

## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (“**Agreement**”) is entered into this 30th day of December 2024, by and between the CITY OF ALAMEDA, a municipal corporation (“**the City**”), and **McGUIRE & HESTER**, a California corporation, whose address is **2810 Harbor Bay Parkway, Alameda, CA 94502**, (“**Contractor**”), in reference to the following:

### **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 City’s Charter.
- B. The City is in need of the following services: Emergency repair and replenishment of shoreline rock slope protection and associated trail repairs, P.W. No 12-27-24. Provider was selected on a sole source basis because of the emergency nature of the work following the storm event December 12 to 14, 2024 and with additional storms coming during the 2024-2025 wet season.
- C. Contractor 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 ratified this agreement on January 21 , 2025.
- E. The City and Contractor desire to enter into an agreement for Emergency repair and replenishment of shoreline rock slope protection and associated trail repairs, P.W. No 12-27-24, upon the terms and conditions herein.

NOW, THEREFORE, in consideration of the forgoing, which are incorporated herein by reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **1. TERM:**

Contractor shall have 45 consecutive working days from the date the work is to commence pursuant to the Notice to Proceed to diligently prosecute the work to completion. This term is extended by said number of consecutive working days pursuant to an issued Change Order granting additional working days.

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

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

**3. COMPENSATION TO CONTRACTOR:**

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

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

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

Total compensation for work will be billed on a time and material basis for a total not to exceed of \$500,000.

Prompt Payment Of Withheld Funds To Subcontractors: The City shall hold retainage from the prime contractor and shall, as determined by the City, make prompt and regular incremental acceptances of portions of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted by the City, including incremental acceptances of portions of the contract work. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving (a) late payment or nonpayment by the prime contractor, (b) deficient subcontractor performance, or (c) noncompliance by a subcontractor with the contract, including but not limited to remedies under California Public Contract Code Section 9204. This clause applies to both DBE and non-DBE subcontractors.

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

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

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

delay. It is therefore agreed that Contractor will pay the City the sum of two thousand DOLLARS (\$2,650) per day as liquidated damages for each and every day's delay beyond the time prescribed to complete the work; and Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the City may deduct the amount thereof from any money due or that may become due Contractor under the Agreement.

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

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

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

Contractor shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents that it is skilled in the professional calling necessary to perform all services contracted for in this Agreement. Contractor further represents that all of its employees and subcontractors shall have sufficient skill and experience to perform the duties assigned to them pursuant to and in furtherance this Agreement. Contractor further represents that it (and its employees and subcontractors) have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the services (including a City Business License, as needed); and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform (at its own cost and expense and without reimbursement from the City) any services necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its subcontractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of any services under this Agreement, or a threat to the safety of persons or property (or any employee who fails or refuses to perform the services in a manner acceptable to the City) shall be promptly removed by the Contractor and shall not be re-employed to perform any further services under this Agreement.

**6. INDEPENDENT PARTIES:**

Contractor hereby declares that it is engaged as an independent business and it agrees to perform its services as an independent contractor. The manner and means of conducting the work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Contractor's services and work. 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 Contractor, its employees, subcontractors, suppliers or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Contractor. Payments of the above items, if required, are the responsibility of Contractor. Any personnel performing the services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control.

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

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

**8. NON-DISCRIMINATION:**

Consistent with the City's policy and state and federal law that harassment and discrimination are unacceptable employer/employee conduct, neither Contractor nor Contractor's employees, agents, subcontractors or suppliers shall harass or discriminate against any job applicant, City employee, or any person on the basis of any kind of any statutorily (federal, state or local) protected class, including but not limited to race, religious creed, color, national origin, ancestry, disability (both mental and physical), including HIV and AIDS, medical condition (e.g., cancer), genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, pregnancy, political affiliation, military and veteran status or legitimate union activities. Such non-discrimination shall include but not be limited to all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination. Contractor agrees that any violations of this provision shall constitute a material breach of this Agreement.

**9. HOLD HARMLESS:**

To the fullest extent permitted by law, Contractor 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 Contractor's performance of its obligations under this Agreement or out of the operations conducted by Contractor 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 Contractor, Contractor shall have no right of reimbursement against Indemnites for the costs of defense even if negligence, recklessness or willful misconduct is not found on the part of Contractor. Contractor shall not have any obligations to indemnify Indemnites 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.

As to Claims for professional liability only, Contractor’s obligation to defend Indemnites (as set forth above) is limited as provided in California Civil Code Section 2782.8.

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

**10. INSURANCE:**

a. On or before the commencement of the terms of this Agreement, Contractor shall furnish 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 paragraphs 10.b. (1) through (5). Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement:

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

Contractor shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company 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. Endorsements naming the City, its City Council, boards, commissions, officials, employees, agents and volunteers as additional insured shall be submitted with the insurance certificates.

**b. COVERAGE:**

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

- (1) Workers’ Compensation:  
Statutory coverage as required by the State of California.
- (2) Liability:  
Commercial general liability coverage in the following minimum limits:
 

Bodily Injury:	\$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. Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required.

(3) Automotive:

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

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

or

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

c. SUBROGATION WAIVER:

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor 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 the Contractor, its employees, agents and subcontractors.

d. FAILURE TO SECURE:

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



e. ADDITIONAL INSURED:

The City, its City Council, boards, commissions, officials, employees and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy. The additional insured coverage under the Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance.

f. SUFFICIENCY OF INSURANCE:

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

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 Contractor are exhausted. **If a Provider is using an Excess Liability policy to supplement any insurance coverage required by this Agreement, they must submit the Excess Liability policy in full.**

11. BONDS:

Contractor shall furnish the following bonds from a bonding company acceptable to the City's Risk Manager:

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

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

Faithful Performance Bond and Labor and Material Bond are only required for work over \$25,000. Therefore, those estimates that are under \$25,000 will not need to budget for the bond premiums and those estimates over \$25,000 will need to budget for the bond premiums.

**12. PROHIBITION AGAINST TRANSFERS:**

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. 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, Contractor's claims for money from the City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to the City by Contractor.

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

**13. SUBCONTRACTOR APPROVAL:**

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

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

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

**14. PERMITS AND LICENSES:**

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

**15. REPORTS:**

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

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



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

**16. RECORDS:**

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

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

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

**17. NOTICES:**

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

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

City of Alameda  
Public Works  
950 W Mall Square, Suite 110  
Alameda, CA 94501  
ATTENTION: Erin Smith  
Ph: (510) 747-7900  
Email: [esmith@alamedaca.gov](mailto:esmith@alamedaca.gov)

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

McGuire and Hester  
2810 Harbor Bay Pkwy  
Alameda, CA 94502

ATTENTION: Matt Finley  
Ph: 510-632-7676  
Email: mfinley@mcguireandhester.com

**18. SAFETY:**

Contractor will be solely and completely responsible for conditions of all vehicles owned or operated by Contractor, including the safety of all persons and property during performance of the services and work under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Contractor 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. Contractor'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.

Contractor will immediately notify the City's Risk Manager 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. Contractor 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 Contractor's employee(s) involved in the incident; (iii) name and address of Contractor's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

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

During the term of this Agreement, Contractor 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 Contractor, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Contractor shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by the City. Contractor shall defend, indemnify, and hold City (including its officials, directors, officers, employees, and agents) free and harmless from any claim or liability arising out of any failure or alleged failure to comply with such laws and regulations pursuant to the indemnification provisions of this Agreement.

**20. HEALTH AND SAFETY REQUIREMENTS.**

Contractor 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. Contractor 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. Contractor also agrees to make available to the City, at the City's request, records to demonstrate Contractor's compliance with this Section.

**21. PREVAILING WAGES:**

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

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

a. For purposes of Sections 22 through 24 of this Agreement, the terms “claim”, “contractor”, “public works project” and “subcontractor” shall have the same meanings set forth in Public Contract Code Section 9204.

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

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

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

e. In executing this Agreement, Contractor acknowledges and agrees that the work authorized by this Agreement may be subject to compliance monitoring and enforcement by the Department of Industrial Relations.

**23. HOURS OF LABOR:**

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Contractor or by any subcontractor on any subcontract under this Agreement, upon the work or upon any part of the work contemplated by this

Agreement, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work, provided that the employees' compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

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

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

#### **24. APPRENTICES:**

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

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

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

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

**25. LABOR DISCRIMINATION:**

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

**26. REGISTRATION OF CONTRACTORS:**

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

**27. URBAN RUNOFF MANAGEMENT:**

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

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

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

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

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

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

**28. COMPLIANCE WITH MARSH CRUST ORDINANCE:**

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

**29. COMPLIANCE WITH THE CITY’S INTEGRATED PEST MANAGEMENT POLICY:**

Contractor shall follow the requirements of the City's Integrated Pest Management (IPM) Policy to ensure the City is in compliance with its Municipal Regional Stormwater NPDES Permit, Order R2-2022-0018, issued by the San Francisco Bay Regional Water Quality Control Board.

- Contractor shall use the most current IPM technologies available to ensure the long-term prevention or suppression of pest problems and to minimize negative impacts on the environment, non-target organisms, and human health for the control or management of pests in and around City buildings and facilities, parks and golf courses, urban landscape areas, rights-of-way, and other City properties.
- Contractor will consider the City IPM Policy’s hierarchy of options or alternatives listed below, in the following order before recommending the use of or applying any pesticide on City property: (1)
  - a. No controls (e.g. tolerating the pest infestation, use of resistant plant varieties or allowing normal life cycle of weeds);
  - b. Physical or mechanical controls (e.g. hand labor, mowing, exclusion);
  - c. Cultural controls (e.g. mulching, disking, alternative vegetation) and good housekeeping (e.g. cleaning desk area);
  - d. Biological controls (e.g., natural enemies or predators);
  - e. Reduced-risk chemical controls (e.g., soaps or oils); and
  - f. Other chemical controls.
- Prior to applying chemical controls Contractor shall complete a checklist for the City’s pre-approval that explains why a chemical control is necessary. For annual contracts that



require regular application of chemical controls the contractor shall submit one checklist prior to the initiation of the project demonstrating that the hierarchy has been reviewed and no other options exist. (See Exhibit C). Additionally, Contractor shall provide documentation to the City's project manager of the implementation of the IPM techniques hierarchy described in the City's IPM Policy.

- Contractor shall avoid the use of the following pesticides that threaten water quality, human health and the environment:
  - a. Acute Toxicity Category I chemicals as identified by the Environmental Protection Agency (EPA);
  - b. Organophosphate pesticides (e.g., those containing Diazinon, chlorpyrifos or malathion);
  - c. Diamides (chlorantraniliprole and cyantraniliprole);
  - d. Neonicotinoids (e.g., imidacloprid, acetamiprid, and dinotefuran);
  - e. Pyrethroids (bifenthrin, cyfluthrin, beta-cyfluthrin, cypermethrin, deltamethrin, esfenvalerate, lambda-cyhalothrin, metofluthrin, permethrin, and tralomethrin), carbamates (e.g., carbaryl and aldicarb), diuron, fipronil and its degradates, and indoxacarb; and
  - f. Copper-based pesticides unless their use is judicious, other approaches and techniques have been considered, and the threat of impact to water quality is prevented.
- Contractor shall sign the Contractor Verification Form (attached as Exhibit B) indicating the intent to implement the City's IPM Policy, and return a signed copy to the City's project manager.
- Contractor shall provide to the City's project manager an annual report of all pesticide usage in support of City operations including pesticide name, active ingredient(s), target pest(s), the total amounts used and the reasons for any increase in use of any pesticide.
- Contractor shall provide a copy of any current IPM certifications(s) to the City's project manager prior to initiation of the service work.

A copy of the City's IPM Policy may be obtained from the City's project manager and is also on file with the City Clerk.

*If this Agreement pertains to the use of any items listed above, Contractor will need to fill out and send in the Contractor Verification Form and Contractor Check List. ADD EXHIBIT B IF PEST CONTROL.*

**30. PURCHASES OF MINED MATERIALS REQUIREMENT:**

Contractor shall ensure that all purchases of mined materials such as construction aggregate, sand and gravel, crushed stone, road base, fill materials, and any other mineral

materials must originate from a surface mining operation identified on the AB3098 List per the Surface Mining and Reclamation Act of 1975 (SMARA).

Within five days of award of contract, Contractor shall submit a report to the City which lists the intended suppliers for the above materials and demonstrates that the suppliers are in compliance with the SMARA requirements. The AB3098 List is maintained by the Department of Conservation's Office of Mine Reclamation (OMR) and can be viewed at: [www.conservation.ca.gov/OMR/ab\\_3098\\_list/index.htm](http://www.conservation.ca.gov/OMR/ab_3098_list/index.htm). Note that the list changes periodically and should be reviewed accordingly.

**31. CALIFORNIA AIR RESOURCES BOARD COMPLIANCE:**

Contractor, shall comply, and shall ensure all subcontractors comply, with all applicable requirements of the most current version of the California Air Resources Board regulations including, without limitation, Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("CARB Regulations").

Throughout the Project, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor's and subcontractors' fleet including, without limitation, Certificates of Reported Compliance, fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep or maintain pursuant to the CARB Regulations upon two (2) calendar days' notice from the City

Contractor shall be solely liable for any and all costs associated with complying with the CARB Regulations as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the CARB Regulations. Contractor shall defend, indemnify and hold harmless the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the CARB Regulations.

**32. TERMINATION:**

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

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 Contractor as provided herein. Upon termination of this Agreement, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

**33. ATTORNEYS' FEES AND COSTS:**

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.

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

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

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

b. Upon receipt of a claim, the City shall conduct a reasonable review and respond in writing within 45 days of receipt and shall identify in a written statement what portions of the claim are disputed and undisputed. Undisputed portions of the claim shall be processed and paid within 60 days of the written statement. Undisputed amounts not paid in a timely manner shall bear interest at 7% per annum. The City and Contractor may mutually agree to extend the 45 day response time.

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

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

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

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

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

**35. CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

**36. ADVERTISEMENT:**

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

**37. 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.

**38. INTEGRATED CONTRACT:**

Subject to the language of Section 43, 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 Contractor.

**39. INSERTED PROVISIONS:**

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

**40. 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.

**41. 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.

**42. SIGNATORY:**

By signing this Agreement, each signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

**43. 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 caused the Agreement to be executed on the day and year first above written.

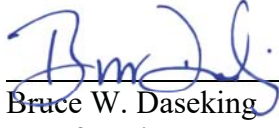
McGuire and Hester  
a California corporation

CITY OF ALAMEDA,  
a municipal corporation

  
\_\_\_\_\_  
Brock Grant  
President

DocuSigned by:  
 1/3/2025  
\_\_\_\_\_  
CF377C6EC7864C4...  
Amy Wooldridge  
Assistant City Manager

RECOMMENDED FOR APPROVAL

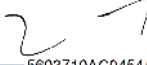
  
\_\_\_\_\_  
Bruce W. Daseking  
VP of Business Development

Signed by:  
 1/2/2025  
\_\_\_\_\_  
21DC39E8C019480...  
Erin Smith  
Public Works Director

Contractor License No.: 95879

APPROVED AS TO FORM:  
City Attorney

DIR No. 1000000033

Signed by:  
 1/2/2025  
\_\_\_\_\_  
5603710AC04544F...  
Len Aslanian  
Assistant City Attorney



12/23/24

Sent Via Email – ESmith@alamedaca.gov

Attention: Erin Smith

Reference: Harbor Bay Dike Erosion Repairs

Subject: Proposal

McGuire and Hester proposes to furnish and install the work outlined below on a  
Time and Materials basis

#### INCLUSIONS

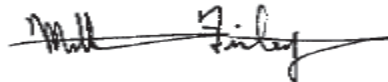
1. Work to be performed on a time and materials bases using standard Cal Trans Labor and Equipment mark ups.
2. Materials, trucking and subcontractors to be marked up 15%.
3. Purchase and deliver rock slope protection (RSP) from Dutra in San Rafael at \$45.85. (Quoted on 12/20/24 and subject to change.
4. Minor tree trimming of existing shoreline trees as needed.
5. Installation of RSP along shoreline in locations as directed by the City of Alameda.
6. Repair of shoreline trail in locations as directed by the City of Alameda.

