

## **SERVICE PROVIDER AGREEMENT**

This SERVICE PROVIDER AGREEMENT (“**Agreement**”) is entered into this \_\_\_\_ day of November 2023 (“**Effective Date**”), by and between the CITY OF ALAMEDA, a municipal corporation (hereinafter “**the City**”), and GEORGE HILLS COMPANY, a California corporation, whose address is P.O. Box 278, Rancho Cordova, CA 95741 (hereinafter “**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: third party administration of the City’s liability claims. Consistent with administrative procurement regulations, the City Attorney has determined it is unnecessary to follow the City’s administrative selection procedures in awarding this Agreement to Provider, given that the City has experienced satisfactory services from Provider at a reasonable cost for more than the past five years.
- 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 Attorney to execute this agreement on November 7, 2023.
- E. The City and Provider desire to enter into an agreement for third party administration of the City’s liability claims, upon the terms and conditions herein.

### **AGREEMENT**

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

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

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

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

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

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

a. By the 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 Attorney or their designee prior to performance and shall be paid on a Time and Material basis as set forth in Exhibit A.

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

<b>YEAR</b>	<b>AMOUNT</b>	<b>ANNUAL ADMINISTRATIVE &amp; REPORTING FEE</b>	<b>ANNUAL COST</b>
2023-2024	\$92,350	\$5,500	\$97,850
2024-2025	\$101,100	\$5,500	\$106,600
2025-2026	\$106,650	\$5,500	\$112,150
2026-2027	\$111,475	\$5,500	\$116,975
2027-2028	\$115,934	\$5,500	\$121,434
		<b>TOTAL</b>	<b>\$555,009</b>

### **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 Indemnitees 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.

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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.

(4) Professional Liability:

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

\$2,000,000 each claim

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

(5) Cyber Liability:

Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Provider in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations with the following minimum limits:

\$2,000,000 per occurrence or claim.

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, and the City has provided 30 days written notice to Provider, 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 Attorney. Provider shall submit a written request for consent to transfer to the City Attorney at least thirty (30) days in advance of the desired transfer. The City Attorney 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 Attorney at least five (5) days in advance. The City Attorney 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 AND DATA:**

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. Provider shall not publicize, disclose, share, communicate or transmit, or permit the publicizing, disclosure, sharing, communication or transmission of any information, data, or materials, including audio or video materials, the Provider receives, generates, compiles, produces, assembles or obtains pursuant to this Agreement, without prior written approval from the City Attorney or designee. Provider's breach of this provision, including any unintentional breach, shall constitute a material breach of the Agreement and Provider shall 1) immediately inform the City of any such breach; 2) take all necessary actions to retract and remove any such breach; 3) indemnify and hold-harmless the City of any loss or damages, including reputational damages; and 4) reimburse the City for all costs and attorney's fees expended by the City to cure and remedy any such breach, including curing, remedying and reimbursing the City for any and all loss or damages, including reputation loss and damages, as a result of such breach. This provision is an essential and nonwaivable provision of any agreement between the Provider and the City, accordingly this provision shall override any other contrary agreement between the City and Provider.

c. Provider shall, at such time and in such form as City Attorney 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  
City Attorney  
2263 Santa Clara Ave., Room 280  
Alameda, CA 94501  
ATTENTION: City Attorney  
Ph: (510) 747-4750

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

George Hills Company  
P.O. Box 278  
Rancho Cordova, CA 95741  
ATTENTION: Chris Shaffer  
Ph: (916) 859-4826

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

City of Alameda  
City Attorney  
2263 Santa Clara Ave, Room 280  
Alameda, CA 94501  
ATTENTION: Risk Manager  
Ph: (510) 747-4750

**18. SAFETY:**

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

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

**19. TERMINATION:**

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

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

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

**20. ATTORNEYS' FEES:**

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

**21. HEALTH AND SAFETY REQUIREMENTS.**

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

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

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

**23. CONFLICT OF LAW:**

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

**24. WAIVER:**

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

**25. INTEGRATED CONTRACT:**

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

**26. CAPTIONS:**

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

**27. COUNTERPARTS:**

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

**28. SIGNATORY:**

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

**29. CONTROLLING AGREEMENT:**

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

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

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

GEORGE HILLS COMPANY  
a California corporation

  
John Chaquica  
CEO

CITY OF ALAMEDA  
a municipal corporation

  
Yibin Shen  
City Attorney

  
Chris Shaffer  
COO

APPROVED AS TO FORM:

DocuSigned by:  
  
Montague Hung  
EFAA2447D90749B...  
Assistant City Attorney

**ATTACHMENT A****SCOPE OF SERVICES AND City EXPRESSED AUTHORITY  
AND LIMITATIONS UNDER THE CONTRACT**

This Attachment A is intended to provide the Scope of Services referenced in Paragraph 1 of the Agreement and also set the specific service expectations in the Agreement, that would not otherwise require revision during the Agreement period, and which may differ from, or elaborate upon, our Client Service Profile. Services to be provided by George Hills Company ("Administrator") on behalf of the City of Alameda ("City") may include some or all of the following,

**I. REPRESENTATIVES**

The City Representative for this Agreement is:

Yibin Shen, City Attorney  
**City of Alameda City Attorney's Office**  
 2263 Santa Clara Avenue, Room 280  
 Alameda, CA 94501  
 Telephone: (510) 747-4750  
 Facsimile: (510) 865-4047

The Administrator's Representatives for this Agreement are:

John Chaquica, CEO; *John.Chaquica@GeorgeHills.com*  
 Chris Shaffer, COO; *Chris.Shaffer@GeorgeHills.com*  
**George Hills Company, Inc.**  
 P.O. Box 278  
 Rancho Cordova, CA 95741  
 (916) 894-4804 Direct  
 (916) 859-4805 Fax

All routine administrative communications between the parties will be between the above named representative and may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Administrator representatives and City's Representative.

**II. SERVICES INCLUDED IN THE AGREEMENT****A. General Administrative Services**

Throughout each year Administrator performs numerous functions which support claims administration on behalf of the Client, but do not include any claims handling, and are performed by non-claims personnel. Below is a list of such services which are included within the terms of this Agreement:

- 1) Claims Management Information System ("CMIS") Services and Reports
  - a. Access to CMIS and training.
  - b. A monthly listing of open claims, showing expense categories, reserves, and total incurred.
  - c. Monthly claim summary reports.
  - d. Monthly hours and claims data detail for billing.
  - e. Providing loss run data and required reports.

