

# ORIGINAL

## SERVICE PROVIDER AGREEMENT

THIS SERVICE PROVIDER AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between CITY OF ALAMEDA, a municipal corporation (the "City"), and PARK ENGINEERING, INC., a California corporation, whose address is 372 Village Square, Orinda, CA 94563 (the "Provider"), in reference to the following:

### RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. The City is in need of the following services: Construction Management, including pre-construction services, construction services and project closeout. City staff issued a Request for Proposal on May 3, 2018 and after a submittal period of 15 days received five timely submitted proposals. Staff reviewed the proposals, interviewed qualified firms and selected the service provider that best meets the City's needs.
- C. Provider is specially trained, experienced and competent to perform the special services that will be required by this Agreement.
- D. City and Provider desire to enter into an agreement for construction management services for the Cross Alameda Trail, Main Street to Constitution Way (CAT/RAMP+Gap) project, upon the terms and conditions herein.

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

#### 1. TERM:

The term of this Agreement shall commence on the 1<sup>st</sup> day of August 2018, and shall terminate on the 31<sup>st</sup> day of August 2019, unless terminated earlier as set forth herein.

#### 2. SERVICES TO BE PERFORMED:

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

#### 3. COMPENSATION TO PROVIDER:

a. By the 7<sup>th</sup> day of each month, Provider shall submit to the City an invoice for the total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedule as set forth in Exhibit A and incorporated herein by this reference.

Extra work must be approved in writing by the City Manager or his/her designee prior to performance and shall be paid on a Time and Material basis as set forth in Exhibit A.

b. The total compensation for the work under this Agreement is not to exceed \$249,389.90, with a five percent contingency in the amount of \$12,454.50, for a total not to exceed of \$261,544.40. Use of contingency shall be at the City's sole discretion, for items of work outside the original scope and requires prior written authorization by the City.

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

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

**5. STANDARD OF CARE:**

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

**6. INDEPENDENT PARTIES:**

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

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

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

**8. NON-DISCRIMINATION:**

Consistent with City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Provider or Provider's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status,

pregnancy, sex, age, or sexual orientation will not be tolerated. Provider agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

**9. HOLD HARMLESS:**

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

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

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

**10. INSURANCE:**

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with subsections 10A, B, C and D. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement:

"Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide ten (10) days' advance written notice to the City of Alameda. Attention: Risk Manager."

b. It is agreed that Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City, its City Council, boards, commissions, officials, employees, and volunteers as additional insured shall be submitted with the insurance certificates.

**A. COVERAGE:**

Provider shall maintain the following insurance coverage:

**(1) Workers' Compensation:**

Statutory coverage as required by the State of California.

**(2) Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$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 aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

**(3) Automotive:**

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

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

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

or

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

**(4) Professional Liability:**

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Provider in the following minimum limits:

\$1,000,000 each occurrence

**B. SUBROGATION WAIVER:**

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

**C. FAILURE TO SECURE:**

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

**D. ADDITIONAL INSURED:**

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

**E. SUFFICIENCY OF INSURANCE:**

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

**11. CONFLICT OF INTEREST:**

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

**12. PROHIBITION AGAINST TRANSFERS:**

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

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

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

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

b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by the Provider. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement.

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

**14. PERMITS AND LICENSES:**

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

**15. REPORTS:**

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

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

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

**16. RECORDS:**

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

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

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

**17. NOTICES:**

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

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

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

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

City of Alameda  
Public Works Department  
950 West Mall Square, Room 110  
Alameda, CA 94501-7575  
ATTENTION: Jack Dybas, Project Manager  
Ph: (510) 747-7948 / Fax: (510) 769-6030  
Email: [jdybas@alamedaca.gov](mailto:jdybas@alamedaca.gov)

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

Park Engineering, Inc.