#### EXCLUSIONS

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. SWPPP Plans, QSP/QSD services, BMP installation/maintenance/removal, inspection, sampling, monitoring, reporting and post construction BMP's.</li> <li>2. Air, settlement, vibration, sound, or other monitoring and mitigation.</li> <li>3. Pre or post construction surveys (e.g. GPS, video, photographic, consultant, etc.).</li> </ol> | <ol style="list-style-type: none"> <li>4. Biologist services, wildlife surveys, demarcations and/or relocations. Rodent eradication or pest control.</li> <li>5. Archeologist cost and related delays.</li> <li>6. Survey and construction staking.</li> <li>7. Testing and inspection.</li> <li>7. Permits and fees.</li> </ol> |
|---|--|

Thank you for the opportunity to provide our proposal. If you have any questions, please feel free to call.

Sincerely,  
McGuire & Hester



Matt Finley  
Area Manager

Attachment:

Bid Price Breakdown

www.McGuireandHester.com

9009 RAILROAD AVE., OAKLAND, CA 94603 ● 2810 HARBOR BAY PARKWAY, ALAMEDA, CA 94502 ● PH: 510.632.7676

1016 N. MARKET BOULEVARD, SACRAMENTO CA, 95834 ● PH: 916.372.8910

CONTRACTOR'S LICENSE NUMBERS ● CA: 95879, DIR: 1000000033

<b>BREAK OUT OF COST BY ACTIVITY</b>					
<b>Notes</b>					
Estimated daily rate for RSP crew. It is estimated that 50' of shoreline could be repaired in an 8 hour day.					
		<b>Quantity</b>	<b>Units</b>	<b>Rate</b>	<b>Total</b>
<b>LABOR</b>					<b>5,613.00</b>
	LABORER	24	HR	\$ 80.00	\$ 1,920.00
	LABORER (OT)	0	HR	\$ 104.00	\$ -
	LABORER FM	0	HR	\$ 112.00	\$ -
	LABORER FM (OT)	0	HR	\$ 153.00	\$ -
	OPERATOR	16	HR	\$ 116.00	\$ 1,856.00
	OPERATOR (OT)	0	HR	\$ 157.00	\$ -
	Operator FM	8	HR	\$ 128.00	\$ 1,024.00
	Operator FM (OT)	0.5	HR	\$ 175.00	\$ 87.50
	Project Manager	4	HR	\$ 157.00	\$ 628.00
	Project Engineer	0	HR	\$ 103.00	\$ -
	Project Superintendent	0.5	HR	\$ 195.00	\$ 97.50
	TEAMSTER		HR	\$ 112.00	\$ -
<b>EQUIPMENT</b>					<b>\$ 3,880.00</b>
	Pickup 3/4 to 1 1/2 ton	8	HR	25.00	200.00
	Loader 950	8	HR	155.00	1,240.00
	Excavator 2150	8	HR	129.00	1,032.00
	Material Handler	16	HR	88.00	1,408.00
					-
	Rock Slope Protection	184	Ton	45.85	4.93
	Trucking	36	Hour	145.00	15.59
					-
<b>Subcontractor</b>					<b>\$ -</b>
					-
					-
	LABOR (33% LS)				1,852.29
	MATERIALS (15%)				2,268.67
	EQUIPMENT (Included in Above Rate)				-
	SUBS (15%)				-
<b>TOTAL COST</b>					<b>\$ 28,738.42</b>



**Extra Work Labor Rates:**

**NO MARKUP OR GC'S**

7/1/2024 to 6/30/2025

Description	Reg. Time	x1.5	x2
Cement Mason	\$ 93.00	\$ 123.00	\$ 154.00
Cement Mason Foreman	\$ 111.00	\$ 151.00	\$ 191.00
Carpenter	\$ 118.00	\$ 158.00	\$ 199.00
Carpenter Foreman	\$ 127.00	\$ 172.00	\$ 217.00
Labor General	\$ 80.00	\$ 104.00	\$ 128.00
Labor Foreman	\$ 112.00	\$ 153.00	\$ 193.00
OE Operator	\$ 116.00	\$ 157.00	\$ 198.00
OE Grade Checker	\$ 113.00	\$ 151.00	\$ 190.00
OE Finish Blade	\$ 115.00	\$ 155.00	\$ 195.00
OE Foreman	\$ 128.00	\$ 175.00	\$ 222.00
Teamster	\$ 92.00	\$ 120.00	\$ 148.00
Project Accountant	\$ 101.00	\$ 101.00	\$ 101.00
Project Engineer	\$ 103.00	\$ 103.00	\$ 103.00
Project Manager	\$ 157.00	\$ 157.00	\$ 157.00
Project Superintendent	\$ 195.00	\$ 195.00	\$ 195.00

Includes standard daytime shifts. Call for shift differential for night work, etc.

**Union increases occur yearly on July 1st. Rates to be adjusted based on the actual increase. Foreman pickup trucks not included in the labor rates. To be added in the equipment section.**



**Extra Work Equipment Rates PRIVATE (Bare) w/OH&P**

Valid Through 12/31/2024

Description	Units	Rate
<b>----- AIR COMPRESSORS -----</b>		
Compressor 185 CFM	HR	\$ 39.00
Compressor 400 CFM	HR	\$ 69.00
<b>----- BLADES -----</b>		
Cat 140H/150 Blade	HR	\$ 236.00
JD 872G Blade	HR	\$ 283.00
<b>----- BACKHOES -----</b>		
Cat 420 F2 BH	HR	\$ 84.00
Cat 430 BH	HR	\$ 90.00
Breaker For BH	HR	\$ 57.00
Comp Wheel For BH up to 24"	HR	\$ 18.00
Drill/Auger for BH up to 8' deep	HR	\$ 18.00
Hoe-Pac For BH	HR	\$ 47.00
<b>----- COMPACTION DIRT -----</b>		
Cat 815 F Compactor	HR	\$ 279.00
50" Single Roller (Cat 323C)	HR	\$ 103.00
66" Single Roller (Cat 433E)	HR	\$ 55.00
84" Single Roller (Cat 563E)	HR	\$ 115.00
Jump Wacker	HR	\$ 14.00
Large Turtle Compactor	HR	\$ 26.00
<b>----- CONCRETE -----</b>		
Conc Buggy (16CF)	HR	\$ 32.00
Texas Screed Machine	HR	\$ 39.00
Concrete Soffcut Saw	HR	\$ 30.00
2 Gang Dowel Drill	HR	\$ 43.00
3 Gang Dowel Drill	HR	\$ 65.00
<b>----- COMPACTION PAVING-----</b>		
36" Roller	HR	\$ 47.00
48" Roller (Cat CB-224)	HR	\$ 54.00
51" Roller (Cat CB-334)	HR	\$ 77.00
66" Roller (Cat CB-534)	HR	\$ 129.00
Vibroplate Plate	HR	\$ 12.00
<b>----- DOZERS -----</b>		
Cat D4 Dozer G	HR	\$ 138.00



**Extra Work Equipment Rates PRIVATE (Bare) w/OH&P**

Valid Through 12/31/2024

Description	Units	Rate
Cat D6 Dozer N	HR	\$ 183.00
Slope Board For Dozer	HR	\$ 18.00
----- EXCAVATORS-----		
Exc 4k lb (TB216)	HR	\$ 43.00
Exc 8k lb (Cat303.5)	HR	\$ 59.00
Exc 16k lb (Cat 307)	HR	\$ 87.00
Exc 30k/32k lb ( TB2150/TB1140 )	HR	\$ 129.00
Exc 45k lb (SK210)	HR	\$ 164.00
Exc 55k lb (E220)	HR	\$ 196.00
Exc 60k lb (E250)	HR	\$ 201.00
Exc 78k lb (E300 & E330)	HR	\$ 240.00
Exc 100k lb (400 &480)	HR	\$ 376.00
Exc 130k lb (PC 600)	HR	\$ 504.00
Brush Cutter For Exc	HR	\$ 29.00
Breaker For Med Exc	HR	\$ 111.00
Felco Conveyor	HR	\$ 79.00
Hoe-Pac for Excavator	HR	\$ 40.00
Excavator Thumb	HR	\$ 23.00
----- GRINDERS-----		
36" AC Zipper	HR	\$ 150.00
----- GENERATORS-----		
5 kw Gen Set	HR	\$ 11.00
15 kw Gen Set	HR	\$ 26.00
25 kw Gen Set	HR	\$ 44.00
40 kw Gen Set	HR	\$ 53.00
500 Amp Welder	HR	\$ 38.00
----- LOADERS-----		
Cat 928F Loader	HR	\$ 105.00
Cat 938F Loader	HR	\$ 120.00
Cat 950H Loader	HR	\$ 155.00
Cat 966 Loader	HR	\$ 219.00
Box Spreader for Loader	HR	\$ 20.00
Side Dump Bucket (938/950)	HR	\$ 22.00



**Extra Work Equipment Rates PRIVATE (Bare) w/OH&P**

Valid Through 12/31/2024

Description	Units	Rate
Skip Loader	HR	\$ 58.00
Bobcat S300 Skid Steer Loader	HR	\$ 72.00
Breaker for Skid Steer	HR	\$ 33.00
Drill for Skid Steer	HR	\$ 14.00
Grinding Head for Skid Steer	HR	\$ 76.00
Skid Steer Mini (MT-55)	HR	\$ 39.00
Cat 279 Skid Steer Loader	HR	\$ 83.00
Rock Wheel for Skid Steer	HR	\$ 61.00
Sweeper for Skid Steer	HR	\$ 16.00
Tiller for Skid Steer	HR	\$ 8.00
Trencher for Skid Steer	HR	\$ 11.00
Wheel Dump (3.3 tn)	HR	\$ 54.00
Wheel Dump (6.6 tn)	HR	\$ 88.00
----- MISC -----		
Arrow Board (Solar)	HR	\$ 18.00
Mower (Kubota)	HR	\$ 35.00
Sprayer (Mitchell)	HR	\$ 23.00
Demo Wheel/Tractor	HR	\$ 293.00
10-ton Forklift	HR	\$ 73.00
GPS Survey Equipment	HR	\$ 58.00
Hydroseed Trailer T-90	HR	\$ 71.00
Auger (2 Man)	HR	\$ 10.00
Drill Seeder	HR	\$ 36.00
Laser	HR	\$ 14.00
Light Tower (4 Lights)	HR	\$ 20.00
Mortar Mixer .5 cy	HR	\$ 12.00
Message Board (Solar)	HR	\$ 41.00
4x4 Mule Survey Vehicle	HR	\$ 33.00
Small 4-6" Pipe Burst Mach	HR	\$ 114.00
HDPE Fuse Mach 2"-8" w/GS	HR	\$ 37.00
HDPE Fuse Mach 6"-18" w/Trailer	HR	\$ 78.00
Rototiller -Walk Behind	HR	\$ 10.00
Sandblast Pot & Compressor	HR	\$ 65.00





**Extra Work Equipment Rates PRIVATE (Bare) w/OH&P**

Valid Through 12/31/2024

Description	Units	Rate
Chain Saw	HR	\$ 10.00
Silt Tank	HR	\$ 29.00
Cat TH560B Telehandler (10K)	HR	\$ 161.00
Cat TH660B Telehandler (8K)	HR	\$ 110.00
Manitou MRT 2150 Rotating	HR	\$ 125.00
Sm.Tractor/Tiller (3520) 37 hp.	HR	\$ 49.00
Lg. Tractor/Tiller (5625) 99 hp.	HR	\$ 99.00
Vacuum Trailer 500 gal	HR	\$ 67.00
Vacuum Truck	HR	\$ 254.00
----- PAVING -----		
Berm Machine	HR	\$ 66.00
200 gal Bitchpot	HR	\$ 23.00
Cat 1055F/655F Paver	HR	\$ 333.00
Lincoln 660 XL Pickup Machine	HR	\$ 203.00
Small Paver Vogle	HR	\$ 203.00
----- PUMPING -----		
2" Sump & Gen Set Combo	HR	\$ 18.00
4" Trash Pump	HR	\$ 24.00
4" Sub Pump	HR	\$ 12.00
----- Railroad Equipment ---		
Hytracker RC 51 Cart	HR	\$ 46.00
Exc 40k (E210) w/Rototilt	HR	\$ -
RR Gondola (25 cy)	HR	\$ 10.00
----- SCRAPERS-----		
Kress K13 Scraper (613)	HR	\$ 278.00
Cat 623 Scraper	HR	\$ 496.00
----- SWEEPERS-----		
Laymore Broom	HR	\$ 57.00
----- TRUCKS -----		
Pickup 1/2 ton	HR	\$ 22.00
Pickup 3/4 to 1 1/2 ton	HR	\$ 25.00
Dump Trk 2 axle - 5 cy	HR	\$ 56.00
Dump Trk 2 axle - 3 cy	HR	\$ 47.00



**Extra Work Equipment Rates PRIVATE (Bare) w/OH&P**

Valid Through 12/31/2024

Description	Units	Rate
Flatbed PU 12'	HR	\$ 44.00
Lowbed (5 Axle) & Tractor	HR	\$ 122.00
Mechanics Truck	HR	\$ 52.00
Paving Crew F550 Truck	HR	\$ 47.00
----- TRENCHER -----		
Trencher RT 40 Ditch Witch	HR	\$ 65.00
Trencher Vermeer RTx450	HR	\$ 60.00
----- WATER TRUCKS -----		
Wtr Trailer 500 Gal	HR	\$ 23.00
Wtr Trk 2k Gal	HR	\$ 73.00
Wtr Tower 10k Gal	HR	\$ 58.00

- Note - Rates based on an offroad (dyed) diesel @ \$4.00 per Gallon.
- Note - Rates based on an on-road (clear) diesel @ \$5.50 per Gallon.
- Note - Rates based on unleaded gasoline @ \$5.25 per Gallon.

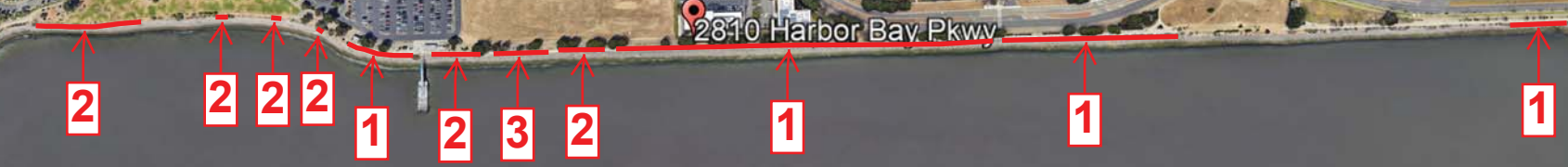
M&H reserves the right to adjust rates based on an increase in fuel prices.

Re-Rented Equip to be billed at actual rental cost plus fuel, oil & maintenance plus 15%

Rates based on 8 hour minimum.