- f. Access to George Hill's Client Portal.
- 2) Providing annual reports to outside agencies.
- 3) Filing of regulatory reports (such as 1099, W-9, etc.).
- 4) Trust Account
  - a. Establish and maintain a trust account to pay indemnity and expenses that may be due on claims. The amount to be maintained in the trust account shall be determined by City. If the trust account is set-up with the Administrator preferred bank—California Bank and Trust, Administrator covers the cost of Positive Pay and Payee Match.
  - b. If the City prefers an alternate bank, there may be an additional set-up fee (other banks processes can be extraordinarily time consuming).
  - c. New bank account set up (signature cards, test checks, online access, set up bank in CXP).
  - d. Discussion and agreement on the approval process.
  - e. Preparation of W-9.
  - f. Process checks weekly.
  - g. Submit positive pay if applicable/monitor positive pay (review daily emails from bank for exceptions).
  - h. Maintain a copy of all checks drawn by Administrator to pay claims and claims related expenses.
    - i. Submit monthly check registers of all transactions made for the period.
- 5) Monitor account balance, prepare replenishment requests as needed (customize request for each client's need).
- 6) Monthly bank reconciliation (prepared and sent to City).
- 7) Payment of invoices that are pass-throughs (i.e., invoices for medical record copies, ExamWorks, etc.).
- 8) Certificates of insurance as required by the Agreement.
- 9) Annual Service
  - a. Respond to outside financial auditors.
  - b. Provide reports to City actuaries and claims auditors
  - c. Submit Administrator SSAE 16 reports, or the current equivalent.
  - d. Providing annual reports to outside agencies.
  - e. Filing of regulatory reports such as 1099, W-9, etc.

## **B. Investigative Services**

- 1) Receipt and examination of all reports of accidents or incidents that are or may be the subject of claims.
- 2) Investigate accidents or incidents as warranted, to include on-site investigation, photographs, witness interviews, determination of losses and other such investigative services necessary to determine all City losses but not to include extraordinary investigative services outside the expertise of Administrator.
- 3) In the event City or other agency conducts any investigation, and upon Client's request, Administrator shall review and analyze for liability and/or damage issues and for possible additional follow-up investigation.
- 4) Maintain service on a 24-hour, 7 days per week basis, to receive reports of any incident or accident which may be the subject of a liability claim and provide immediate investigative services to the extent necessary to provide a complete investigation.
- 5) Undertake items of investigation requiring special handling for City at the direction of the City's Attorney or authorized representative.

### **C. Liability and Claim Handling Services**

- 1) Promptly set up a claim file upon receipt of the claim and maintain a claim file on each potential or actual claim reported.
- 2) Assess and evaluate the nature and extent of each claim and establish claims reserves for indemnity and legal expense.
- 3) Administrator will follow any City policy regarding tort claim rejection instructions, including rejection and return of an untimely or insufficient claim.
- 4) Ensure timely tort claim handling, including contact and follow-up with claimants regarding claim issues and processing.
- 5) Any bodily injury claim that is being pursued shall be indexed. Notice only matters or precautionary bodily injury claims that are not pursued do not need to be indexed.
- 6) Determine the need for defense representation, recommend legal counsel, and support litigation activity.
- 7) Report claims to the excess insurer in compliance with excess carrier's reporting requirements and coordinate with the excess insurer on a claim's progress in accordance with the excess insurer's reporting requirements.
- 8) Maintain records on any such claim and notify City when City is about to exhaust the Self-Insured Retention.
- 9) Obtain settlement contracts and releases upon settlement of claims or potential claims not in litigation.
- 10) Perform periodic reviews, as needed, of City files and claims as well as statutory requirements to ensure compliance including excess insurance related requirements.
- 11) Perform the necessary data gathering for the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) and the Set Aside Contracts in compliance with Section 111 of the MMSEA including the required reporting. (See *Attachment B*)
- 12) To the extent there is privileged information or PHI shared between agencies, which is subject to protection under HIPAA, Administrator shall implement all necessary measures in compliance with the Act and will execute a Business Associates Agreement (BAA).

### **D. Litigation Support Services**

1. Upon notification by the City that litigation has been filed naming City or any of its members, Administrator shall follow the instructions outlined in the Client Expressed Scope of Work Instructions form. Administrator will work collaboratively with City to post all legal payments and expenses and to ensure that all financial activities related to the case are recorded in the system for inclusion on a formal loss run which will be provided to the City.
2. The CMIS operated by Administrator will serve as the repository for the City's legal file pertaining to the litigation.,
3. Administrator will collaborate with the City to ensure that there is a process such that the file contents include the following documents and information:
  1. Operative Summons and Complaint
  2. Case evaluations from defense counsel
  3. A summary or copy of any discovery motions
  4. Summary of discovery efforts and evidence obtained
  5. Expert Witness Reports and summary of expected testimony
  6. A summary or copy of dispositive motions
  7. Mediation or settlement conference statements of all parties
  8. Settlement demands or offers from any party

9. A copy of any Judgment, arbitration award, or Jury verdict
10. Any Court order of significance to liability in the case
11. Appellate documents including open and responsive briefs and opinions or decisions issued by the Court.

## **E. Litigation Management and Support Services (optional)**

- 1) Claims Processors, Adjusters and/or Supervisors will perform the following services in relation to litigated, or to-be-litigated, claims:
  - Upon notification by the City that litigation has been filed on an open claim, Administrator shall follow the litigation referral process as outlined in the Client Expressed Scope of Work Instructions form.
  - Work cooperatively with City in choosing outside counsel from approved panel and assist defense counsel in on-going litigation defense efforts.
  - Obtain and maintain a Litigation Plan and Budget.
  - Review legal bills in connection with Litigation Plan and Budget; Review, evaluate and adjust defense counsel invoices for legal services in cooperation with the City.
  - Cooperate with and assist defense counsel assigned to litigation of open claims and provide such investigative services as directed during pre-trial and trial stages.
  - Assist in responding to discovery or preparing discovery.
  - At the request of the City, attend mandatory settlement conferences on behalf of City.
  - Appear on behalf of City in small claims actions filed against City on open claims handled by Administrator.
  - Review and evaluate case evaluations, correspondence and status reports forwarded to Administrator by counsel. Regularly discuss, review, and direct investigation, discovery, and case strategy with counsel.
  - Cooperate with counsel and litigation manager as a team with an open communication approach on each case to obtain the most economical and best result for the City.

