened Coverage

We will pay for the expense of returning a stolen covered "auto" to you.

## 3. Personal Effects Coverage

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to \$500 for "personal effects" stolen from the "auto".

As used in this endorsement, "personal effects" means tangible property that is worn or carried by an "insured". "Personal effects" does not include tools, jewelry, money or securities.

## 4. Lease Gap

In the event of a total "loss" to a covered "auto" shown in the Declarations, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

a. The amount paid under the Physical Damage Coverage Section of the policy; and

b. Any:

- (1) Overdue lease/loan payments at the time of the "loss";
- (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
- (3) Security deposits not returned by the lessor;
- (4) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchases with the loan or lease; and
- (5) Carry-over balances from previous loans or leases.

**5. Glass Repair – Waiver Of Deductible**

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

**F. Physical Damage Coverage Extensions**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions** is amended by the following:

**1. Additional Transportation Expense**

**Sections a. and b.** are amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

**2. Hired Auto Physical Damage**

The following section is added:

Any "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" for physical damage coverage. The most we will pay for each covered "auto" is the lesser of:

- (1) the actual cash value;
- (2) the cost for repair or replacement; or
- (3) \$50,000, or higher limit if shown on the Declarations for Hired Auto Physical Damage Coverage.

For each covered "auto" a deductible of \$100 for Comprehensive Coverage and \$1,000 for Collision Coverage will apply.

**G. Business Auto Conditions**

**SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions** is changed by the following:

**1. Notice Of Occurrence**

**Section 2. – Duties In The Event Of Accident, Claim, Suit Or, Loss, a.** is changed by adding the following:

If you report an injury to an "employee" to your workers' compensation carrier and if it is subsequently determined that the injury is one to which this insurance may apply, any failure to comply with this condition will be waived if you provide us with the required notice as soon thereafter as practicable after you know or reasonably should have known that this insurance may apply.

**2. Waiver Of Subrogation**

**Section 5. Transfer Of Rights Of Recovery Against Others To Us** is changed by adding the following:

However, this Condition does not apply to any person(s) or organization(s) with whom you have a written contract, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under such contract with that person or organization.

**SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions** is changed by the following:

**3. Unintentional Failure To Disclose Hazards**

The following condition is added:

Your unintentional failure to disclose all hazards as of the inception date of the policy shall not prejudice any insured with respect to the coverage afforded by this policy.

**4. Primary Insurance**

**Condition 5. Other Insurance** is changed by adding the following:

For any covered "auto" this insurance shall apply as primary and not contribute with any other insurance where such requirement is agreed in a written contract executed prior to a "loss".

**H. Bodily Injury Redefined**

**SECTION V – DEFINITIONS, C. "Bodily injury"** is replaced by the following:

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

**I. Extended Cancellation Condition**

**COMMON POLICY CONDITIONS (Form IL 00 17), A. Cancellation, 2.b.** is replaced by the following:

The greater of sixty (60) days or the time required by any applicable state amendatory endorsement before the effective date of cancellation if we cancel for any other reason.

All other terms and conditions of this policy remain unchanged.





**WAIVER OF SUBROGATION  
BLANKET BASIS**

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RENEWAL  
NA  
9-60-29-60  
PAGE 1 OF 1

HOME OFFICE  
SAN FRANCISCO

EFFECTIVE OCTOBER 3, 2022 AT 12.01 A.M.  
AND EXPIRING OCTOBER 3, 2023 AT 12.01 A.M.

ALL EFFECTIVE DATES ARE  
AT 12:01 AM PACIFIC  
STANDARD TIME OR THE  
TIME INDICATED AT  
PACIFIC STANDARD TIME

ECAST ENGINEERING, INC.  
PO BOX 7572  
OAKLAND, CA 94601

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  
2.00% OF THE TOTAL POLICY PREMIUM.

SCHEDULE

<u>PERSON OR ORGANIZATION</u>	<u>JOB DESCRIPTION</u>
ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED HAS AGREED BY WRITTEN CONTRACT TO FURNISH THIS WAIVER	BLANKET WAIVER OF SUBROGATION

NOTHING IN THIS ENDORSEMENT SHALL BE HELD TO VARY, ALTER, WAIVE OR EXTEND  
ANY OF THE TERMS, CONDITIONS, AGREEMENTS, OR LIMITATIONS OF THIS POLICY  
OTHER THAN AS ABOVE STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BE  
HELD TO VARY, ALTER, WAIVE OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR  
LIMITATIONS IN THIS ENDORSEMENT.

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO:

OCTOBER 5, 2022

  
AUTHORIZED REPRESENTATIVE

  
PRESIDENT AND CEO

2572

SCIF FORM 10217 (REV.4-2018)

OLD DP 217