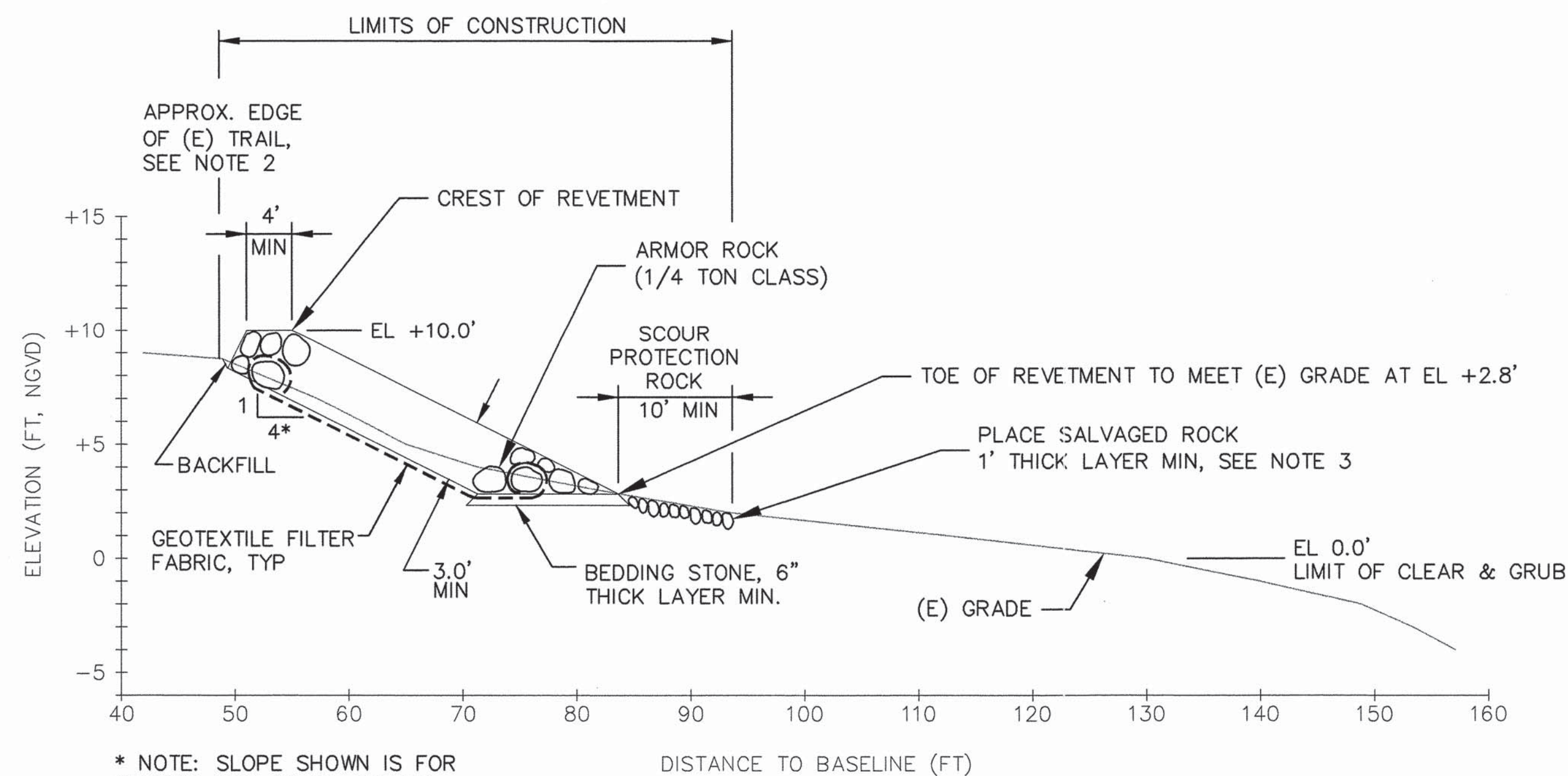
# SHORELINE EROSION ALONG HARBOR BAY DIKE

LOCATIONS OF RECOMMENDED  
REPLENISHMENT OF ROCK SLOPE PROTECTION  
(RSP) AND TRAIL REPAIR LOCATIONS

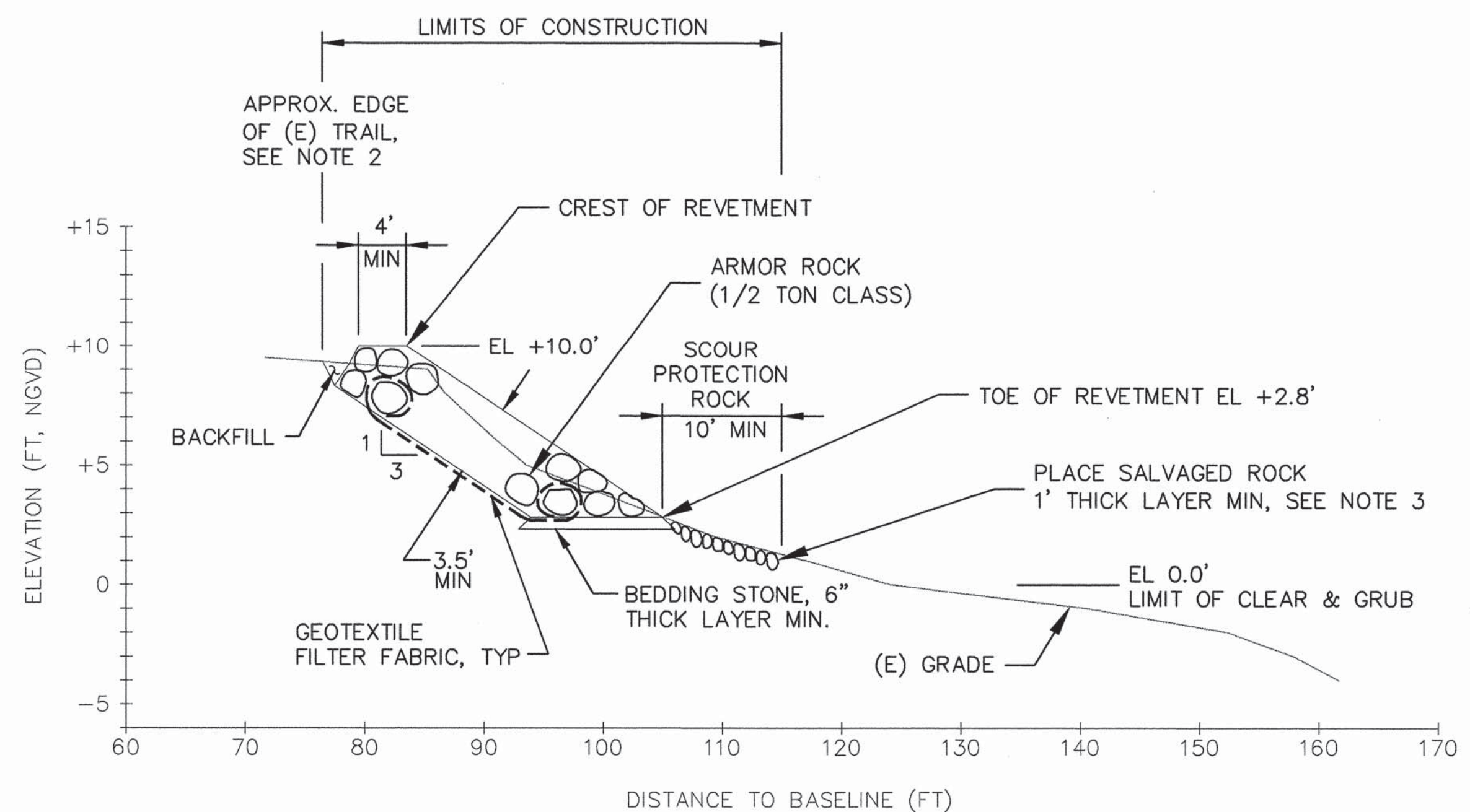


**LEGEND:**  
1 : HIGH PRIORITY REPAIR AREA  
2 : MEDIUM PRIORITY REPAIR AREA  
3. LOWER PRIORITY REPAIR AREA

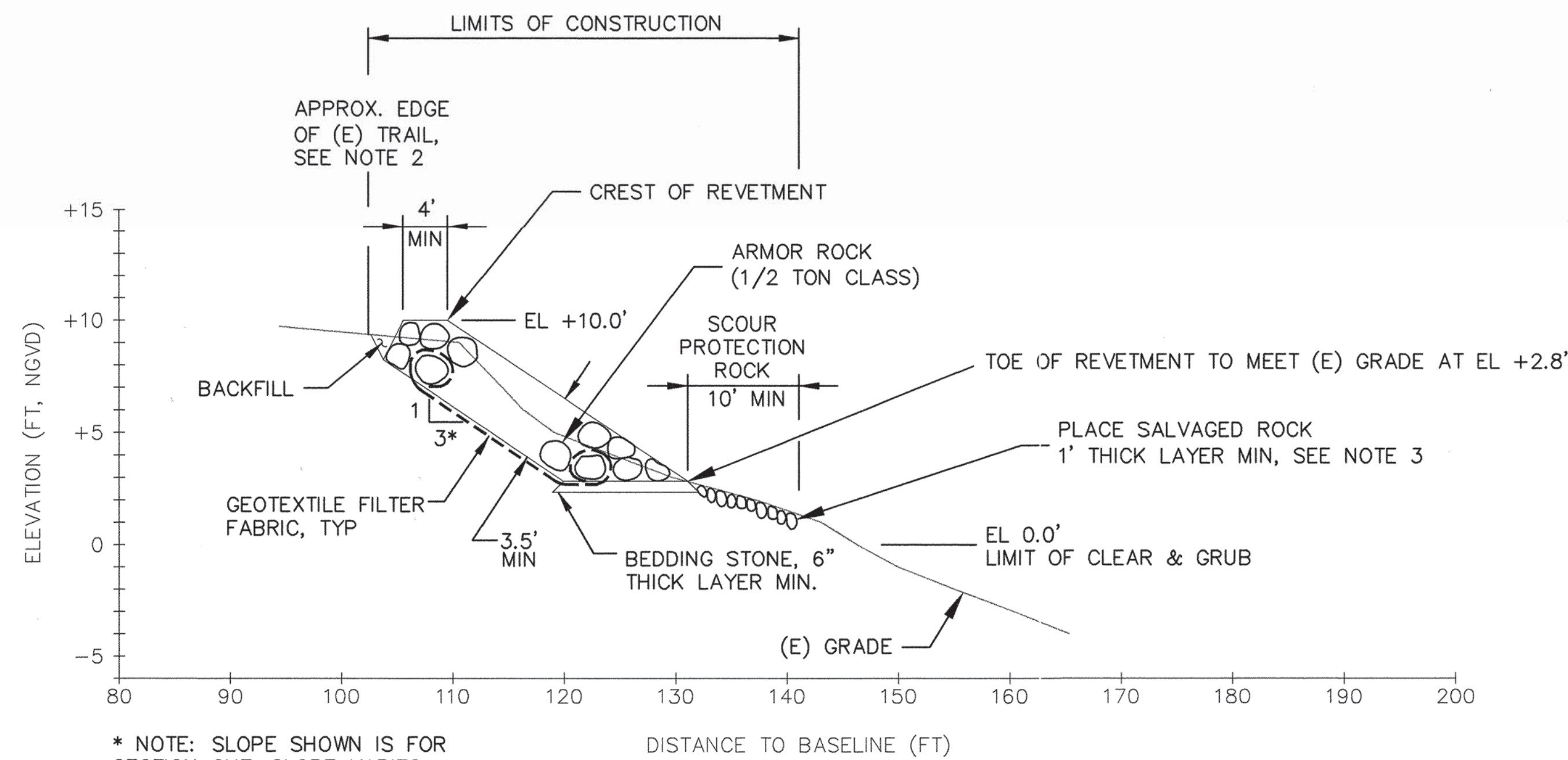




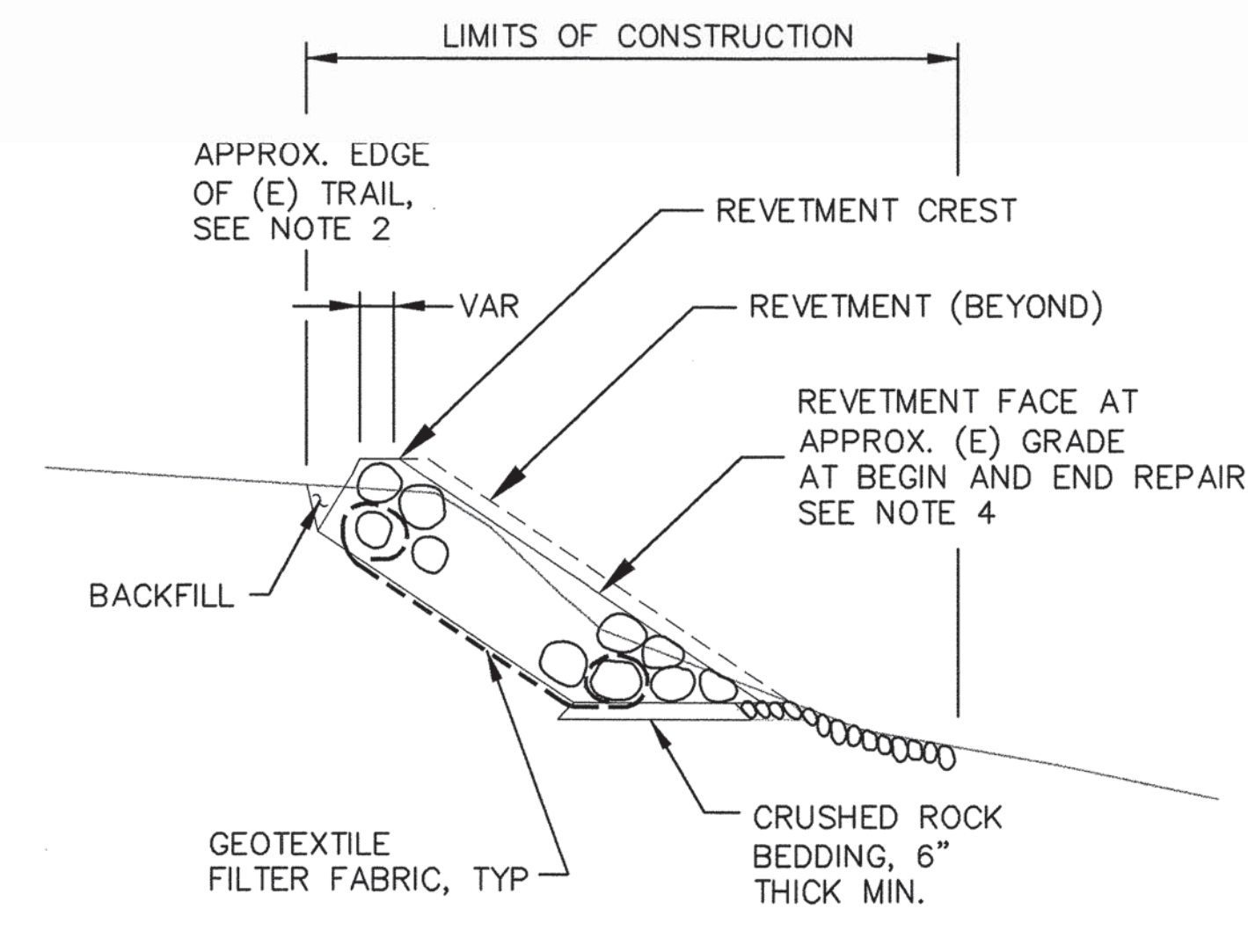
**SECTION A**  
SCALE H: 1"=10'-0"  
V: 1"=5'-0"



**SECTION B**  
SCALE H: 1"=10'-0"  
V: 1"=5'-0"



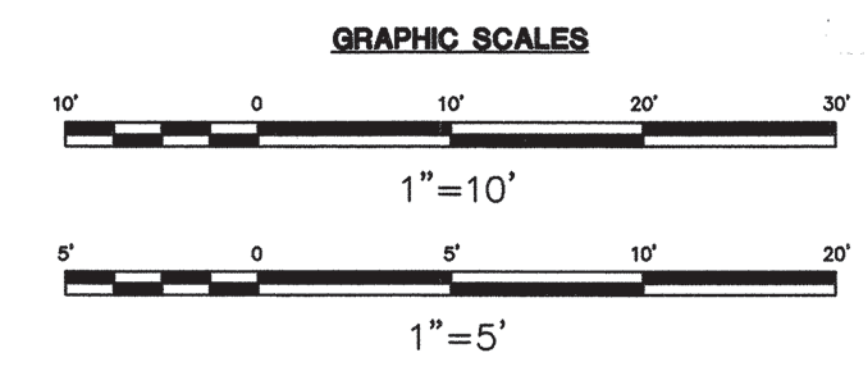
**SECTION C**  
SCALE H: 1"=10'-0"  
V: 1"=5'-0"



**END DETAIL D**  
NO SCALE

- NOTES:**
- SEE NOTE 2 ON SHEET C-1.
  - SEE SPECIFICATIONS FOR EXCAVATION NEAR EXISTING TRAIL.
  - ROCK FOR SCOUR PROTECTION SHALL BE PLACED SUCH THAT IT RESULTS IN MINIMUM VOIDS. WHERE EXISTING IS DETERMINED TO BE ACCEPTABLE BY THE ENGINEER, NO ADDITIONAL SCOUR PROTECTION SHALL BE PROVIDED.
  - A TRANSITION FROM THE (E) GRADE TO THE SPECIFIED REVETMENT FACE SHALL OCCUR OVER THE FIRST AND LAST 5' OF EACH REVETMENT.