## **F. Reports and Procedures**

- 1) Within thirty (30) days of assignment, or sooner if practicable, required, or requested, Administrator will provide City with a report pursuant to specified claims handling instructions, showing name(s) of claimant(s), type of claim, date of loss, comments on liability, reserve recommendations, settlement recommendations, and other pertinent information. Subsequent to the initial thirty (30) day report, Administrator will report as often as warranted by any important change in status but no longer than every ninety (90) days until the claim closes unless extended diary is appropriate.
- 2) All original reports, documents, and claim data of every kind or description, that are prepared in whole or in part by or for the Administrator in connection with this contract shall be City's property and constitute the Administrator's work product for which compensation is paid. A copy of all reports, documents, and claim data of every kind or description that is in whole or in part by or for the City is the property of Administrator. Additional copies of original reports, documents, and data requested by City will be at City's expense in accordance with this contract.
- 3) Administrator agrees that City have access and the right to audit and reproduce any of the Administrator's relevant records to ensure that the City is receiving all services to which the City is entitled under this Agreement or for any purpose relating to the Agreement.

**G. Data**

- 1) Utilize Administrator's claims management information system. City will be provided "read-only" access to the claims system. "Read-write" access may be obtained at the City's additional expense.
- 2) Record all claim information including all financial data.
- 3) Provide City and broker Read only on-line access to the claims data system (up to five users), if desired by City.
- 4) Provide monthly standard loss run and check register.
- 5) Provide annual claims data report upon request. Written authorization and/or a Business Associate Agreement may be required for confidential information protected by HIPAA.
- 6) Provide assistance to City in developing customized reports when requested (may require additional charge).
- 7) Arrange for electronic file conversion for any open and closed claims at the direction of City.

**H. Claim Review Meetings**

Administrator shall, on a mutually agreed periodic basis, meet with Client to review and discuss the City's claims inventory and claims results of specified periods and delivery of services by Administrator. Administrator will attend two (2) claims review meetings annually with the meetings to be held remotely by phone or video conference.

**I. Financial Accounting**

- 1) Establish and maintain a trust fund for the purpose of paying indemnity and expenses that may be due on the claims. The amount to be maintained in the trust fund shall be determined by the Client.
- 2) Maintain a copy of all checks drawn by the Administrator to pay claims and claims related expenses.
- 3) Submit monthly check registers of all transactions made for the period.
- 4) Complete or update Attachment B "Preferred Method of Check Processing" for check processing options.
- 5) Approval process shall be documented in Administrator Client Expressed Scope of Work Standards and Instruction Form.
- 6) Administrator will provide monthly bank reconciliation reports to City for audit purposes.

**J. Third Party Subrogation Services**

In any claim in which City is alleged to be liable or case in which City is a named defendant, Administrator will identify additional parties to that dispute which may also bear responsibility or liability for the damages claimed by the claimant(s) and/or plaintiff(s). Where additional individuals or entities are identified as having some responsibility, Administrator will perform the following services:

- 1) Identify to the City, the additional individuals or entities and the basis for potential liability.
- 2) Prepare and file a claim with each identified individual or entity.
- 3) As applicable, tender defense to or seek recovery from any identified individual or entity.
- 4) With client's prior approval and with the assistance of counsel, Administrator will prepare and file, or caused to be prepared and filed, any necessary litigation required to affect the claim of recovery on behalf of the City.

- 5) Manage litigation related to such claims or cases made to or filed against the other individual or entity.
- 6) All costs and expenses of litigation filed pursuant to this section, including attorney fees for outside counsel where necessary and approved, will be paid by the City.

## **K. First Party Subrogation Services**

In the event that City assigns first party subrogation claims to Administrator, City shall identify damages it has sustained which a value of \$1,000 or greater and for which any individual or entity is believed to be liable or responsible, the following may be performed:

- 1) City may authorize Administrator to act as a representative of City for the investigation, adjustment, processing, supervision, and evaluation of an ultimate recovery of potential money from the identified individuals or entities.
- 2) With prior approval of the City, Administrator may engage the services of one of the City's litigation attorneys to consult, review, and determine the best legal strategy available leading to recovery for the City. Upon determination by the attorney that a civil action is in the best interest of the City, Administrator will notify the City and obtain authorization to initiate litigation in accordance with the recommendations of the City and its attorney.
- 3) Where Administrator is able to recover money from an identified individual or entity, in addition to any other compensation identified in this contract, City will pay a Subrogation Fee in the amount of 30% of the gross amount recovered for each recovery obtained by Administrator. The minimum amount to be paid to Administrator will be \$250 per claim upon recovery. However, Administrator has the authority to reject any claim for any reason, relieving the City of any fiscal responsibility for rejected claims only. The amounts due under this section shall be invoiced to the City on a monthly basis following receipt of the recovery payment from the at-fault party.
- 4) While Administrator is handling a subrogation claim for the City pursuant to the terms of this Agreement, and the institution of a civil action is determined by the City to be the best course of action, City may elect to, at City's expense, recall the claim to the City's control so that City may pursue recovery in a manner in the best interest of the City. In the event the City recalls the claim as indicated above, City shall be responsible for payment to Administrator for any and all time and expense incurred by Administrator's subrogation claim adjuster, and/or subrogation division staff, up to the time wherein the claim has been recalled by the City.
- 5) Where requested, Administrator shall consult with City on claims and other related matters not specifically assigned to Administrator for handling under this Agreement.
- 6) Administrator reserves the right to cease working on any claim whereas information has not been made available to Administrator within 120 days after Administrator has submitted the information and/or documentation to the City, at such time, the claim will be closed.
- 7) Due to the nature of these services, in that compensation is contingent upon recovery, if the contract is terminated prior to recovery or other closure of any claim, the City shall pay Administrator for all expenses and time spent, to date, on any claims(s) currently open and recovery in process. Payment shall be based on the current hourly rate of Administrator of \$95.00 per hour. Administrator will submit final invoice within five business days of termination.

- 8) All costs and expenses of litigation filed pursuant to this section, including attorney fees for outside counsel where necessary and approved, will be paid by the City.
- 9) Administrator does not handle subrogation claims with a value less than \$1,000, unless a separate arrangement is established and agreed to..
- 10) Billing for Services and Payment to Administrator: The process preferred by Administrator is stated as follows:
  - A. Once recovery is agreed to between Administrator and the at-fault party and all documentation executed including a release, the at-fault party will issue a check to Administrator for the full agreed upon amount;
  - B. Administrator shall deposit the gross recovered funds into the Administrator Client Trust Fund.
  - C. Within ten (10) days after deposit, Administrator will issue the net payment to the City of the amount remaining after deduction of the fees to compensation Administrator based on this Agreement.

### **III. CLIENT EXPRESSED AUTHORITY AND LIMITATIONS**

The list immediately below contains numerous services provided in this Agreement for which Administrator requests the City expressly establish authority and/or limitations, on the ability of Administrator to act on behalf of the City. The City will check the appropriate box establishing the authority of Administrator to act or the limitation as to that authority.