372 Village Square  
Orinda, CA 94563

ATTENTION: Jaemin Park

Ph: (925) 818-3756 (cell) / 925-257-2508 (office) / Fax: (925) 401-7030

Email: [jpark@park-eng.com](mailto:jpark@park-eng.com)

**18. SAFETY:**

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

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

**19. TERMINATION:**

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

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

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

**20. ATTORNEY'S FEES:**

In the event of the bringing of any action or suit by a party hereto against the other party by reason of any breach of any covenants, conditions, obligation or provision arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses of the action or suit, including reasonable attorneys' fees, experts' fees, all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For the purposes of this Agreement, reasonable fees of attorneys of the Alameda City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Alameda City Attorney's services were rendered who practice in Alameda County in law firms with approximately the same number of attorneys as employed by the Alameda City Attorney's Office.

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

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

**22. CONFLICT OF LAW:**

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

**23. WAIVER:**

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

**24. INTEGRATED CONTRACT:**

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 City and Provider.

**25. 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.

**26. NONDISCRIMINATION – FEDERAL REQUIREMENTS:**

a. Provider certifies and agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, or condition or physical or mental handicap (as defined in 41 C.F.R. Section 60-741, et. seq.), in accordance with requirement of state or federal law. Provider shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap in accordance with requirements of state and federal law. Such shall include, but not be limited to, the following:

A. Employment upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation.

B. Selection for training, including interns and apprentices.

(i) Provider agrees to post in conspicuous places in each of Provider's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) Provider shall, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap, in accordance with requirements of state and federal law.

(iii) Provider shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of Provider's commitments under this paragraph.

(iv) Provider certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap, in accordance with requirement of state and federal law.

(v) In accordance with applicable state and federal law, Provider shall allow duly authorized county, state and federal representatives access to its employment records during regular business hours in order to verify compliance with the anti-discrimination provisions of this paragraph. Provider shall provide such other information and records as such representatives may require in order to verify compliance with the anti-discrimination provisions of this paragraph.

b. If the City finds that any of the provisions of this paragraph have been violated, the same shall constitute a material breach of Agreement upon which City may determine to cancel, terminate, or suspend this Agreement. City reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated. In addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Provider has violated state and federal anti-

discrimination laws shall constitute a finding by City that Provider has violated the anti-discrimination provisions of Agreement.

c. The parties agree that in the event Provider violates any of the anti-discrimination provisions of this paragraph, City shall be entitled, at its option, to the sum of \$500.00 pursuant to California Civil Code Section 1671 as liquidated damages in lieu of canceling, terminating, or suspending this Agreement.

d. Provider hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), all requirements imposed by the applicable regulations (45 C.F.R.), and all guidelines and interpretations issued pursuant thereto, to the end that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of Provider receiving Federal Financial Assistance. In addition, Provider shall comply with the Uniform Federal Accessibility Standards, and Provider, Engineer, or Architect responsible for any design, construction or alteration shall certify compliance with those Standards.

e. Provider's attention is directed to laws, including but not limited to:

A. CIVIL RIGHTS/EQUAL OPPORTUNITY

(i) Civil Rights Act of 1964. Under Title VII of the Civil Rights Act of 1964, no person shall, on the grounds of race, sex, religion, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(ii) Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(iii) Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act.

B. PROGRAM ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES

This Agreement is subject to laws and regulations concerning the rights of otherwise qualified individuals with handicaps for equal participation in, and benefit from federally assisted programs and activities, including but not limited to:

(i) Americans with Disabilities Act of 1990 (ADA) (28 C.F.R. 35). Title II, Subpart A of the Americans with Disabilities Act of 1990 applies to all publicly funded activities and programs. Provider shall also comply with the public accommodations requirements of Title III of the ADA, as applicable.

(ii) Nondiscrimination on the Basis of Handicap (24 CFR 8). These regulations, which implement Section 504 of the Rehabilitation Act of 1973, as amended, and as cited in Section 109 of the Housing and Community Development Act, apply to all federally assisted activities and programs and are implemented through the regulations at 24 C.F.R. 8.

(iii) Architectural Barrier Act of 1968. Any building or facility, excluding privately owned residential structures, designed, constructed, or altered with federal funds, shall comply with the Uniform Federal Accessibility Standards, 1984 (41 C.F.R. 3) and the Handicapped Accessibility Requirements of the State of California Title 24. The Consultant, Engineer or Architect responsible for such design, construction or alteration shall certify compliance with the above standards.