*Mallika Ramachandran*  
MALLIKA RAMACHANDRAN, SUPERVISING CIVIL ENGINEER  
STATE OF CALIFORNIA REGISTERED PROFESSIONAL ENGINEER  
No. C-51782



**CONSTRUCTION NOTES**

- ALL FEDERAL, STATE, AND LOCAL REQUIREMENTS AND CONDITIONS WILL BE COMPLIED WITH WHERE APPLICABLE.
- A COPY OF ALL APPLICABLE PERMITS MUST BE IN THE POSSESSION OF A RESPONSIBLE PERSON AND AVAILABLE AT THE SITE AT ALL TIMES.
- CONTRACTOR SHALL COMPLY WITH THE CITY & ALAMEDA COUNTY'S COUNTY-WIDE CLEAN WATER PROGRAM. BROCHURES FOR THE BEST MANAGEMENT PRACTICES (BMPs) CAN BE OBTAINED FROM THE CENTRAL PERMITS OFFICE. THE CONTRACTOR SHALL BECOME FAMILIAR WITH THESE BMPs & FAILURE TO COMPLY WITH THEM WILL RESULT IN FINES. CONTRACTOR SHALL SUBMIT EROSION CONTROL PLANS FOR CITY OF ALAMEDA AND STATE WATER RESOURCES BOARD REVIEW & APPROVAL.
- THE ENGINEER SHALL BE NOTIFIED IMMEDIATELY AND PRIOR TO COMMENCING ANY WORK IF ANY DISCREPANCIES OR OMISSIONS EXIST IN THE CONSTRUCTION DOCUMENTS. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND EXISTING CONDITIONS AND VERIFY ALL SITE WORK TO BE DONE BEFORE COMMENCING WORK. IN THE EVENT THAT A CONFLICT OCCURS, THE CONTRACTOR SHALL NOTIFY THE ENGINEER BEFORE PROCEEDING.
- DETAILS AND NOTES MARKED "TYPICAL" SHALL APPLY TO ALL SIMILAR CONDITIONS UNLESS NOTED OTHERWISE.
- EXISTING & PRIVATE & PUBLIC UTILITIES SHOWN HEREON REFLECT AVAILABLE RECORD DATA. CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING, PROTECTING, & SUPPORTING ALL UTILITIES WHICH ARE TO REMAIN IN USE WHETHER SHOWN OR NOT SHOWN HEREON. CONTRACTOR SHALL NOTIFY UNDERGROUND SERVICE ALERT (U.S.A.) & ALL PUBLIC UTILITY COMPANIES & OWNERS OF PRIVATE UTILITIES WITHIN THE CONSTRUCTION AREA 48 HOURS PRIOR TO THE START OF ANY CONSTRUCTION.
- THE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS & LICENSES (SEE SPECS).
- DIMENSIONS SHOWN ARE APPROXIMATE. LIMITS OF WORK SHALL BE ESTABLISHED IN THE FIELD BY THE ENGINEER.
- CONTRACTOR SHALL BE HELD RESPONSIBLE FOR ANY DISCREPANCIES NOT REPORTED TO THE ENGINEER 72 HOURS PRIOR TO THE BID OPENING BETWEEN EXISTING CONDITIONS NOTED ON THE PLANS & ACTUAL SITE CONDITIONS & MATERIALS & MATERIAL QUANTITIES.
- THIS AREA IS SUBJECT TO TIDAL ACTION. CONTRACTOR SHOULD BE PREPARED TO WORK UNDER THIS CONDITION & SCHEDULE THE WORK ACCORDINGLY.

J:\4482 Bay Farm Island\Draw\4482x1.dwg

FINAL  
100%  
\*  
\*  
CONCEPT  
STATUS

NO.	REVISION	BY	DATE	EXPIRES



<b>MOFFATT &amp; NICHOL ENGINEERS</b>	
DESIGNED BY DT	CHECKED BY DT
DRAWN BY DJW	IN CHARGE BJ

CITY OF ALAMEDA  
ALAMEDA, CALIFORNIA  
BAY FARM ISLAND DIKE REPAIR - PHASE 2  
No. P.W. 05-99-16  
**CROSS SECTIONS**

SCALE	DATE
AS SHOWN	4/17/00
JOB NO.	4482
SHEET	C-2





Policy Number: 54303064

CG 20 10 12 19

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

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

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part

<b>Schedule</b>	
<b>Name Of Additional Insured Person(s) Or Organization(s)</b>	<b>Location(s) Of Covered Operations</b>
WHERE REQUIRED BY WRITTEN CONTRACT.	ALL LOCATIONS WHERE REQUIRED BY WRITTEN CONTRACT.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

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

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

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

However:

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

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

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

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

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

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

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

All other terms and conditions of this Policy remain unchanged.



# **CHUBB® Chubb Commercial Excess Follow-Form Insurance**

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# CHUBB® *Chubb Commercial Excess Follow-Form Insurance*

## *Contract*

Please read the entire policy carefully. The terms and conditions of this insurance include the various sections of this contract: Coverage; Investigation, Defense And Settlements; Supplementary Payments; Coverage Territory; Who Is An Insured; Limits Of Insurance; When This Excess Follow-Form Insurance Applies; Exclusions; Conditions and Definitions, as well as the Declarations and any Endorsements made a part of this insurance.

Throughout this contract the words "you" and "your" refer to the named **insured** shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

Words and phrases that appear in **bold** print have special meanings and are defined in the Definitions section of this contract.

### **Coverage/Excess Follow-Form**

Subject to all of the terms and conditions applicable to this insurance, we will pay, on behalf of the **insured**, that part of **loss**, to which this insurance applies, which exceeds the applicable **underlying limits**.

This insurance applies only if the triggering event that must happen during the policy period of the applicable **controlling underlying insurance** happens during the policy period of this insurance.

This insurance will follow the terms and conditions of **controlling underlying insurance**, unless a term or condition contained in this insurance:

- differs from any term or condition contained in the applicable **controlling underlying insurance**; or
- is not contained in the applicable **controlling underlying insurance**.

With respect to such exceptions described above, the terms and conditions contained in this insurance will apply, to the extent that such terms and conditions provide less coverage than the terms and conditions of the applicable **controlling underlying insurance**.

This insurance does not apply to any part of **loss** within **underlying limits**, or any related costs or expenses.

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

The most we will pay hereunder is fixed as set forth in the Limits Of Insurance section of this contract.

Our obligations hereunder end when we have used up the applicable Limits Of Insurance.

Other than as provided under the Investigation, Defense And Settlements and Supplementary Payments sections of this contract, we have no other obligation or liability to pay sums or perform acts or services under this insurance.

### **Investigation, Defense And Settlements**

We have no duty to defend any person or organization against any claim or suit.

We may at our discretion participate in the defense, investigation and settlement of any occurrence, offense, claim or suit.

If we choose to participate in the defense of any claim or suit, we will not be obligated to participate in the defense of any person or organization when we have used up the applicable Limits Of Insurance.

The most we will pay hereunder is fixed as set forth in the Limits Of Insurance section of this contract.

**Supplementary Payments**

Subject to all of the terms and conditions of this insurance, with respect to a claim or suit we investigate or settle, we will pay:

- expenses incurred directly by us and at our sole discretion;
- prejudgment interest awarded against the insured on that part of a judgment we pay. If we make an offer to pay the applicable Limits Of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- interest on that part of a judgment, to which this insurance applies, that accrues after entry of the judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limits Of Insurance.

Supplementary Payments does not include any fine or other penalty.

The most we will pay hereunder is fixed as set forth in the Limits Of Insurance section of this contract.

Our obligations hereunder end when we have used up the applicable Limits Of Insurance.

**Coverage Territory**

This insurance applies anywhere that the applicable **controlling underlying insurance** applies.

**Who Is An Insured**

The following persons or organizations qualify as **insureds**:

- the named **insured** shown in the Declarations; and
- other persons or organizations qualifying as an **insured in controlling underlying insurance**, but not beyond the extent of any limitations imposed under any contract or agreement.

**Limits Of Insurance**

The Limits Of Insurance shown in the Declarations and the rules below fix the most we will pay, regardless of the number of:

- **insureds**;
- claims made or suits brought;
- persons or organizations making claims or bringing suits;
- vehicles involved; or
- coverages provided in this contract.

The aggregate limits apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months (starting with the beginning of the policy period shown in the Declarations), provided the applicable aggregate limits in all **underlying insurance** apply in such manner. If the aggregate limits in any **underlying insurance** do not so apply, then the applicable aggregate limits of this insurance will apply to the entire policy period and not separately to any portion (whether annual or otherwise) thereof.

If the policy period is extended after issuance, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

**Other Aggregate Limit**

Subject to the Each Occurrence Limit, the Other Aggregate Limit is the most we will pay for the sum of amounts described as reducing Limits Of Insurance of this insurance (see Payments That Reduce The Limits Of Insurance section), except amounts included in the products-completed operations hazard.

# CHUBB® Chubb Commercial Excess Follow-Form Insurance

## Limits Of Insurance

### Other Aggregate Limit (continued)

However, the Other Aggregate Limit of this policy will:

- not apply when all **underlying insurance** does not apply an aggregate limit; or
- apply in the same manner as the aggregate limit in controlling underlying insurance applies, provided all other **underlying insurance** also applies an aggregate limit in the same manner as **controlling underlying insurance**.

### Products-Completed Operations Aggregate Limit

Subject to the Each Occurrence Limit, the Products-Completed Operations Aggregate Limit is the most we will pay for the sum of amounts described as reducing Limits Of Insurance of this insurance (see Payments That Reduce The Limits Of Insurance section) included in the products-completed operations hazard as defined in **controlling underlying insurance**.

### Each Occurrence Limit

The Each Occurrence Limit is the most we will pay for the sum of amounts described as reducing Limits Of Insurance of this insurance (see Payments That Reduce The Limits Of Insurance section) arising out of any one occurrence, even if such loss is or otherwise would be covered in whole or in part under more than one **underlying insurance** policy.

Any such amounts we pay will reduce the amount of the applicable aggregate limit available for any other payment.

If the applicable aggregate limit has been reduced to an amount that is less than the Each Occurrence Limit, then the remaining amount of such aggregate limit is the most that will be available for any other payment.

### Payments That Reduce The Limits Of Insurance

Any amounts we pay for **loss** will reduce the Limits Of Insurance of this insurance.

Payments that we make under the Supplementary Payments and Investigation, Defense And Settlement sections of this insurance will not reduce the Limits Of Insurance, unless payments for investigation, defense and settlement and supplementary payments reduce the limits of insurance of any applicable **underlying insurance**.

If costs or expenses for supplementary payments and investigation, defense and settlement reduce the limits of insurance of any applicable **underlying insurance**, then any such cost or expenses including supplementary payments to which this insurance applies will reduce the applicable Limits Of Insurance of this insurance.

### When This Excess Follow-Form Insurance Applies

Subject to all of the terms and conditions of this insurance, if the applicable **underlying limits** are:

- reduced by payment of judgments, settlements or related costs or expenses (if such costs or expenses reduce such limits) for triggering events that happen during the policy period of this insurance and provided all **underlying limits** also applies to **loss** and also drops down, then this insurance will drop down to apply in excess of the remaining amount of the applicable **underlying limits**.
- exhausted by payment of judgments, settlements or related costs or expenses (if such costs or expenses reduce such limits) for triggering events that happen during the policy period of this insurance, then this insurance will apply in the same manner as the applicable **controlling underlying insurance** would have applied but for such exhaustion.

**Exclusions**

The use of the words damages, loss, cost or expense in any exclusion does not expand any coverage under this contract.

**Asbestos**

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

**Controlling Underlying Insurance**

This insurance does not apply to any damages, loss, cost or expense to which the terms and conditions of **controlling underlying insurance** do not apply.

**Coverages/ Laws, Various**

- This insurance does not apply to any damages, loss, cost or expense or obligation of any **insured** under any:
- medical expenses or payments coverage or law;
  - no-fault coverage or law;
  - personal injury protection coverage or law;
  - underinsured or uninsured financial responsibility coverage or law;
  - workers' compensation, disability benefits or unemployment compensation coverage or law; or
  - similar coverage or law.

**Employee Retirement Income Security Laws**

This insurance does not apply to any damages, loss, cost or expense or obligation of any **insured** under the United States of America Employees' Retirement Income Security Act (E.R.I.S.A.) of 1974 or any similar law, as now constituted or hereafter amended.

**Employment-Related Practices**

- A. This insurance does not apply to any damages, loss, cost or expense arising out of any injury or damage sustained at any time by any:
  - 1. person, whether or not sustained in the course of employment by any **insured**, arising out of any employment-related act, omission, policy, practice or representation directed at such person, occurring in whole or in part at any time.
  - 2. brother, child, parent, sister or spouse of any person at whom any act, omission, policy, practice or representation is directed, as described in subparagraph A.1. above.
- B. As used in this exclusion, such acts, omissions, policies, practices or representations described above include any:
  - 1. arrest, detention or imprisonment;
  - 2. breach of any express or implied covenant;
  - 3. coercion, criticism, humiliation, prosecution or retaliation;
  - 4. defamation or disparagement;

# CHUBB® Chubb Commercial Excess Follow-Form Insurance

## Exclusions

### Employment-Related Practices (continued)

5. demotion, discipline, evaluation or reassignment;
  6. discrimination, harassment or segregation;
  7.
    - a. eviction; or
    - b. invasion or other violation of any right of occupancy;
  8. failure or refusal to advance, compensate, employ or promote;
  9. invasion or other violation of any right of privacy or publicity;
  10. termination of employment; or
  11. other employment-related act, omission, policy, practice, representation or relationship in connection with any **insured** at any time.
- C. This exclusion applies:
1. regardless of the capacity in which the **insured** may be liable; and
  2. to any obligation to share any damages, loss, cost or expense with or repay someone else who must pay any damages, loss, cost or expense because of any of the foregoing.

### Nuclear Energy

- A. This insurance does not apply to any damages, loss, cost or expense:
1. with respect to which any **insured** under this policy also has status as an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would have had status as an insured under any such policy but for its termination upon exhaustion of its limit of insurance; or
  2. arising out of the **nuclear hazardous properties of nuclear material** and with respect to which:
    - a. any person or organization is required to maintain financial protection pursuant to the United States of America Atomic Energy Act of 1954, or any law amendatory thereof; or
    - b. the **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. This insurance does not apply to any damages, loss, cost or expense arising out of the **nuclear hazardous properties of nuclear material**:
1. if the **nuclear material**:
    - a. is at any **nuclear facility** owned by, or operated by or on behalf of, any **insured**;
    - b. has been discharged or dispersed there from; or
    - c. is contained in **nuclear spent fuel** or **nuclear waste** at any time transported, handled, stored, disposed of, processed, treated, possessed or used by or on behalf of any **insured**; or



**Exclusions**

*Nuclear Energy  
(continued)*

2. in any way related to the furnishing by any **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**. But if such facility is located within the United States of America (including its possessions or territories) or Canada, this subparagraph 2. applies only to **nuclear property damage** to such **nuclear facility** and any property thereat.