#### **GENERAL ADMINISTRATIVE SERVICES:**

George Hills will establish and maintain a trust account for claim-related payments

City will will make all claim-related payments

Administrator will send certificates of insurance to the following contact:

#### **INVESTIGATIVE SERVICES:**

George Hills will conduct all investigations

City will conduct all investigations

City will direct Administrator on each claim as to who performs investigations

*In the event the Client or other agency conducts any investigation, Administrator shall review for completeness.*

Retention of Vendors (appraisers, translators, copy services, Independent Adjuster, IME's, Surveillance, etc.):

Must be preauthorized by City

Does not need preauthorization

#### **LIABILITY AND CLAIM HANDLING SERVICES:**

City's position regarding rejections (e.g., *if entity so dictates, a claim will be rejected for insufficiency*). Check all that apply.

Protocols for Rejections

- Administrator needs authorization
- Administrator does not need authorization
- Administrator sends the Rejection
- City sends the Rejection
- Administrator sends out Denial Letter simultaneously with Rejection outlining the reason

**LITIGATION SUPPORT SERVICES:**

Check all that apply.

- City will handle litigated claims inhouse, with Administrator to capture data into SIMS
  - City will send data to Administrator weekly
  - City will send data to Administrator monthly

Excess Reporting

- Administrator will report claims to the excess insurer in compliance with excess carrier's reporting requirements and coordinate with the excess insurer on a claim's progress in accordance with the excess insurer's reporting requirements.
- City will report claims to the excess insurer in compliance with excess carrier's reporting requirements and coordinate with the excess insurer on a claim's progress in accordance with the excess insurer's reporting requirements

Claims Exceeding SIR:

- Administrator stops tracking activity once the SIR has been reached.
- Administrator will continue to track all activity at and/or above the SIR. The Excess JPA/Carrier will provide Administrator with activity documentation above the SIR.
- Administrator will reserve to Full Value and track recoveries.

**LITIGATION MANAGEMENT AND SUPPORT SERVICES:**

Check all that apply.

- Administrator will handle litigated claims
  - All litigated cases
  - Case as assigned

Mandatory Settlement Conferences

- Administrator always attends
- City will attend with Administrator attending upon request only

Small Claims Actions filed against City

Administrator always appears  
 City will attend with Administrator attending upon request only

Legal Counsel

Administrator must have City authorization to refer to outside Legal Counsel  
 Administrator does not need City authorization to refer to outside Legal Counsel  
 Administrator must use City approved Legal Panel for Attorney selection  
 City does not have an approved Legal Panel for Attorney selection  
 All Litigation to be handled by City inhouse Legal  
 Administrator always sends Litigation Assignment packets to Legal Counsel

City specific Litigation Guidelines:  Yes  No

City specific Litigation Referral Form/Letter:  Yes  No

City specific Litigation Budget Form:  Yes  No

Pay fees for Experts, photocopies, medical records as:  Expense  Legal

**REPORTS AND PROCEDURES:**

Administrator will provide client report of all claims quarterly (specify frequency).  
 Administrator will arrange for the performance of an audit annually.  
 City will arrange for the performance of an audit annually.

**AUTHORITY LEVELS:**

Reserve within SIR:

\$0.00  Other: \_\_\_\_\_

Adjuster must seek approval from (client contact) to post indemnity reserves above authority level.

Settlement Authority:

\$0.00  Other: \_\_\_\_\_

Adjuster must seek approval from (client contact) to consent to settlement of any claim at or above the amount indicated.

Medical Treatment:

Medical Authorizations should only be sent to the claimant once liability is determined to be adverse to the City.  
 Medical Authorizations should go out as soon as it is determined that a BI claim is being pursued.

**FINANCIAL ACCOUNTING:**

George Hills will establish and maintain a trust account for claim-related payments  
 City will make all claim-related payments

- George Hills will provide trust account reconciliation reports monthly
- George Hills will provide check registers reports monthly

**THIRD PARTY SUBROGATION SERVICES:**

- Administrator is authorized to initiate third party subrogation claims on behalf of City
- Administrator must obtain authorization to initiate third party subrogation claims on behalf of City.

**FIRST PARTY SUBROGATION SERVICES:**

- City elects to incorporate the first party subrogation services of Administrator into the contract
- City authorizes Administrator to initiate first party subrogation claims on behalf of City
  
- City agrees to the additional compensation payable to Administrator for its first party subrogation services as follows:  
Administrator shall be entitled to 30% of the gross recovery for each claim initiated by Administrator through its first party subrogation efforts.
- City agrees to the terms and conditions stated in Section K "First Party Subrogation Services" contained herein above.

## EXHIBIT B

### **COMPENSATION, FEES AND EXPENSES**

The following compensation, fees and expenses, shall be paid in consideration for the services provided by Administrator as described in this Agreement at Paragraph 1, "Services." This Section shall remain in force and services provided during the entire term of this Contract, unless otherwise amended pursuant to Paragraph 24 of the Agreement.

The compensation to be paid pursuant to this Agreement is comprised of three distinct categories:

- A: "Administrative Services"
- B: "Fees for Claim Adjusting Services"
- C: "Allocated Costs/Expenses"

The Fees and Costs/Expenses pursuant to subsections "A", "B", and "C" will be billed together monthly in a standard invoice format utilized by Administrator. Additionally, if the City elects any optional services identified subsections "F" or "G" below, all additional amounts will also be billed together monthly where applicable.

#### **A. Administration Services**

- 1) Annual Administration Fee: \$5,000 which is billed annually at the beginning of the Contract period and thereafter upon the anniversary of the Agreement.
- 2) MMSEA: There is a \$500 annual reporting fee, charged to support our contract with our service provider for reporting to CMS. This fee is billed annually at the beginning of the Agreement period.
- 3) System Access Fee: Access to the claims management information system, "CMIS", which includes the setup and management of up to five (5) "read only" user accounts. "Read/write" access to the system can be obtained for an additional fee.
- 4) iMetrics Report Fee: There will be no charge for our iMetrics business intelligence reports with executive in-person debriefs.
- 5) George Hills Client Portal: George Hills operates a client interface which is intended to provide the City with information regarding claims related and loss information. George Hills will be provided with access for two (2) users at no additional cost.
- 6) Custom Reports: Additional charges for custom reporting shall be defined as, requiring a third-party programmer for three hours or more and is client specific.
- 7) Catastrophic Fees: Administrator recognizes that there are events that are unanticipated and/or catastrophic. When such events occur, it requires additional hours for the handling of such claims which could not be estimated or included in the Annual Fixed Fee calculation contained herein. As such, to preserve the quality and efficiency of service,

when such an event is deemed to be catastrophic by any entity providing excess coverage, the California Department of Insurance, the Insurance Services Office, or any local, state, or federal government declares a State of Emergency in relation to the subject matter upon which the claim is based, or upon agreement of the City and Admininistrator, should any one event occur resulting in five or more claimants alleging loss out of the same designated event, or two or more claimants with their own attorneys, Admininistrator will bill the City on a time and expenses basis at the current hourly rate for all services. These claims will be identified for separate billing procedures and will not be counted in the claims frequency which serves as the underlying basis for the Fixed Fee calculation applicable for the next year in the contract period.

- 8) **Fixed Fee Annual Recalculation:** Admininistrator reviews and analyzes the claims frequency annually. Within 30 days of the end of each 12-month period from the date the work under the contract is initiated, Admininistrator will provide notice to the City of the actual number of claims received for the preceding 12 months. If the claims frequency exceeds the base number of 1050 by greater than 10%, Admininistrator will provide a new Annual Fixed Fee calculation based on the change in frequency. The new Annual Fixed Fee will begin on November 1st of the next year in the Agreement term. If the frequency changes in an amount of 10% or less, there will be no change in the Annual Fixed Fee calculation. If the frequency drops by greater than 10 percent, the Annual Fix Fee will be decreased for the next year in the Agreement.
- 9) **General File:** A general administrative file shall be established and maintained to track effort related to services necessary to fulfill our contractual obligations and not otherwise associated with a claim.

## B. Fees for Claim Adjusting Services

- 1) **Annual Fixed Fee.** In exchange for the services provided under this Agreement by Admininistrator, City shall pay to Admininistrator the following Annual Fixed Fee(s).

Fixed Fee*	
Year One: 2023/2024	\$92,350
Year Two: 2024/2025	\$101,100
Year Three: 2025/2026	\$106,650
Year Four: 2026/2027	\$111,475
Year Five: 2027/2028	\$115,934

- 2) **Hourly Rates Applicable:** For reference, in the event that Catastrophic Fees are triggered or if hourly rates are implicated for any reason, the current hourly rates which are charged for all time worked on claims using a 1/10<sup>th</sup> of an hour increment for each task performed on a claim:

Litigation Manager: \$225/hour\*

Claims Supervisor: \$127/hour\*

Claims Adjuster: \$102/hour\*

Claims Processing: \$84/hour\*

3) First Party Subrogation Services: Compensation, fees and costs are details in Exhibit A at Section K which is incorporated herein.

**C. Allocated Costs/Expenses**

Administrator will charge to the City both allocated and non-allocated costs and expenses incurred pursuant to this Agreement as stated herein and defined further in Attachment D, "Allocated Expenses."

- 1) Mileage Reimbursement: Mileage traveled will be paid at the IRS rate in effect at the time the mileage is travled. This section applies to mileage which can be allocated to a specific claim and also mileage which is not allocated to any claim, such as attendance at claim review, board and/or committee meetings requested or required by the City.
- 2) Adjuster Travel Expenses: Administrator will separately charge for any travel expenses in connection with attendance at mediations, settlement conferences, trials, etc. This will be subject to prior approval and actual expenses will be submitted with receipts on a monthly basis. This section applies to travel expenses which can be allocated to a specific claim and also travel expenses which are not allocated to any claim, such as attendant at claim review, board and/or committee meetings.

**D. Payment Schedule**

Administrator will submit its invoices to City, and payment shall be made by City, within a reasonable period of time, not to exceed thirty (30) days from the date of the invoice.

**E. Electronic Funds Transfer Or Direct Deposit**

Administrator has determined that the most efficient and secure default form of payment for goods and/or services provided under Contract with City shall be Electronic Funds Transfer (EFT) or direct deposit, unless an alternative method of payment is deemed appropriate by both Administrator and Client and agreed to in writing.

Administrator will submit a direct deposit authorization request via to City with banking and vendor information, and any other information that the City determines is reasonably necessary to process the payment and comply with all accounting, record keeping, and tax reporting requirements.

At any time during the duration of the Agreement, Administrator may submit a written request for an exemption to this requirement. Such request must be based on specific legal, business or operational needs and Administrator will explain why the payment method designated by the City is not feasible and an alternative is necessary.

**G. Optional Services**

Administrator employs "in-house" attorneys which have vast experience in claims and litigation handling, problem resolution, issue identification and investigation, and advice and consultation, for all types of claims and issues which may arise for a public entity. Should the special

circumstance arise whereby City requests additional services by a George Hills attorney, including those identified in the list below, the services will be provided on a time and expenses basis and at the rate of \$225.00 per hour, billed using 1/10th of an hour increments for each task performed on a claim or issue. The fees charged for these services will be in addition to any other compensation defined in this

Litigation Management

Monitoring Counsel

Outside General and Special Counsel

Trial/Mediation/Board Meeting Attendance

Legal Training and Seminars

Administrator can also provide Professional and Financial Services related to risk management and loss prevention in alignment with the scope of services for the same rate referenced above.

**NOTE:** These services are traditionally Time and Expense, however an annual fee can be considered.



# **CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

10/4/2023

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

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

<b>PRODUCER</b> Arthur J. Gallagher Risk Management Services, LLC 2121 N. California Blvd., Suite 350 Walnut Creek CA 94596	<b>CONTACT NAME:</b> Certificate Department	
	<b>PHONE (A/C, No, Ext):</b> 925-299-1112	<b>FAX (A/C, No):</b> 925-299-0328
	<b>E-MAIL ADDRESS:</b> CertRequests@ajg.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
	INSURER A : Citizens Insurance Company of America	31534
<b>INSURED</b> George Hills Company Inc. PO Box 278 Rancho Cordova CA 95741	INSURER B : Allmerica Financial Benefit Insurance Co	41840
	INSURER C : Hanover American Insurance Company	36064
	INSURER D : Hiscox Insurance Company Inc.	10200
	INSURER E : Landmark American Insurance Company	33138
	INSURER F : Markel American Insurance Company	28932
	GEORHIL-03	
License#: 0D69293		

## COVERAGES

**CERTIFICATE NUMBER:** 177574798

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**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.

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

ADDITIONAL INSURED(S): The City of Alameda, its officers, officials, employees, agents or volunteers. 30 day Notice of Cancellation will be provided per the attached form.