*Obligations Of  
Underlying Insurance*

This insurance does not apply to any damages, loss, cost or expense for which the liability or obligation under **underlying insurance** is by law unlimited.

*Pollution*

- A.
  1. This insurance does not apply to any damages, loss, cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**, other than as described in paragraph B. below.
  2. Subparagraph A.1. above does not apply to:
    - a. bodily injury or property damage included in the products-completed operations hazard;
    - b. bodily injury or property damage:
      - i. caused by the escape of operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of mobile equipment or its parts;
      - ii. if sustained within a building and caused by the release of gaseous irritants or contaminants from materials brought into that building, in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
      - iii. resulting from your other ongoing contracting operations;
    - c. bodily injury if sustained within a building and caused by the escape of gaseous irritants or contaminants from equipment used to heat that building;
    - d. bodily injury or property damage caused by heat, smoke or fumes from a **hostile fire**; or
    - e. bodily injury or property damage resulting from the ownership, maintenance or use of an auto.
- B. This insurance does not apply to any damages, loss, cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:
  1. which are or were at any time transported, handled, stored, disposed of, processed or treated as waste by or for any:
    - a. **insured**; or
    - b. person or organization for whom any **insured** may be legally responsible.
  2. at or from any premises, site or location:
    - a. which is or was at any time used by or for any **insured** or others for the handling, storage, disposal, processing or treatment of waste; or
    - b. on which any insured or any contractor or subcontractor working directly or indirectly on any **insured**'s behalf is performing operations, if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

# CHUBB® Chubb Commercial Excess Follow-Form Insurance

## Exclusions

### Pollution (continued)

- C. This insurance does not apply to any damages, loss, cost or expense arising out of any:
1. request, demand, order, or regulatory or statutory requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or
  2. claim or proceeding by or on behalf of any governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.
  3. Subparagraphs C.1. and C.2. above do not apply to the liability for damages, for property damage, that the **insured** would have in the absence of such request, demand, order or regulatory or statutory requirement, or such claim or proceeding by or on behalf of a governmental authority.

This exclusion applies regardless of whether or not the pollution was accidental, expected, gradual, intended, preventable or sudden.

With respect to this insurance, the following conditions apply.

## Conditions

### Appeals

We may, at our discretion, initiate or participate in an appeal of a judgment, if such judgment may result in a payment under this insurance.

If we initiate or participate in an appeal, we will pay our costs of the appeal. But in no case will the amount we pay for **loss** exceed the Limits Of Insurance.

### Bankruptcy

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

### Cancellation

The first named **insured** may cancel this policy at any time by sending us a written request or by returning the policy and stating when thereafter cancellation is to take effect.

We may cancel this policy at any time by sending to the first named **insured** a notice sixty (60) days, twenty (20) days in the event of non-payment of premium, in advance of the cancellation date. Our notice of cancellation will be mailed to the first named **insured's** last known address and will indicate the date on which coverage is terminated. If notice of cancellation is mailed, proof of mailing will be sufficient proof of notice.

The earned premium will be computed on a pro rata basis. Any unearned premium will be returned as soon as practicable.

### Changes

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

### Compliance By Insureds

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

**Conditions**

(continued)

**Compliance With Applicable Trade Sanctions**

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance.

**Conformance**

Any terms of this insurance which are in conflict with the applicable statutes of the State or jurisdiction in which this policy is issued are amended to conform to such statutes.

**Disclosures And Representations**

We have issued this insurance:

- based upon representations you made to us; and
- in reliance upon your representations.

Unintentional failure of an employee of the **insured** to disclose a hazard or other material information will not violate this condition, unless an officer (whether or not an employee) of any **insured** or an officer's designee knows about such hazard or other material information.

**Duties In The Event Of Occurrence, Offense, Claim Or Suit**

A. You must see to it that we and any insurers of **underlying insurance** are notified as soon as practicable of any occurrence or offense that may result in a claim, if the claim may involve us or other insurers. To the extent possible, notice should include:

1. how, when and where the occurrence or offense happened;
2. the names and addresses of any injured persons and witnesses; and
3. the nature and location of any injury or damage arising out of the occurrence or offense.

Notice of an occurrence or offense is not notice of a claim.

B. If a claim is made or suit is brought against any **insured**, you must:

1. immediately record the specifics of the claim or suit and the date received;
2. notify us and any other insurers as soon as practicable; and
3. see to it that we receive written notice of the claim or suit as soon as practicable.

C. You and any other involved **insured** must:

1. immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit;
2. authorize us to obtain records and other information;
3. cooperate with us and any other insurers in the:
  - a. investigation or settlement of the claim; or
  - b. defense against the suit; and
4. assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the **insured** because of loss to which this insurance may also apply.

D. No **insured** will, except at the **insured's** own cost, make any payment, assume any obligation or incur any expense without our consent.

# CHUBB® Chubb Commercial Excess Follow-Form Insurance

## Conditions

### *Duties In The Event Of Occurrence, Offense, Claim Or Suit (continued)*

- E. Notice given by or on behalf of:
  1. the **insured**;
  2. the injured person; or
  3. any other claimant;

to a licensed agent of ours with particulars sufficient to identify the insured shall be deemed notice to us.
- F. Knowledge of an occurrence or offense by an agent or employee of the insured will not constitute knowledge by the **insured**, unless an officer (whether or not an employee) of any **insured** or an officer's designee knows about such occurrence or offense.
- G. Failure of an agent or employee of the **insured**, other than an officer (whether or not an employee) of any **insured** or an officer's designee, to notify us of an occurrence or offense which such person knows about will not affect the insurance afforded to you.
- H. If a claim or loss does not reasonably appear to involve either this insurance or any **underlying insurance**, but it later develops into a claim or loss to which this insurance applies, the failure to report it to us will not violate this condition, provided the **insured** gives us immediate notice as soon as the **insured** is aware that this insurance may apply to such claim or loss.

### *First Named Insured*

The person or organization first named in the Declarations is primarily responsible for payment of all premiums. The first named **insured** will act on behalf of all other named **insureds** for the giving and receiving of notice of cancellation or nonrenewal and the receiving of any return premiums that become payable under this policy.

### *Inspections And Surveys*

We may:

- make inspections and surveys at any time;
- give you reports on the conditions we find; and
- recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions:

- are safe or healthful; or
- comply with laws, regulations, codes or standards.

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

### *Legal Action Against Us*

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

- join us as a party or otherwise bring us into a suit seeking damages from an **insured**; or
- sue us on this insurance unless all of the terms and conditions of this insurance have been fully complied with.

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## Conditions

### *Legal Action Against Us (continued)*

A person or organization may sue us to recover on an **agreed settlement** or on a final judgment against an **insured** obtained after an actual:

- trial in a civil proceeding; or
- arbitration or other alternative dispute resolution proceeding;

but we will not be liable for any damages, loss, cost or expense that are not payable under the terms and conditions of this insurance, or that are in excess of the applicable Limits Of Insurance.

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### *Maintenance Of Underlying Insurance And Underlying Limits*

We have issued this insurance in reliance upon representations made by you about **underlying insurance** and **underlying limits**. You must see to it that:

- **underlying insurance** is and remains valid and in full force and effect.
- **underlying insurance** will not be cancelled, non-renewed or rescinded without replacement by coverage to which we agree.
- the terms and conditions of **underlying insurance** will not materially change, unless we agree otherwise.
- the terms and conditions of renewals or replacements of **underlying insurance** will be materially the same as the prior coverage, unless we agree otherwise.
- **underlying limits** are and remain available, regardless of any bankruptcy, insolvency or other financial impairment of any insurer or any other person or organization.
- the **underlying limits** will not be reduced or exhausted, except for the reduction or exhaustion by payment of judgments, settlements or related costs or expenses (if such costs or expenses reduce such limits).

Failure to comply with this condition will not invalidate this insurance. But in the case of any such failure, our obligation or liability will not exceed that which would have applied absent any failure to comply with this condition.

You must notify us as soon as practicable if any **underlying insurance** is no longer valid or in full force or effect.

---

### *Other Insurance*

If other valid and collectible insurance is available to the **insured** for loss that we would otherwise cover under this insurance, our obligations are limited as follows.

- A. This insurance is excess over any insurance affording coverage that this insurance would also afford, whether primary, excess, contingent or on any other basis.
- B. We will pay only our share of the amount of **loss**, if any, that exceeds the sum of the total of:
  1. amounts that all other insurance would pay for loss in the absence of this insurance; and
  2. all self insured retentions, self insurance, deductible or other mechanisms (including contractual obligations of any person or organization to the **insured**) arranged for the funding of loss.

The insurance or other mechanisms described in subparagraphs A. or B. above does not include **underlying insurance** or insurance negotiated specifically to apply in excess of this insurance.

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# CHUBB® Chubb Commercial Excess Follow-Form Insurance

## Conditions

(continued)

<i>Titles Of Paragraphs</i>	The titles of the various paragraphs of this policy and endorsements, if any, attached to this policy are inserted solely for convenience or reference and are not to be deemed in any way to limit or affect the provisions to which they relate.
<i>Transfer Of Rights And Duties</i>	Your rights and duties under this insurance may not be transferred without our written consent. However, if you die, then your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative, or to anyone having temporary custody of your property until your legal representative has been appointed.
<i>Transfer Or Waiver Of Rights Of Recovery Against Others</i>	<p>We will waive the right of recovery we would otherwise have had against another person or organization for loss to which this insurance applies, provided the <b>insured</b> has waived their rights of recovery against such person or organization in a contract or agreement that is executed before loss.</p> <p>To the extent that the <b>insured</b>'s rights to recover all or part of any payment made under this insurance have not been waived, those rights are transferred to us. The <b>insured</b> must do nothing after <b>loss</b> to impair them. At our request, the <b>insured</b> will bring suit or transfer those rights to us and help us enforce them.</p> <p>Any amount recovered will be apportioned as follows:</p> <ul style="list-style-type: none"> <li>• first, we shall receive all amounts recovered until we have been fully reimbursed for all amounts we have incurred, including costs or expenses of such recovery proceedings.</li> <li>• then, you are entitled to claim for any further amount recovered.</li> </ul>
<i>When Loss Is Payable</i>	Our obligation to make payment of <b>loss</b> , which is covered under the terms and conditions of this insurance, does not apply unless and until there has been payment of the full amounts of <b>underlying limits</b> and other insurance.
<i>When We Do Not Renew</i>	If we decide not to renew this policy, we will mail or deliver to the first named insured stated in the Declarations written notice of the nonrenewal not less than sixty (60) days before the expiration date. If notice of nonrenewal is mailed, proof of mailing will be sufficient proof of notice.



**Definitions**

**WITH RESPECT TO THIS INSURANCE, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW.**

*Agreed Settlement*

**Agreed settlement** means a settlement and release of liability signed by us, the **insured** and the claimant or the claimant's legal representative.

*Asbestos*

**Asbestos** means asbestos in any form, including its presence or use in any alloy, by-product, compound or other material or waste. Waste includes material to be recycled, reconditioned or reclaimed.

*Controlling Underlying Insurance*

**Controlling underlying insurance** means the policy or policies of insurance shown as Controlling Underlying Insurance(s) in the Declarations.

*Hostile Fire*

**Hostile fire** means one which becomes uncontrollable or breaks out from where it was intended to be.

*Insured*

**Insured** means a person or an organization qualifying as an **insured** in the Who Is An Insured section of this contract.

*Loss*

**Loss** means damages that the **insured** becomes legally obligated to pay because of injury or damage.

*Nuclear Facility*

**Nuclear facility** means any:

- A. **nuclear reactor;**
- B. equipment or device designed or used for:
  - 1. separating the isotopes of plutonium or uranium;
  - 2. processing or utilizing **nuclear spent fuel;** or
  - 3. handling, processing or packaging **nuclear waste;**
- C. equipment or device used for the processing, fabricating or alloying of **nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than:
  - 1. twenty-five (25) grams of plutonium or uranium 233, or any combination thereof; or
  - 2. two-hundred-fifty (250) grams of uranium 235; or
- D. structure, basin, excavation, premises or place prepared or used for the storage or disposal of **nuclear waste;**

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

*Nuclear Hazardous Properties*

**Nuclear hazardous properties** include radioactive, toxic or explosive properties.



# CHUBB® Chubb Commercial Excess Follow-Form Insurance

## Definitions

(continued)

WITH RESPECT TO THIS INSURANCE, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW.

### Nuclear Material

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

**By-product material**, **source material** and **special nuclear material** have the meanings given them in the United States of America Atomic Energy Act of 1954 or in any law amendatory thereof.

### Nuclear Property Damage

**Nuclear property damage** includes all forms of radioactive contamination of property.

### Nuclear Reactor

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

### Nuclear Spent Fuel

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

### Nuclear Waste

**Nuclear waste** means any waste material:

- containing **nuclear material**, other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content; and
- resulting from the operation by any person or organization of any **nuclear facility** described in subparagraphs A. or B. of the definition of **nuclear facility**.

### Pollutants

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

### Underlying Insurance

**Underlying insurance** means the coverages described in:

- **controlling underlying insurance**; and
- the Underlying Limits Of Insurance shown in the Declarations.

### Underlying Limits

**Underlying limits** means the sum of amounts:

- A. shown in the Underlying Limits Of Insurance section of the Declarations, consisting of amounts:
  1. available under applicable **underlying insurance**; and
  2. any **insured** must pay because **underlying insurance**, as represented by you, is not available, regardless of the reason;
- B. available under any applicable antecedent, renewal or replacement of **underlying insurance**;
- C. of any allocation, deductible, participation, retention or other self-insurance applicable to the insurance described in subparagraphs A. and B. above; and

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**Definitions**

**WITH RESPECT TO THIS INSURANCE, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW.**

*Underlying Limits  
(continued)*

D. of any reinstatement of limits or supplemental or other limits available under the insurance described in subparagraphs A. and B. above.

If amounts available under the applicable **underlying insurance**, shown in the Underlying Limits Of Insurance section of the Declarations, are greater or less than the amount shown in the Declarations, then the greater of such amounts shall apply in the computation of **underlying limits**.

**POLICY NUMBER:** 54303064

**COMMERCIAL GENERAL LIABILITY  
10-02-2461 (Ed. 7-15)**

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

## **PRIMARY INSURANCE FOR SCHEDULED ADDITIONAL INSURED**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Additional Insured:**

**Location Of Covered Operations:**

Where required by written contract.

All Locations

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

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

#### **Primary And Noncontributory Insurance**

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

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

Insured: McGuire and Hester

POLICY NUMBER: 54303063

COMMERCIAL AUTOMOBILE

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

## COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

This endorsement modifies the Business Auto Coverage Form.

#### 1. EXTENDED CANCELLATION CONDITION

Paragraph A.2.b. – CANCELLATION - of the COMMON POLICY CONDITIONS form IL 00 17 is deleted and replaced with the following:

- b. 60 days before the effective date of cancellation if we cancel for any other reason.

#### 2. BROAD FORM INSURED

##### A. Subsidiaries and Newly Acquired or Formed Organizations As Insureds

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

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

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

##### B. Employees as Insureds

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

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or

borrow in your business or your personal affairs.

##### C. Lessors as Insureds

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

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
  - (1) The agreement requires you to provide direct primary insurance for the lessor; and
  - (2) The "auto" is leased without a driver. Such leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire. However, the lessor is an "insured" only for "bodily injury" or "property damage" resulting from the acts or omissions by:
    1. You;
    2. Any of your "employees" or agents; or
    3. Any person, except the lessor or any "employee" or agent of the lessor, operating an "auto" with the permission of any of 1. and/or 2. above.

##### D. Persons And Organizations As Insureds Under A Written Insured Contract

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

- f. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed under an express provision in a written "insured contract", written agreement or a written permit issued to you by a governmental or public authority to add such person or organization to this policy as an "insured". However, such person or organization is an "insured" only:

- (1) with respect to the operation, maintenance or use of a covered "auto"; and
- (2) for "bodily injury" or "property damage" caused by an "accident" which takes place after:
  - (a) You executed the "insured contract" or written agreement; or
  - (b) The permit has been issued to you.