LC

10/19/2023

## CERTIFICATE HOLDER

## CANCELLATION

City of Alameda, City Attorney's Office  
Attention: Risk Manager  
2263 Santa Clara Avenue, Room 280  
Alameda CA 94501  
USA

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**

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **BUSINESSOWNERS LIABILITY SPECIAL BROADENING ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESSOWNERS COVERAGE FORM**

<b>SUMMARY OF COVERAGES</b>	<b>Limits</b>	<b>Page</b>
1. Additional Insured by Contract, Agreement or Permit	Included	1
2. Additional Insured - Broad Form Vendors	Included	2
3. Alienated Premises	Included	3
4. Broad Form Property Damage - Borrowed Equipment, Customers Goods and Use of Elevators	Included	3
5. Incidental Malpractice (Employed Nurses, EMT's and Paramedics)	Included	3
6. Personal and Advertising Injury - Broad Form	Included	4
7. Product Recall Expense	Included	4
Product Recall Expense Each Occurrence Limit	\$25,000 Occurrence	5
Product Recall Expense Aggregate Limit	\$50,000 Aggregate	5
Product Recall Deductible	\$500	5
8. Unintentional Failure to Disclose Hazards	Included	6
9. Unintentional Failure to Notify	Included	6

This endorsement amends coverages provided under the Businessowners Coverage Form through new coverages and broader coverage grants. This coverage is subject to the provisions applicable to the Businessowners Coverage Form, except as provided below.

The following changes are made to **SECTION II - LIABILITY:**

**1. Additional Insured by Contract, Agreement or Permit**

The following is added to **SECTION II - LIABILITY, C. Who Is An Insured:**

**Additional Insured by Contract, Agreement or Permit**

a. Any person or organization with whom you agreed in a written contract, written agreement or permit to add such person or organization as an additional insured on your policy is an additional insured 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, but only with respect to:

(1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;

(2) Premises you own, rent, lease or occupy; or

(3) Your maintenance, operation or use of equipment leased to you.

b. The insurance afforded to such additional insured described above:

(1) Only applies to the extent permitted by law; and

(2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.

(3) Applies on a primary basis if that is required by the written contract, written agreement or permit.

(4) Will not be broader than coverage provided to any other insured.

(5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

- c. This provision does not apply:
  - (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".
  - (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
  - (3) To any lessor of equipment:
    - (a) After the equipment lease expires; or
    - (b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor.
  - (4) To any:
    - (a) Owners or other interests from whom land has been leased if the "occurrence" takes place or the offense is committed after the lease for the land expires; or
    - (b) Managers or lessors of premises if:
      - (i) The "occurrence" takes place or the offense is committed after you cease to be a tenant in that premises; or
      - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
  - (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.
- d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance**:

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

- 1. Required by the contract, agreement or permit described in Paragraph a.; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations.

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

- e. All other insuring agreements, exclusions, and conditions of the policy apply.

## 2. Additional Insured - Broad Form Vendors

The following is added to **SECTION II - LIABILITY, C. Who Is An Insured**:

### Additional Insured - Broad Form Vendors

- a. Any person or organization that is a vendor with whom you agreed in a written contract or written agreement to include as an additional insured under this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.
- b. The insurance afforded to such vendor described above:
  - (1) Only applies to the extent permitted by law;
  - (2) Will not be broader than the insurance which you are required by the contract or agreement to provide for such vendor;
  - (3) Will not be broader than coverage provided to any other insured; and
  - (4) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto
- c. With respect to insurance afforded to such vendors, the following additional exclusions apply:
 

The insurance afforded to the vendor does not apply to:

  - (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reasons of the assumption of 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;
  - (2) Any express warranty unauthorized by you;

- (3) Any physical or chemical change in the product made intentionally by the vendor;
- (4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instruction from the manufacturer, and then repackaged in the original container;
- (5) Any failure to make such inspection, 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 sale of the product;
- (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (7) 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;
- (8) "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:
  - (a) The exceptions contained within the exclusion in subparagraphs (4) or (6) above; or
  - (b) 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.
- (9) "Bodily injury" or "property damage" arising out of an "occurrence" that took place before you have signed the contract or agreement with the vendor.
- (10) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
- (11) 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.
- d. With respect to the insurance afforded to these vendors, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance:**

The most we will pay on behalf of the vendor for a covered claim is the lesser of the amount of insurance:

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

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

### 3. Alienated Premises

**SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage k. Damage to Property**, paragraph (2) is replaced by the following:

- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises and occurred from hazards that were known by you, or should have reasonably been known by you, at the time the property was transferred or abandoned.

### 4. Broad Form Property Damage - Borrowed Equipment, Customers Goods, Use of Elevators

- a. The following is added to **SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage, k. Damage to Property**:

Paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.

Paragraph (3), (4) and (6) do not apply to "property damage" to "customers goods" while on your premises nor to the use of elevators.

- b. For the purposes of this endorsement, the following definition is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions**:

- 1. "Customers goods" means property of your customer on your premises for the purpose of being:
  - a. Worked on; or
  - b. Used in your manufacturing process.

- c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent or on any other basis.

### 5. Incidental Malpractice - Employed Nurses, EMT's and Paramedics

**SECTION II - LIABILITY, C. Who Is An Insured**, paragraph 2.a.(1)(d) does not apply to a nurse,

emergency medical technician or paramedic employed by you if you are not engaged in the business or occupation of providing medical, paramedical, surgical, dental, x-ray or nursing services.

## 6. Personal Injury - Broad Form

- a. **SECTION II - LIABILITY, B. Exclusions, 2. Additional Exclusions Applicable only to "Personal and Advertising Injury",** paragraph e. is deleted.
- b. **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, 14.** "Personal and advertising injury", paragraph b. is replaced by the following:
  - b. Malicious prosecution or abuse of process.
- c. The following is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, Definition 14.** "Personal and advertising injury":  
 "Discrimination" (unless insurance thereof is prohibited by law) that results in injury to the feelings or reputation of a natural person, but only if such "discrimination" is:
  - (1) Not done intentionally by or at the direction of:
    - (a) The insured;
    - (b) Any officer of the corporation, director, stockholder, partner or member of the insured; and
  - (2) Not directly or indirectly related to an "employee", not to the employment, prospective employment or termination of any person or persons by an insured.
- d. For purposes of this endorsement, the following definition is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:**
  1. "Discrimination" means the unlawful treatment of individuals based upon race, color, ethnic origin, gender, religion, age, or sexual preference. "Discrimination" does not include the unlawful treatment of individuals based upon developmental, physical, cognitive, mental, sensory or emotional impairment or any combination of these.
- e. This coverage does not apply if liability coverage for "personal and advertising injury" is excluded either by the provisions of the Coverage Form or any endorsement thereto.

## 7. Product Recall Expense

- a. **SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage,**

**o. Recall of Products, Work or Impaired Property** is replaced by the following:

**o. 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, but this exclusion does not apply to "product recall expenses" that you incur for the "covered recall" of "your product".

However, the exception to the exclusion does not apply to "product recall expenses" resulting from:

- (4) Failure of any products to accomplish their intended purpose;
- (5) Breach of warranties of fitness, quality, durability or performance;
- (6) Loss of customer approval, or any cost incurred to regain customer approval;
- (7) Redistribution or replacement of "your product" which has been recalled by like products or substitutes;
- (8) Caprice or whim of the insured;
- (9) A condition likely to cause loss of which any insured knew or had reason to know at the inception of this insurance;
- (10) Asbestos, including loss, damage or clean up resulting from asbestos or asbestos containing materials; or
- (11) Recall of "your products" that have no known or suspected defect solely because a known or suspected defect in another of "your products" has been found.

- b. The following is added to **SECTION II - LIABILITY, C. Who Is An Insured**, paragraph 3.b.:

"Product recall expense" arising out of any withdrawal or recall that occurred before you acquired or formed the organization.

c. The following is added to **SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance:**

**Product Recall Expense Limits of Insurance**

- a. The Limits of Insurance shown in the SUMMARY OF COVERAGES of this endorsement and the rules stated below fix the most that we will pay under this Product Recall Expense Coverage regardless of the number of:
  - (1) Insureds;
  - (2) "Covered Recalls" initiated; or
  - (3) Number of "your products" withdrawn.
- b. The Product Recall Expense Aggregate Limit is the most that we will reimburse you for the sum of all "product recall expenses" incurred for all "covered recalls" initiated during the policy period.
- c. The Product Recall Each Occurrence Limit is the most we will pay in connection with any one defect or deficiency.
- d. All "product recall expenses" in connection with substantially the same general harmful condition will be deemed to arise out of the same defect or deficiency and considered one "occurrence".
- e. Any amount reimbursed for "product recall expenses" in connection with any one "occurrence" will reduce the amount of the Product Recall Expense Aggregate Limit available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.
- f. If the Product Recall Expense Aggregate Limit has been reduced by reimbursement of "product recall expenses" to an amount that is less than the Product Recall Expense Each Occurrence Limit, the remaining Aggregate Limit is the most that will be available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.
- g. **Product Recall Deductible**

We will only pay for the amount of "product recall expenses" which are in excess of the \$500 Product Recall Deductible. The Product Recall Deductible applies separately to each "covered recall". The limits of insurance will not be reduced by the amount of this deductible.

We may, or will if required by law, pay all or any part of any deductible amount, if applicable. Upon notice of our payment

of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

The Product Recall Expense Limits of Insurance 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 the purposes of determining the Limits of Insurance.

d. The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expense General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:**

You must see to it that the following are done in the event of an actual or anticipated "covered recall" that may result in "product recall expense":

- (1) Give us prompt notice of any discovery or notification that "your product" must be withdrawn or recalled. Include a description of "your product" and the reason for the withdrawal or recall;
- (2) Cease any further release, shipment, consignment or any other method of distribution of like or similar products until it has been determined that all such products are free from defects that could be a cause of loss under this insurance.
- e. For the purposes of this endorsement, the following definitions are added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:**
  - 1. "Covered recall" means a recall made necessary because you or a government body has determined that a known or suspected defect, deficiency, inadequacy, or dangerous condition in "your product" has resulted or will result in "bodily injury" or "property damage".
  - 2. "Product recall expense(s)" means:
    - a. Necessary and reasonable expenses for:
      - (1) Communications, including radio or television announcements or printed advertisements including stationary, envelopes and postage;

- (2) Shipping the recalled products from any purchaser, distributor or user to the place or places designated by you;
- (3) Remuneration paid to your regular "employees" for necessary overtime;
- (4) Hiring additional persons, other than your regular "employees";
- (5) Expenses incurred by "employees" including transportation and accommodations;
- (6) Expenses to rent additional warehouse or storage space;
- (7) Disposal of "your product", but only to the extent that specific methods of destruction other than those employed for trash discarding or disposal are required to avoid "bodily injury" or "property damage" as a result of such disposal,  
you incur exclusively for the purpose of recalling "your product"; and
- b. Your lost profit resulting from such "covered recall".

f. This Product Recall Expense Coverage does not apply:

- (1) If the "products - completed operations hazard" is excluded from coverage under this Coverage Part including any endorsement thereto; or
- (2) To "product recall expense" arising out of any of "your products" that are otherwise excluded from coverage under this Coverage Part including endorsements thereto.

#### 8. Unintentional Failure to Disclose Hazards

The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions:**

##### Representations

We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.

#### 9. Unintentional Failure to Notify

The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:**

Your rights afforded under this Coverage Part shall not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit", solely due to your reasonable and documented belief that the "bodily injury", "property damage" or "personal and advertising injury" is not covered under this Policy.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

1. **SECTION I - PROPERTY**, if two or more of this coverage part's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.
2. **SECTION II - LIABILITY**, it is our stated intent that the various Coverage Parts, forms, endorsements or policies issued to the named insured by us, or any company affiliated with us, do not provide any duplication or overlap of coverage for the same claim, "suit", "occurrence", offense, accident, "wrongful act" or loss. We will not pay more than the actual amount of the loss or damage.

If this Coverage Part and any other Coverage Part, form, endorsement or policy issued to the named insured by us, or any company affiliated with us, apply to the same claim, "suit", occurrence, offense, accident, "wrongful act" or loss, the maximum Limit of Insurance under all such Coverage Parts, forms, endorsements or policies combined shall not exceed the highest applicable Limit of Insurance under any one Coverage Part, form, endorsement or policy.

This condition does not apply to any Excess or Umbrella Policy issued by us specifically to apply as excess insurance over this policy.

#### G. Liberalization

If we adopt any revision that would broaden the coverage under this policy without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

#### H. Other Insurance

##### 1. SECTION I - PROPERTY

If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But, we will not pay more than the applicable Limit of Insurance of **SECTION I - PROPERTY**.

##### 2. SECTION II - LIABILITY

If other valid and collectible insurance is available to the insured for a loss we cover under **SECTION II - LIABILITY**, our obligations are limited as follows:

###### a. Primary Insurance

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

However, if you agree in a written contract, written agreement, or written permit that the insurance provided to any person or organization included as an Additional Insured under this Coverage Part is primary and non-contributory, we will not seek contribution from any other insurance available to that Additional Insured which covers the Additional Insured as a Named Insured except:

- (1) For the sole negligence of the Additional Insured; or
- (2) When the Additional Insured is an Additional Insured under another liability policy.