**3. FELLOW EMPLOYEE COVERAGE**

EXCLUSION B.5. - FELLOW EMPLOYEE – of SECTION II – LIABILITY COVERAGE does not apply.

**PHYSICAL DAMAGE – ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE**

Paragraph A.1.a. – TRANSPORTATION EXPENSES – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day for temporary transportation expense, subject to a maximum limit of \$1,000.

**AUTO LOAN/LEASE GAP COVERAGE**

Paragraph A.1 – COVERAGE EXTENSIONS - of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

**c. Unpaid Loan or Lease Amounts**

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

- 1. The amount paid under the Physical Damage Coverage Section of the policy; and
- 2. Any:
  - a. Overdue loan/lease payments at the time of the "loss";
  - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - c. Security deposits not returned by the lessor;
  - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
  - e. Carry-over balances from previous loans or leases.

We will pay for any unpaid amount due on the loan or lease if caused by:

- 1. Other than Collision Coverage only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- 2. Specified Causes of Loss Coverage only if the Declarations indicate that Specified Causes of Loss Coverage is provided for any covered "auto"; or
- 3. Collision Coverage only if the Declarations indicate that Collision Coverage is provided for any covered "auto."

**RENTAL AGENCY EXPENSE**

Paragraph A.1 – COVERAGE EXTENSIONS – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

**d. Rental Expense**

We will pay the following expenses that you or any of your "employees" are legally obligated to pay because of a written contract or agreement entered into for use of a rental vehicle in the conduct of your business:

**MAXIMUM WE WILL PAY FOR ANY ONE CONTRACT OR AGREEMENT:**

- 1. \$2,500 for loss of income incurred by the rental agency during the period of time that vehicle is out of use because of actual damage to, or "loss" of, that vehicle, including income lost due to absence of that vehicle for use as a replacement;
  - 2. \$2,500 for decrease in trade-in value of the rental vehicle because of actual damage to that vehicle arising out of a covered "loss"; and
  - 3. \$2,500 for administrative expenses incurred by the rental agency, as stated in the contract or agreement.
- \$7,500 maximum total amount for paragraphs 1., 2. and 3. combined.

**EXTRA EXPENSE – BROADENED COVERAGE**

Paragraph A.1 – COVERAGE EXTENSIONS – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

**e. Recovery Expense**

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

**AIRBAG COVERAGE**

Paragraph B.3.a. - EXCLUSIONS – of SECTION III – PHYSICAL DAMAGE COVERAGE does not apply to the accidental or unintended discharge of an airbag. Coverage is excess over any other collectible insurance or warranty specifically designed to provide this coverage.

**AUDIO/VISUAL AND DATA ELECTRONIC EQUIPMENT BROADENED COVERAGE**

Paragraph C.1.b. – LIMIT OF INSURANCE - of SECTION III - PHYSICAL DAMAGE is deleted and replaced with the following:

- b. \$2,000 is the most we will pay for "loss" in any one "accident" to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:
  - (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
  - (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
  - (3) An integral part of such equipment.

**GLASS REPAIR – WAIVER OF DEDUCTIBLE**

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

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

**11. TWO OR MORE DEDUCTIBLES**

Paragraph D.- DEDUCTIBLE – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

If this Coverage Form and any other Coverage Form or policy issued to you by us that is not an automobile policy or Coverage Form applies to the same “accident”, the following applies:

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

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

Paragraph A.2.a. - DUTIES IN THE EVENT OF AN ACCIDENT, CLAIM, SUIT OR LOSS of SECTION IV - BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

- a. In the event of “accident”, claim, “suit” or “loss”, you must promptly notify us when the “accident” is known to:
  - (1) You or your authorized representative, if you are an individual;
  - (2) A partner, or any authorized representative, if you are a partnership;
  - (3) A member, if you are a limited liability company; or
  - An executive officer, insurance manager, or authorized representative, if you are an organization other than a partnership or limited liability company.

knowledge of an “accident”, claim, “suit” or “loss” by other persons does not imply that the persons listed above have such knowledge. Notice to us should include:

  - (1) How, when and where the “accident” or “loss” occurred;
  - (2) The “insured’s” name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons or witnesses.

**1  WAIVER OF SUBROGATION**

Paragraph A.5. - TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US of SECTION IV – BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

5. We will waive the right of recovery we would otherwise have against another person or organization for “loss” to which this insurance applies, provided the “insured” has waived

their rights of recovery against such person or organization under a contract or agreement that is entered into before such “loss”.

To the extent that the “insured’s” rights to recover damages for all or part of any payment made under this insurance has not been waived, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after “accident” or “loss” to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

**1  UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

Paragraph B.2. – CONCEALMENT, MISREPRESENTATION or FRAUD of SECTION IV – BUSINESS AUTO CONDITIONS - is deleted and replaced with the following:

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

**1  AUTOS RENTED BY EMPLOYEES**

Paragraph B.5. - OTHER INSURANCE of SECTION IV – BUSINESS AUTO CONDITIONS - is amended to add the following:

- e. Any “auto” hired or rented by your “employee” on your behalf and at your direction will be considered an “auto” you hire. If an “employee’s” personal insurance also applies on an excess basis to a covered “auto” hired or rented by your “employee” on your behalf and at your direction, this insurance will be primary to the “employee’s” personal insurance.

**1  HIRED AUTO – COVERAGE TERRITORY**

Paragraph B.7.b.(5). - POLICY PERIOD, COVERAGE TERRITORY of SECTION IV – BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

- (5) A covered “auto” of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 5 days or less; and

**1  RESULTANT MENTAL ANGUISH COVERAGE**

Paragraph C. of - SECTION V – DEFINITIONS is deleted and replaced by the following:

“Bodily injury” means bodily injury, sickness or disease sustained by any person, including mental anguish or death as a result of the “bodily injury” sustained by that person.



POLICY NUMBER: 54303063

COMMERCIAL AUTO  
1 2 1 Ed. 1 1

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## PRIMARY AND NON-CONTRIBUTORY LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

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

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

Named Insured **McGuire and Hester**

### SCHEDULE

Name  Person  Or Organization

Where required by written contract.

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

The following is added to Item 5. – “Other Insurance” of Item B. – “General Conditions” under Section IV – “Business Auto Conditions”:

e. Regardless of the provisions of Paragraph 5.a. through d. above, for any liability arising out of the ownership, maintenance, use, rental, lease, loan, hire or borrowing by an “insured” of a covered “auto” for which an “insured” is contractually obligated to provide primary insurance coverage to a client, this Coverage Form will be primary and non-contributory with respect to the Persons or Organizations in the schedule, regardless of the availability or existence of other collectible insurance under any other Coverage Form or policy that applies on a primary basis.



POLICY NUMBER:5030306

COMMERCIAL GENERAL LIABILITY  
1222 Ed. 11

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

# **TRANSFER OR WAIVER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US – SCHEDULED PERSON(S) OR ORGANIZATION(S)**

This endorsement modifies insurance provided under the following:

COMMERCIALGENERAL LIABILITY COVERAGE FORM

### **SCHEDULE**

<p><b>Name Of Person(s) or Organization(s):</b></p> <p>WHERE REQUIRED BY WRITTEN CONTRACT.</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

The policy is amended at **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Condition 8. Transfer Or Waiver Of Rights Of Recovery Against Other To Us** by deleting the first paragraph and replacing it with the following:

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

**Workers' Compensation and Employers' Liability Policy**

Named Insured  McGuire and Hester	Endorsement Number
	Policy Number Symbol: WCF Number: 54303065
Policy Period 7/01/2024 <b>TO</b> 7/01/2025	Effective Date of Endorsement 07/01/2024
Issued By (Name of Insurance Company) FEDERAL INSURANCE	
Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.	

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

This endorsement applies only to the insurance provided by the policy because California is shown in Item 3.A. of the Information Page.

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, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule, where you are required by a written contract to obtain this waiver from us.

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

Schedule

1. (    ) Specific Waiver  
Name of person or organization:
  
- ( X ) Blanket Waiver  
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.
  
2. Operations:  
    ALL
  
3. Premium:  
The premium charge for this endorsement shall be   1.0   percent of the California premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.
  
4. Minimum Premium: \$0

*Amy Gregory*

\_\_\_\_\_  
Authorized Representative



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/27/2024
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**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

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

<b>PRODUCER</b> R. C. Fischer & Co. P. O. Box 8101 Walnut Creek CA 94596	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2"><b>CONTACT NAME:</b> Amy Gregory</td> </tr> <tr> <td><b>PHONE (A/C. No. Ext):</b> 925-627-5471</td> <td><b>FAX (A/C. No):</b> 925-932-0962</td> </tr> <tr> <td colspan="2"><b>E-MAIL ADDRESS:</b> agregory@rcfischer.com</td> </tr> <tr> <td colspan="2" style="text-align: center;"><b>INSURER(S) AFFORDING COVERAGE</b></td> </tr> <tr> <td><b>INSURER A :</b> Executive Risk Indemnity Inc.</td> <td style="text-align: right;"><b>NAIC #</b> 35181</td> </tr> <tr> <td><b>INSURER B :</b> Federal Insurance Company</td> <td style="text-align: right;">20281</td> </tr> <tr> <td><b>INSURER C :</b></td> <td></td> </tr> <tr> <td><b>INSURER D :</b></td> <td></td> </tr> <tr> <td><b>INSURER E :</b></td> <td></td> </tr> <tr> <td><b>INSURER F :</b></td> <td></td> </tr> </table>	<b>CONTACT NAME:</b> Amy Gregory		<b>PHONE (A/C. No. Ext):</b> 925-627-5471	<b>FAX (A/C. No):</b> 925-932-0962	<b>E-MAIL ADDRESS:</b> agregory@rcfischer.com		<b>INSURER(S) AFFORDING COVERAGE</b>		<b>INSURER A :</b> Executive Risk Indemnity Inc.	<b>NAIC #</b> 35181	<b>INSURER B :</b> Federal Insurance Company	20281	<b>INSURER C :</b>		<b>INSURER D :</b>		<b>INSURER E :</b>		<b>INSURER F :</b>	
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<b>INSURED</b> McGuire and Hester 9009 Railroad Ave Oakland CA 94603	MCGUAND-01																				

**COVERAGES** **CERTIFICATE NUMBER:** 1060725046 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contract Liab <input checked="" type="checkbox"/> XCU GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: GL Ded \$10K	Y	Y	54303064	7/1/2024	7/1/2025	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 Emp Ben. \$1,000,000
B	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	54303063	7/1/2024	7/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	93652735	7/1/2024	7/1/2025	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
B	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y	54303065	7/1/2024	7/1/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 RE: M&H Job No. 5156 - City of Alameda - Harbor Bay Shoreline Emergency Work.  
 The City, its City Council, boards, commissions, officials, employees, agents and volunteers, are named additional insureds per CG20101219 & 160202921116. Insurance is primary and noncontributory per 100224610715 & 100224610715. Waiver of subrogation applies per 100227721119, 160202921116 & WC99003750518. Umbrella is follow form 070209090505.

<b>CERTIFICATE HOLDER</b>  City of Alameda 950 W. Mall Square #110 Alameda CA 94501	<b>CANCELLATION</b>  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 
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Policy Number: 54303064

CG 20 10 12 19

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

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

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part

<b>Schedule</b>	
<b>Name Of Additional Insured Person(s) Or Organization(s)</b>	<b>Location(s) Of Covered Operations</b>
WHERE REQUIRED BY WRITTEN CONTRACT.	ALL LOCATIONS WHERE REQUIRED BY WRITTEN CONTRACT.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

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

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

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

However:

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

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

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

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

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

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

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

All other terms and conditions of this Policy remain unchanged.

# **CHUBB® Chubb Commercial Excess Follow-Form Insurance**

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# CHUBB® *Chubb Commercial Excess Follow-Form Insurance*

## *Contract*

Please read the entire policy carefully. The terms and conditions of this insurance include the various sections of this contract: Coverage; Investigation, Defense And Settlements; Supplementary Payments; Coverage Territory; Who Is An Insured; Limits Of Insurance; When This Excess Follow-Form Insurance Applies; Exclusions; Conditions and Definitions, as well as the Declarations and any Endorsements made a part of this insurance.

Throughout this contract the words "you" and "your" refer to the named **insured** shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

Words and phrases that appear in **bold** print have special meanings and are defined in the Definitions section of this contract.

### **Coverage/Excess Follow-Form**

Subject to all of the terms and conditions applicable to this insurance, we will pay, on behalf of the **insured**, that part of **loss**, to which this insurance applies, which exceeds the applicable **underlying limits**.

This insurance applies only if the triggering event that must happen during the policy period of the applicable **controlling underlying insurance** happens during the policy period of this insurance.

This insurance will follow the terms and conditions of **controlling underlying insurance**, unless a term or condition contained in this insurance:

- differs from any term or condition contained in the applicable **controlling underlying insurance**; or
- is not contained in the applicable **controlling underlying insurance**.

With respect to such exceptions described above, the terms and conditions contained in this insurance will apply, to the extent that such terms and conditions provide less coverage than the terms and conditions of the applicable **controlling underlying insurance**.

This insurance does not apply to any part of **loss** within **underlying limits**, or any related costs or expenses.

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

The most we will pay hereunder is fixed as set forth in the Limits Of Insurance section of this contract.

Our obligations hereunder end when we have used up the applicable Limits Of Insurance.

Other than as provided under the Investigation, Defense And Settlements and Supplementary Payments sections of this contract, we have no other obligation or liability to pay sums or perform acts or services under this insurance.

### **Investigation, Defense And Settlements**

We have no duty to defend any person or organization against any claim or suit.

We may at our discretion participate in the defense, investigation and settlement of any occurrence, offense, claim or suit.

If we choose to participate in the defense of any claim or suit, we will not be obligated to participate in the defense of any person or organization when we have used up the applicable Limits Of Insurance.

The most we will pay hereunder is fixed as set forth in the Limits Of Insurance section of this contract.

**Supplementary Payments**

Subject to all of the terms and conditions of this insurance, with respect to a claim or suit we investigate or settle, we will pay:

- expenses incurred directly by us and at our sole discretion;
- prejudgment interest awarded against the insured on that part of a judgment we pay. If we make an offer to pay the applicable Limits Of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- interest on that part of a judgment, to which this insurance applies, that accrues after entry of the judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limits Of Insurance.

Supplementary Payments does not include any fine or other penalty.

The most we will pay hereunder is fixed as set forth in the Limits Of Insurance section of this contract.

Our obligations hereunder end when we have used up the applicable Limits Of Insurance.

**Coverage Territory**

This insurance applies anywhere that the applicable **controlling underlying insurance** applies.

**Who Is An Insured**

The following persons or organizations qualify as **insureds**:

- the named **insured** shown in the Declarations; and
- other persons or organizations qualifying as an **insured in controlling underlying insurance**, but not beyond the extent of any limitations imposed under any contract or agreement.

**Limits Of Insurance**

The Limits Of Insurance shown in the Declarations and the rules below fix the most we will pay, regardless of the number of:

- **insureds**;
- claims made or suits brought;
- persons or organizations making claims or bringing suits;
- vehicles involved; or
- coverages provided in this contract.

The aggregate limits apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months (starting with the beginning of the policy period shown in the Declarations), provided the applicable aggregate limits in all **underlying insurance** apply in such manner. If the aggregate limits in any **underlying insurance** do not so apply, then the applicable aggregate limits of this insurance will apply to the entire policy period and not separately to any portion (whether annual or otherwise) thereof.

If the policy period is extended after issuance, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

**Other Aggregate Limit**

Subject to the Each Occurrence Limit, the Other Aggregate Limit is the most we will pay for the sum of amounts described as reducing Limits Of Insurance of this insurance (see Payments That Reduce The Limits Of Insurance section), except amounts included in the products-completed operations hazard.

# CHUBB® Chubb Commercial Excess Follow-Form Insurance

## Limits Of Insurance

### Other Aggregate Limit (continued)

However, the Other Aggregate Limit of this policy will:

- not apply when all **underlying insurance** does not apply an aggregate limit; or
- apply in the same manner as the aggregate limit in controlling underlying insurance applies, provided all other **underlying insurance** also applies an aggregate limit in the same manner as **controlling underlying insurance**.

### Products-Completed Operations Aggregate Limit

Subject to the Each Occurrence Limit, the Products-Completed Operations Aggregate Limit is the most we will pay for the sum of amounts described as reducing Limits Of Insurance of this insurance (see Payments That Reduce The Limits Of Insurance section) included in the products-completed operations hazard as defined in **controlling underlying insurance**.

### Each Occurrence Limit

The Each Occurrence Limit is the most we will pay for the sum of amounts described as reducing Limits Of Insurance of this insurance (see Payments That Reduce The Limits Of Insurance section) arising out of any one occurrence, even if such loss is or otherwise would be covered in whole or in part under more than one **underlying insurance** policy.

Any such amounts we pay will reduce the amount of the applicable aggregate limit available for any other payment.

If the applicable aggregate limit has been reduced to an amount that is less than the Each Occurrence Limit, then the remaining amount of such aggregate limit is the most that will be available for any other payment.

### Payments That Reduce The Limits Of Insurance

Any amounts we pay for **loss** will reduce the Limits Of Insurance of this insurance.

Payments that we make under the Supplementary Payments and Investigation, Defense And Settlement sections of this insurance will not reduce the Limits Of Insurance, unless payments for investigation, defense and settlement and supplementary payments reduce the limits of insurance of any applicable **underlying insurance**.

If costs or expenses for supplementary payments and investigation, defense and settlement reduce the limits of insurance of any applicable **underlying insurance**, then any such cost or expenses including supplementary payments to which this insurance applies will reduce the applicable Limits Of Insurance of this insurance.

### When This Excess Follow-Form Insurance Applies

Subject to all of the terms and conditions of this insurance, if the applicable **underlying limits** are:

- reduced by payment of judgments, settlements or related costs or expenses (if such costs or expenses reduce such limits) for triggering events that happen during the policy period of this insurance and provided all **underlying limits** also applies to **loss** and also drops down, then this insurance will drop down to apply in excess of the remaining amount of the applicable **underlying limits**.
- exhausted by payment of judgments, settlements or related costs or expenses (if such costs or expenses reduce such limits) for triggering events that happen during the policy period of this insurance, then this insurance will apply in the same manner as the applicable **controlling underlying insurance** would have applied but for such exhaustion.

**Exclusions**

The use of the words damages, loss, cost or expense in any exclusion does not expand any coverage under this contract.

**Asbestos**

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

**Controlling Underlying Insurance**

This insurance does not apply to any damages, loss, cost or expense to which the terms and conditions of **controlling underlying insurance** do not apply.

**Coverages/ Laws, Various**

- This insurance does not apply to any damages, loss, cost or expense or obligation of any **insured** under any:
- medical expenses or payments coverage or law;
  - no-fault coverage or law;
  - personal injury protection coverage or law;
  - underinsured or uninsured financial responsibility coverage or law;
  - workers' compensation, disability benefits or unemployment compensation coverage or law; or
  - similar coverage or law.

**Employee Retirement Income Security Laws**

This insurance does not apply to any damages, loss, cost or expense or obligation of any **insured** under the United States of America Employees' Retirement Income Security Act (E.R.I.S.A.) of 1974 or any similar law, as now constituted or hereafter amended.

**Employment-Related Practices**

- A. This insurance does not apply to any damages, loss, cost or expense arising out of any injury or damage sustained at any time by any:
  - 1. person, whether or not sustained in the course of employment by any **insured**, arising out of any employment-related act, omission, policy, practice or representation directed at such person, occurring in whole or in part at any time.
  - 2. brother, child, parent, sister or spouse of any person at whom any act, omission, policy, practice or representation is directed, as described in subparagraph A.1. above.
- B. As used in this exclusion, such acts, omissions, policies, practices or representations described above include any:
  - 1. arrest, detention or imprisonment;
  - 2. breach of any express or implied covenant;
  - 3. coercion, criticism, humiliation, prosecution or retaliation;
  - 4. defamation or disparagement;

# CHUBB® Chubb Commercial Excess Follow-Form Insurance

## Exclusions

### Employment-Related Practices (continued)

5. demotion, discipline, evaluation or reassignment;
  6. discrimination, harassment or segregation;
  7.
    - a. eviction; or
    - b. invasion or other violation of any right of occupancy;
  8. failure or refusal to advance, compensate, employ or promote;
  9. invasion or other violation of any right of privacy or publicity;
  10. termination of employment; or
  11. other employment-related act, omission, policy, practice, representation or relationship in connection with any **insured** at any time.
- C. This exclusion applies:
1. regardless of the capacity in which the **insured** may be liable; and
  2. to any obligation to share any damages, loss, cost or expense with or repay someone else who must pay any damages, loss, cost or expense because of any of the foregoing.

### Nuclear Energy

- A. This insurance does not apply to any damages, loss, cost or expense:
1. with respect to which any **insured** under this policy also has status as an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would have had status as an insured under any such policy but for its termination upon exhaustion of its limit of insurance; or
  2. arising out of the **nuclear hazardous properties of nuclear material** and with respect to which:
    - a. any person or organization is required to maintain financial protection pursuant to the United States of America Atomic Energy Act of 1954, or any law amendatory thereof; or
    - b. the **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. This insurance does not apply to any damages, loss, cost or expense arising out of the **nuclear hazardous properties of nuclear material**:
1. if the **nuclear material**:
    - a. is at any **nuclear facility** owned by, or operated by or on behalf of, any **insured**;
    - b. has been discharged or dispersed there from; or
    - c. is contained in **nuclear spent fuel** or **nuclear waste** at any time transported, handled, stored, disposed of, processed, treated, possessed or used by or on behalf of any **insured**; or

**Exclusions**

*Nuclear Energy  
(continued)*

- 2. in any way related to the furnishing by any **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**. But if such facility is located within the United States of America (including its possessions or territories) or Canada, this subparagraph 2. applies only to **nuclear property damage** to such **nuclear facility** and any property thereat.

*Obligations Of  
Underlying Insurance*

This insurance does not apply to any damages, loss, cost or expense for which the liability or obligation under **underlying insurance** is by law unlimited.

*Pollution*

- A.
  - 1. This insurance does not apply to any damages, loss, cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**, other than as described in paragraph B. below.
  - 2. Subparagraph A.1. above does not apply to:
    - a. bodily injury or property damage included in the products-completed operations hazard;
    - b. bodily injury or property damage:
      - i. caused by the escape of operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of mobile equipment or its parts;
      - ii. if sustained within a building and caused by the release of gaseous irritants or contaminants from materials brought into that building, in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
      - iii. resulting from your other ongoing contracting operations;
    - c. bodily injury if sustained within a building and caused by the escape of gaseous irritants or contaminants from equipment used to heat that building;
    - d. bodily injury or property damage caused by heat, smoke or fumes from a **hostile fire**; or
    - e. bodily injury or property damage resulting from the ownership, maintenance or use of an auto.
- B. This insurance does not apply to any damages, loss, cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:
  - 1. which are or were at any time transported, handled, stored, disposed of, processed or treated as waste by or for any:
    - a. **insured**; or
    - b. person or organization for whom any **insured** may be legally responsible.
  - 2. at or from any premises, site or location:
    - a. which is or was at any time used by or for any **insured** or others for the handling, storage, disposal, processing or treatment of waste; or
    - b. on which any insured or any contractor or subcontractor working directly or indirectly on any **insured's** behalf is performing operations, if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.



# CHUBB® Chubb Commercial Excess Follow-Form Insurance

## Exclusions

### Pollution (continued)

- C. This insurance does not apply to any damages, loss, cost or expense arising out of any:
1. request, demand, order, or regulatory or statutory requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or
  2. claim or proceeding by or on behalf of any governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.
  3. Subparagraphs C.1. and C.2. above do not apply to the liability for damages, for property damage, that the **insured** would have in the absence of such request, demand, order or regulatory or statutory requirement, or such claim or proceeding by or on behalf of a governmental authority.

This exclusion applies regardless of whether or not the pollution was accidental, expected, gradual, intended, preventable or sudden.

With respect to this insurance, the following conditions apply.

## Conditions

### Appeals

We may, at our discretion, initiate or participate in an appeal of a judgment, if such judgment may result in a payment under this insurance.

If we initiate or participate in an appeal, we will pay our costs of the appeal. But in no case will the amount we pay for **loss** exceed the Limits Of Insurance.

### Bankruptcy

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

### Cancellation

The first named **insured** may cancel this policy at any time by sending us a written request or by returning the policy and stating when thereafter cancellation is to take effect.

We may cancel this policy at any time by sending to the first named **insured** a notice sixty (60) days, twenty (20) days in the event of non-payment of premium, in advance of the cancellation date. Our notice of cancellation will be mailed to the first named **insured's** last known address and will indicate the date on which coverage is terminated. If notice of cancellation is mailed, proof of mailing will be sufficient proof of notice.

The earned premium will be computed on a pro rata basis. Any unearned premium will be returned as soon as practicable.

### Changes

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

### Compliance By Insureds

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



**Conditions**

*(continued)*

**Compliance With Applicable Trade Sanctions**

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance.

**Conformance**

Any terms of this insurance which are in conflict with the applicable statutes of the State or jurisdiction in which this policy is issued are amended to conform to such statutes.

**Disclosures And Representations**

We have issued this insurance:

- based upon representations you made to us; and
- in reliance upon your representations.

Unintentional failure of an employee of the **insured** to disclose a hazard or other material information will not violate this condition, unless an officer (whether or not an employee) of any **insured** or an officer's designee knows about such hazard or other material information.

**Duties In The Event Of Occurrence, Offense, Claim Or Suit**

A. You must see to it that we and any insurers of **underlying insurance** are notified as soon as practicable of any occurrence or offense that may result in a claim, if the claim may involve us or other insurers. To the extent possible, notice should include:

1. how, when and where the occurrence or offense happened;
2. the names and addresses of any injured persons and witnesses; and
3. the nature and location of any injury or damage arising out of the occurrence or offense.

Notice of an occurrence or offense is not notice of a claim.

B. If a claim is made or suit is brought against any **insured**, you must:

1. immediately record the specifics of the claim or suit and the date received;
2. notify us and any other insurers as soon as practicable; and
3. see to it that we receive written notice of the claim or suit as soon as practicable.

C. You and any other involved **insured** must:

1. immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit;
2. authorize us to obtain records and other information;
3. cooperate with us and any other insurers in the:
  - a. investigation or settlement of the claim; or
  - b. defense against the suit; and
4. assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the **insured** because of loss to which this insurance may also apply.

D. No **insured** will, except at the **insured's** own cost, make any payment, assume any obligation or incur any expense without our consent.

# CHUBB® Chubb Commercial Excess Follow-Form Insurance

## Conditions

### *Duties In The Event Of Occurrence, Offense, Claim Or Suit (continued)*

- E. Notice given by or on behalf of:
  1. the **insured**;
  2. the injured person; or
  3. any other claimant;

to a licensed agent of ours with particulars sufficient to identify the insured shall be deemed notice to us.
- F. Knowledge of an occurrence or offense by an agent or employee of the insured will not constitute knowledge by the **insured**, unless an officer (whether or not an employee) of any **insured** or an officer's designee knows about such occurrence or offense.
- G. Failure of an agent or employee of the **insured**, other than an officer (whether or not an employee) of any **insured** or an officer's designee, to notify us of an occurrence or offense which such person knows about will not affect the insurance afforded to you.
- H. If a claim or loss does not reasonably appear to involve either this insurance or any **underlying insurance**, but it later develops into a claim or loss to which this insurance applies, the failure to report it to us will not violate this condition, provided the **insured** gives us immediate notice as soon as the **insured** is aware that this insurance may apply to such claim or loss.

### *First Named Insured*

The person or organization first named in the Declarations is primarily responsible for payment of all premiums. The first named **insured** will act on behalf of all other named **insureds** for the giving and receiving of notice of cancellation or nonrenewal and the receiving of any return premiums that become payable under this policy.

### *Inspections And Surveys*

We may:

- make inspections and surveys at any time;
- give you reports on the conditions we find; and
- recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions:

- are safe or healthful; or
- comply with laws, regulations, codes or standards.

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

### *Legal Action Against Us*

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

- join us as a party or otherwise bring us into a suit seeking damages from an **insured**; or
- sue us on this insurance unless all of the terms and conditions of this insurance have been fully complied with.

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## Conditions

### *Legal Action Against Us (continued)*

A person or organization may sue us to recover on an **agreed settlement** or on a final judgment against an **insured** obtained after an actual:

- trial in a civil proceeding; or
- arbitration or other alternative dispute resolution proceeding;

but we will not be liable for any damages, loss, cost or expense that are not payable under the terms and conditions of this insurance, or that are in excess of the applicable Limits Of Insurance.

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### *Maintenance Of Underlying Insurance And Underlying Limits*

We have issued this insurance in reliance upon representations made by you about **underlying insurance** and **underlying limits**. You must see to it that:

- **underlying insurance** is and remains valid and in full force and effect.
- **underlying insurance** will not be cancelled, non-renewed or rescinded without replacement by coverage to which we agree.
- the terms and conditions of **underlying insurance** will not materially change, unless we agree otherwise.
- the terms and conditions of renewals or replacements of **underlying insurance** will be materially the same as the prior coverage, unless we agree otherwise.
- **underlying limits** are and remain available, regardless of any bankruptcy, insolvency or other financial impairment of any insurer or any other person or organization.
- the **underlying limits** will not be reduced or exhausted, except for the reduction or exhaustion by payment of judgments, settlements or related costs or expenses (if such costs or expenses reduce such limits).

Failure to comply with this condition will not invalidate this insurance. But in the case of any such failure, our obligation or liability will not exceed that which would have applied absent any failure to comply with this condition.

You must notify us as soon as practicable if any **underlying insurance** is no longer valid or in full force or effect.

---

### *Other Insurance*

If other valid and collectible insurance is available to the **insured** for loss that we would otherwise cover under this insurance, our obligations are limited as follows.

- A. This insurance is excess over any insurance affording coverage that this insurance would also afford, whether primary, excess, contingent or on any other basis.
- B. We will pay only our share of the amount of **loss**, if any, that exceeds the sum of the total of:
  1. amounts that all other insurance would pay for loss in the absence of this insurance; and
  2. all self insured retentions, self insurance, deductible or other mechanisms (including contractual obligations of any person or organization to the **insured**) arranged for the funding of loss.

The insurance or other mechanisms described in subparagraphs A. or B. above does not include **underlying insurance** or insurance negotiated specifically to apply in excess of this insurance.

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# CHUBB® Chubb Commercial Excess Follow-Form Insurance

## Conditions

(continued)

<i>Titles Of Paragraphs</i>	The titles of the various paragraphs of this policy and endorsements, if any, attached to this policy are inserted solely for convenience or reference and are not to be deemed in any way to limit or affect the provisions to which they relate.
<i>Transfer Of Rights And Duties</i>	Your rights and duties under this insurance may not be transferred without our written consent. However, if you die, then your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative, or to anyone having temporary custody of your property until your legal representative has been appointed.
<i>Transfer Or Waiver Of Rights Of Recovery Against Others</i>	<p>We will waive the right of recovery we would otherwise have had against another person or organization for loss to which this insurance applies, provided the <b>insured</b> has waived their rights of recovery against such person or organization in a contract or agreement that is executed before loss.</p> <p>To the extent that the <b>insured</b>'s rights to recover all or part of any payment made under this insurance have not been waived, those rights are transferred to us. The <b>insured</b> must do nothing after <b>loss</b> to impair them. At our request, the <b>insured</b> will bring suit or transfer those rights to us and help us enforce them.</p> <p>Any amount recovered will be apportioned as follows:</p> <ul style="list-style-type: none"> <li>• first, we shall receive all amounts recovered until we have been fully reimbursed for all amounts we have incurred, including costs or expenses of such recovery proceedings.</li> <li>• then, you are entitled to claim for any further amount recovered.</li> </ul>
<i>When Loss Is Payable</i>	Our obligation to make payment of <b>loss</b> , which is covered under the terms and conditions of this insurance, does not apply unless and until there has been payment of the full amounts of <b>underlying limits</b> and other insurance.
<i>When We Do Not Renew</i>	If we decide not to renew this policy, we will mail or deliver to the first named insured stated in the Declarations written notice of the nonrenewal not less than sixty (60) days before the expiration date. If notice of nonrenewal is mailed, proof of mailing will be sufficient proof of notice.