###### b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (b) That is Property Insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
  - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to **SECTION II - LIABILITY, Exclusion g. Aircraft, Auto or Watercraft**; and
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under **SECTION II - LIABILITY** 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.

- c. 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.
- d. We will share the remaining loss, if any, with any other insurance that is not described in this provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations for this Coverage.
- e. **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.
- f. When this insurance is excess, we will have no duty under Business Liability Coverage to defend any claim or "suit" that any other insurer has a duty to defend. 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.

#### I. Premiums

- 1. The first Named Insured shown in the Declarations:
  - a. Is responsible for the payment of all premiums; and
  - b. Will be the payee for any return premiums we pay.
- 2. The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation or anniversary of the effective date of this policy, we will compute the

premium in accordance with our rates and rules then in effect.

- 3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:

- a. Paid to us prior to the anniversary date; and
- b. Determined in accordance with paragraph 2. above.

Our forms then in effect will apply. If you do not pay the continuation premium, this policy will expire on the first anniversary date that we have not received the premium.

- 4. Undeclared exposures or change in your business operation, acquisition or use of locations may occur during the policy period that is not shown in the Declarations. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules then in effect.

#### J. Premium Audit

- 1. This policy is subject to audit if a premium designated as an advance premium is shown in the Declarations. We will compute the final premium due when we determine your actual exposures.
- 2. Premium shown in this policy 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 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.
- 3. 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.

#### K. Transfer of Rights of Recovery Against Others to Us

- 1. Applicable to **SECTION I - PROPERTY** Coverage:

If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

- a. Prior to a loss to your Covered Property.
- b. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
  - (1) Someone insured by this insurance;
  - (2) A business firm:
    - (a) Owned or controlled by you; or
    - (b) That owns or controls you; or
  - (3) Your tenant.

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

**2. Applicable to SECTION II - LIABILITY Coverage:**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair such rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

We waive any right of recovery we may have against any person or organization with whom you have a written contract, permit or agreement to waive any rights of recovery against such person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard".

This condition does not apply to Medical Expenses Coverage.

**L. Transfer of Your Rights and Duties Under This Policy**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured. If you die, your rights and duties will be transferred to your legal representative but only while that legal representative is acting within the scope of their duties as your legal representative. Until your legal representative is appointed, anyone with proper temporary custody of your property will have your rights and duties but only with respect to that property.

**Policy Number: AWFH38993202**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE PART**

**A. The following is added to SECTION II - LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured:**

**Additional Insured if Required by Contract**

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional "insured" under this Coverage Part, such person or organization is an "insured"; but only to the extent that such person or organization qualifies as an "insured" under paragraph **A.1.c.** of this Section.

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional "insured" under this Coverage Part, the most we will pay on behalf of such additional "insured" is the lesser of:

- (1) The Limits of Insurance for liability coverage specified in the written contract, written agreement or written permit; or**
- (2) The Limits of Insurance for Liability Coverage shown in the Declarations applicable to this Coverage Part.**

Such amount shall be part of and not in addition to the Limits of Insurance shown in the Declarations applicable to this Coverage Part. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

**B. The following is added to SECTION IV - BUSINESS AUTO CONDITIONS, Paragraph B. General Conditions, subparagraph 5. Other Insurance:**

**Primary and Non-Contributory**

If you agree in a written contract, written agreement or written permit that the insurance provided to a person or organization who qualifies as an additional "insured" under SECTION II - LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured, subparagraph **Additional Insured if Required by Contract** is primary and non-contributory, the following applies:

The liability coverage provided by this Coverage Part is primary to any other insurance available to the additional "insured" as a Named Insured. We will not seek contribution from any other insurance available to the additional "insured" except:

- (1) For the sole negligence of the additional "insured"; or**
- (2) For negligence arising out of the ownership, maintenance or use of any "auto" not owned by the additional "insured" or by you, unless that "auto" is a "trailer" connected to an "auto" owned by the additional "insured" or by you; or**
- (3) When the additional "insured" is also an additional "insured" under another liability policy.**

**C. This endorsement will apply only if the "accident" occurs:**

- 1. During the policy period;**
- 2. Subsequent to the execution of the written contract or written agreement or the issuance of the written permit; and**
- 3. Prior to the expiration of the period of time that the written contract, written agreement or written permit requires such insurance to be provided to the additional "insured".**

**D. Coverage provided to an additional "insured" will not be broader than coverage provided to any other "insured" under this Coverage Part.**

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

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

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.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% of the California workers' compensation premium otherwise due on such remuneration.

**Schedule**

<b>Person or Organization</b>	<b>Job Description</b>
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APPLIES AS BLANKET WAIVER  
CONTRACT WITH THE POLICY-  
WC POLICYHOLDER EMPLOYEES.

FOR THOSE HAVING A WRITTEN  
HOLDER REQUIRING WOS FOR

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  
Insured

Policy No. WHFH38994302

Endorsement No.

Insurance Company THE HANOVER AMERICAN INSURANCE COMPANY

Countersigned By \_\_\_\_\_

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NOTICE OF CANCELLATION TO DESIGNATED ENTITY(S)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 COMMERCIAL LIABILITY UMBRELLA COVERAGE PART  
 HANOVER COMMERCIAL FOLLOW FORM EXCESS AND UMBRELLA POLICY  
 COMMERCIAL PROPERTY COVERAGE PART  
 BUSINESS AUTO COVERAGE FORM  
 BUSINESS OWNERS COVERAGE FORM

### SCHEDULE

Name of Designated Entity Mailing Address or Email Address	Number Days Notice
CITY OF ALAMEDA, CITY ATTORNEY'S OFFICE ATTN: RISK MANAGER 2263 SANTA CLARA AVENUE, ROOM 280 ALAMEDA CA, 94501	30

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

If we cancel this policy for any reason other than nonpayment of premium, we will give written notice of such cancellation to the Designated Entity(s) shown in the Schedule. Such notice may be delivered or sent by any means of our choosing. The notice to the Designated Entity(s) will state the effective date of cancellation.

Unless otherwise noted in the Schedule above, such notice will be provided to the Designated Entity(s) no more than the number of days in advance of the effective date of cancellation that we are required to provide to the Named Insured for such cancellation.

Such notice of cancellation is solely for the purpose of informing the Designated Entity(s) of the effective date of cancellation and does not grant, alter, or extend any rights or obligations under this policy.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.