**Definitions**

**WITH RESPECT TO THIS INSURANCE, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW.**

*Agreed Settlement*

**Agreed settlement** means a settlement and release of liability signed by us, the **insured** and the claimant or the claimant's legal representative.

*Asbestos*

**Asbestos** means asbestos in any form, including its presence or use in any alloy, by-product, compound or other material or waste. Waste includes material to be recycled, reconditioned or reclaimed.

*Controlling Underlying Insurance*

**Controlling underlying insurance** means the policy or policies of insurance shown as Controlling Underlying Insurance(s) in the Declarations.

*Hostile Fire*

**Hostile fire** means one which becomes uncontrollable or breaks out from where it was intended to be.

*Insured*

**Insured** means a person or an organization qualifying as an **insured** in the Who Is An Insured section of this contract.

*Loss*

**Loss** means damages that the **insured** becomes legally obligated to pay because of injury or damage.

*Nuclear Facility*

**Nuclear facility** means any:

- A. **nuclear reactor;**
- B. equipment or device designed or used for:
  - 1. separating the isotopes of plutonium or uranium;
  - 2. processing or utilizing **nuclear spent fuel;** or
  - 3. handling, processing or packaging **nuclear waste;**
- C. equipment or device used for the processing, fabricating or alloying of **nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than:
  - 1. twenty-five (25) grams of plutonium or uranium 233, or any combination thereof; or
  - 2. two-hundred-fifty (250) grams of uranium 235; or
- D. structure, basin, excavation, premises or place prepared or used for the storage or disposal of **nuclear waste;**

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

*Nuclear Hazardous Properties*

**Nuclear hazardous properties** include radioactive, toxic or explosive properties.

# CHUBB® Chubb Commercial Excess Follow-Form Insurance

## Definitions

(continued)

WITH RESPECT TO THIS INSURANCE, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW.

### Nuclear Material

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

**By-product material**, **source material** and **special nuclear material** have the meanings given them in the United States of America Atomic Energy Act of 1954 or in any law amendatory thereof.

### Nuclear Property Damage

**Nuclear property damage** includes all forms of radioactive contamination of property.

### Nuclear Reactor

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

### Nuclear Spent Fuel

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

### Nuclear Waste

**Nuclear waste** means any waste material:

- containing **nuclear material**, other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content; and
- resulting from the operation by any person or organization of any **nuclear facility** described in subparagraphs A. or B. of the definition of **nuclear facility**.

### Pollutants

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

### Underlying Insurance

**Underlying insurance** means the coverages described in:

- **controlling underlying insurance**; and
- the Underlying Limits Of Insurance shown in the Declarations.

### Underlying Limits

**Underlying limits** means the sum of amounts:

- A. shown in the Underlying Limits Of Insurance section of the Declarations, consisting of amounts:
  1. available under applicable **underlying insurance**; and
  2. any **insured** must pay because **underlying insurance**, as represented by you, is not available, regardless of the reason;
- B. available under any applicable antecedent, renewal or replacement of **underlying insurance**;
- C. of any allocation, deductible, participation, retention or other self-insurance applicable to the insurance described in subparagraphs A. and B. above; and

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**Definitions**

**WITH RESPECT TO THIS INSURANCE, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW.**

*Underlying Limits  
(continued)*

D. of any reinstatement of limits or supplemental or other limits available under the insurance described in subparagraphs A. and B. above.

If amounts available under the applicable **underlying insurance**, shown in the Underlying Limits Of Insurance section of the Declarations, are greater or less than the amount shown in the Declarations, then the greater of such amounts shall apply in the computation of **underlying limits**.



**POLICY NUMBER:** 54303064

**COMMERCIAL GENERAL LIABILITY  
10-02-2461 (Ed. 7-15)**

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

## **PRIMARY INSURANCE FOR SCHEDULED ADDITIONAL INSURED**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Additional Insured:**

**Location Of Covered Operations:**

Where required by written contract.

All Locations

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

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

#### **Primary And Noncontributory Insurance**

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

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

Insured: McGuire and Hester

POLICY NUMBER: 54303063

COMMERCIAL AUTOMOBILE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

This endorsement modifies the Business Auto Coverage Form.

#### 1. EXTENDED CANCELLATION CONDITION

Paragraph A. b. – CANCELLATION of the COMMON POLICY CONDITIONS form IL is deleted and replaced with the following:

- b. days before the effective date of cancellation if we cancel for any other reason.

#### 2. BROAD FORM INSURED

##### A. Subsidiaries and Newly Acquired or Formed Organizations As Insureds

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

- Any legally incorporated subsidiary in which you own more than of the voting stock on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
  - (a) That is an "insured" under any other automobile policy;
  - (b) That has exhausted its Limit of Insurance under any other policy; or
  - (c) days or more after its acquisition or formation by you, unless you have given us written notice of the acquisition or formation.

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

##### B. Employees as Insureds

Paragraph A. – W/O IS AN INSURED – of SECTION II – LIABILITY COVERAGE is amended to add the following:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or

borrow in your business or your personal affairs.

#### C. Lessors as Insureds

Paragraph A. – W/O IS AN INSURED – of SECTION II – LIABILITY COVERAGE is amended to add the following:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
  - The agreement requires you to provide direct primary insurance for the lessor; and
  - The "auto" is leased without a driver. Such leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire. However, the lessor is an "insured" only for "bodily injury" or "property damage" resulting from the acts or omissions by:
    - You;
    - Any of your "employees" or agents; or
    - Any person, except the lessor or any "employee" or agent of the lessor, operating an "auto" with the permission of any of and/or above.

#### D. Persons And Organizations As Insureds Under A Written Insured Contract

Paragraph A. – W/O IS AN INSURED – of SECTION II – LIABILITY COVERAGE is amended to add the following:

- f. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed under an express provision in a written "insured contract", written agreement or a written permit issued to you by a governmental or public authority to add such person or organization to this policy as an "insured". However, such person or organization is an "insured" only:

- (1) with respect to the operation, maintenance or use of a covered "auto"; and
- (2) for "bodily injury" or "property damage" caused by an "accident" which takes place after:
  - (a) You executed the "insured contract" or written agreement; or
  - (b) The permit has been issued to you.

**3. FELLOW EMPLOYEE COVERAGE**

EXCLUSION B.5. - FELLOW EMPLOYEE – of SECTION II – LIABILITY COVERAGE does not apply.

**4. PHYSICAL DAMAGE – ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE**

Paragraph A.4.a. – TRANSPORTATION EXPENSES – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day for temporary transportation expense, subject to a maximum limit of \$1,000.

**5. AUTO LOAN/LEASE GAP COVERAGE**

Paragraph A. 4. – COVERAGE EXTENSIONS - of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

**c. Unpaid Loan or Lease Amounts**

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

1. The amount paid under the Physical Damage Coverage Section of the policy; and
2. Any:
  - a. Overdue loan/lease payments at the time of the "loss";
  - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - c. Security deposits not returned by the lessor;
  - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
  - e. Carry-over balances from previous loans or leases.

We will pay for any unpaid amount due on the loan or lease if caused by:

1. Other than Collision Coverage only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
2. Specified Causes of Loss Coverage only if the Declarations indicate that Specified Causes of Loss Coverage is provided for any covered "auto"; or
3. Collision Coverage only if the Declarations indicate that Collision Coverage is provided for any covered "auto."

**6. RENTAL AGENCY EXPENSE**

Paragraph A. 4. – COVERAGE EXTENSIONS – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

**d. Rental Expense**

We will pay the following expenses that you or any of your "employees" are legally obligated to pay because of a written contract or agreement entered into for use of a rental vehicle in the conduct of your business:

**MAXIMUM WE WILL PAY FOR ANY ONE CONTRACT OR AGREEMENT:**

1. \$2,500 for loss of income incurred by the rental agency during the period of time that vehicle is out of use because of actual damage to, or "loss" of, that vehicle, including income lost due to absence of that vehicle for use as a replacement;
2. \$2,500 for decrease in trade-in value of the rental vehicle because of actual damage to that vehicle arising out of a covered "loss"; and
3. \$2,500 for administrative expenses incurred by the rental agency, as stated in the contract or agreement.
4. \$7,500 maximum total amount for paragraphs 1., 2. and 3. combined.

**7. EXTRA EXPENSE – BROADENED COVERAGE**

Paragraph A.4. – COVERAGE EXTENSIONS – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

**e. Recovery Expense**

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

**8. AIRBAG COVERAGE**

Paragraph B.3.a. - EXCLUSIONS – of SECTION III – PHYSICAL DAMAGE COVERAGE does not apply to the accidental or unintended discharge of an airbag. Coverage is excess over any other collectible insurance or warranty specifically designed to provide this coverage.

**9. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT - BROADENED COVERAGE**

Paragraph C.1.b. – LIMIT OF INSURANCE - of SECTION III - PHYSICAL DAMAGE is deleted and replaced with the following:

- b. \$2,000 is the most we will pay for "loss" in any one "accident" to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:
  - (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
  - (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
  - (3) An integral part of such equipment.

**10. GLASS REPAIR – WAIVER OF DEDUCTIBLE**

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

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

**11. TWO OR MORE DEDUCTIBLES**

Paragraph D.- DEDUCTIBLE – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

If this Coverage Form and any other Coverage Form or policy issued to you by us that is not an automobile policy or Coverage Form applies to the same “accident”, the following applies:

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

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

Paragraph A.2.a. - DUTIES IN THE EVENT OF AN ACCIDENT, CLAIM, SUIT OR LOSS of SECTION IV - BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

- a. In the event of “accident”, claim, “suit” or “loss”, you must promptly notify us when the “accident” is known to:
  - (1) You or your authorized representative, if you are an individual;
  - (2) A partner, or any authorized representative, if you are a partnership;
  - (3) A member, if you are a limited liability company; or
  - (4) An executive officer, insurance manager, or authorized representative, if you are an organization other than a partnership or limited liability company.

Knowledge of an “accident”, claim, “suit” or “loss” by other persons does not imply that the persons listed above have such knowledge. Notice to us should include:

- (1) How, when and where the “accident” or “loss” occurred;
- (2) The “insured’s” name and address; and
- (3) To the extent possible, the names and addresses of any injured persons or witnesses.

**13. WAIVER OF SUBROGATION**

Paragraph A.5. - TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US of SECTION IV – BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

5. We will waive the right of recovery we would otherwise have against another person or organization for “loss” to which this insurance applies, provided the “insured” has waived

their rights of recovery against such person or organization under a contract or agreement that is entered into before such “loss”.

To the extent that the “insured’s” rights to recover damages for all or part of any payment made under this insurance has not been waived, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after “accident” or “loss” to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

**14. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

Paragraph B.2. – CONCEALMENT, MISREPRESENTATION or FRAUD of SECTION IV – BUSINESS AUTO CONDITIONS - is deleted and replaced with the following:

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

**15. AUTOS RENTED BY EMPLOYEES**

Paragraph B.5. - OTHER INSURANCE of SECTION IV – BUSINESS AUTO CONDITIONS - is amended to add the following:

- e. Any “auto” hired or rented by your “employee” on your behalf and at your direction will be considered an “auto” you hire. If an “employee’s” personal insurance also applies on an excess basis to a covered “auto” hired or rented by your “employee” on your behalf and at your direction, this insurance will be primary to the “employee’s” personal insurance.

**16. HIRED AUTO – COVERAGE TERRITORY**

Paragraph B.7.b.(5). - POLICY PERIOD, COVERAGE TERRITORY of SECTION IV – BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

- (5) A covered “auto” of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 45 days or less; and

**17. RESULTANT MENTAL ANGUISH COVERAGE**

Paragraph C. of - SECTION V – DEFINITIONS is deleted and replaced by the following:

“Bodily injury” means bodily injury, sickness or disease sustained by any person, including mental anguish or death as a result of the “bodily injury” sustained by that person.

**POLICY NUMBER:** 54303063

**COMMERCIAL AUTO**  
16-02-0316 Ed. 10 14

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

## **PRIMARY AND NON-CONTRIBUTORY LIABILITY INSURANCE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

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

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

**Named Insured: McGuire and Hester**

### **SCHEDULE**

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

Where required by written contract.

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

The following is added to Item 5. – “**Other Insurance**” of Item B. – “**General Conditions**” under Section IV – “**Business Auto Conditions**”:

e. Regardless of the provisions of Paragraph 5.a. through d. above, for any liability arising out of the ownership, maintenance, use, rental, lease, loan, hire or borrowing by an “insured” of a covered “auto” for which an “insured” is contractually obligated to provide primary insurance coverage to a client, this Coverage Form will be primary and non-contributory with respect to the Persons or Organizations in the schedule, regardless of the availability or existence of other collectible insurance under any other Coverage Form or policy that applies on a primary basis.

POLICY NUMBER:54303064

COMMERCIAL GENERAL LIABILITY  
10-02-2772 (Ed. 11-19)

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

**TRANSFER OR WAIVER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US – SCHEDULED PERSON(S) OR  
ORGANIZATION(S)**

This endorsement modifies insurance provided under the following:

COMMERCIALGENERAL LIABILITY COVERAGE FORM

**SCHEDULE**

**Name Of Person(s) or Organization(s):**

WHERE REQUIRED BY WRITTEN CONTRACT.

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

The policy is amended at **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Condition 8. Transfer Or Waiver Of Rights Of Recovery Against Other To Us** by deleting the first paragraph and replacing it with the following:

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.



**Workers' Compensation and Employers' Liability Policy**

Named Insured  McGuire and Hester	Endorsement Number
	Policy Number Symbol: WCF Number: 54303065
Policy Period 7/01/2024 <b>TO</b> 7/01/2025	Effective Date of Endorsement 07/01/2024
Issued By (Name of Insurance Company) FEDERAL INSURANCE	
Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.	

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

This endorsement applies only to the insurance provided by the policy because California is shown in Item 3.A. of the Information Page.

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, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule, where you are required by a written contract to obtain this waiver from us.

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

Schedule

1. (    ) Specific Waiver  
Name of person or organization:
  
- ( X ) Blanket Waiver  
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.
  
2. Operations:  
    ALL
  
3. Premium:  
The premium charge for this endorsement shall be   1.0   percent of the California premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.
  
4. Minimum Premium: \$0

*Amy Gregory*

\_\_\_\_\_  
Authorized Representative

# City of Alameda



## Signature Approval Form

Date: January 2, 2025  
To: Jennifer Ott, City Manager  
From: Erin Smith, Public Works Director  
Re: Signature Request

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Please check one of the following boxes

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

**Emergency contract with McGuire and Hester to make repairs to the Bay Farm Island Dike.** The City Manager, or her designee – the Assistant City Manager - is signing this agreement in advance of Council approval per Alameda City Charter 3-15.2 and CUPCCAA (specifically, Government Code section 22050). This contract will be brought to City Council on 1/21/25 for ratification.

Emergency repair and replenishment of shoreline rock slope protection and associated trail repairs, P.W. No 12-27-24. Provider was selected on a sole source basis because of the emergency nature of the work following the storm event December 12 to 14, 2024 and with additional storms coming during the 2024-2025 wet season.

Is this going to Council? Y When? 1/21/25