(iv) In resolving any conflict between the accessibility standards cited in paragraphs (i), (ii) and (iii) above, the more stringent standard shall apply.

**27. RESTRICTIONS ON LOBBYING – FEDERAL REQUIREMENT:**

This Agreement is subject to 24 C.F.R. 87 which prohibits the payment of Federal funds to any person for influencing or attempting to influence, any public officer or employee in connection with the award, making, entering into, extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or agreement.

*Signatures on next page*

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

PARK ENGINEERING  
A California Corporation



Steve Patterson  
Vice President



Jaemin Park  
President / Chief Financial Officer

CITY OF ALAMEDA  
A Municipal Corporation

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Elizabeth D. Warmerdam  
Acting City Manager

RECOMMENDED FOR APPROVAL



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Liam Garland  
Public Works Director

APPROVED AS TO FORM:  
City Attorney



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Janet Kern  
City Attorney



June 12, 2018

Jack Dybas  
City of Alameda  
Public Works Department  
950 West Mall Square, Room 110  
Alameda, CA 94501

**RE: Scope of Services and Cost Proposal to Provide Construction Management Services  
for Cross Alameda Trail Project, Main Street to Constitution Way**

Dear Mr. Dybas:

Park Engineering, Inc. is excited to provide Construction Management Services to the City of Alameda for Cross Alameda Trail Project, Main Street to Constitutional Way. Thank you for the opportunity to work with the City on this important project.

Included with this cover letter is a detailed Scope of Services for providing Construction Management & Inspection Services to match information provided on the estimated construction schedule and services to be provided. Service include Pre, During & Post-Construction services with a full-time construction inspector and part time construction manager / resident engineer. A more detailed cost proposal than previously submitted is also included to match discussions held specific to the level of effort needed to monitor the construction progress & schedule.

As Project Manager, I will manage the construction management team and work with the City to ensure that the City has have every resource necessary from Park Engineering for a successful project. As you know, Steve Patterson will be the construction manager for the City for the duration of the project. Steve will be supported by Chris Kinser, construction inspector, who has extensive experience on various types of construction projects including streetscape and pavement rehabilitation projects. All these team members were present at the recent interview with the City.

We look forward to the opportunity to work with the City of Alameda. Should you have any questions or need additional information, please do not hesitate to contact me. I can be reached at (925) 818-3756 and [jpark@park-eng.com](mailto:jpark@park-eng.com). We have read and will comply with City's sample consultant services agreement and insurance requirements. I will be the main contact throughout the proposal process and am authorized to negotiate and contractually bind the firm to provide services to the City.

Orinda Office  
372 Village Square  
Orinda, CA 94563  
Tel: 925-257-2508  
Fax: 925-401-7030

Sincerely,

A handwritten signature in blue ink, appearing to read "Jaemin Park".

Jaemin Park, PE  
President

Emeryville Office  
3960 Adeline Street, #3  
Emeryville, CA 94608  
Tel: 925-257-2508  
Fax: 925-401-7030

**WORK PLAN**

Park Engineering will support the City by providing construction inspection services as-needed. We will perform all the duties required in the RFP.

**Task A – Pre-construction Services**

- A.01: Review and comment on PS&E Project Documents to identify potential construction or bid-ability issues. Then work in a collaborative effort with the Designer for any needed modifications if time allows.
- A.02: Analyze contract documents specific to reducing and/or improving the construction schedule by attempting to minimize risks and delays during construction and, potentially, improving phasing of construction.
- A.03: Assist the City with bidding & award of construction, including the Pre-bid Conference and answers to bidder's questions.
- A.04: Prepare for and attend the Pre-construction conference
- A.05: Document existing site conditions prior to construction with video and pictures.
- A.06: Assist City Staff with / perform the set-up of project files.

**Task B – Construction Management Services**

- B.01: Provide coordination of project construction site for all involved parties – Contractor, utilities, special testing, Design Team members & City Staff.
- B.02: Initiate & maintain an open flow of communication to all involved project personnel, included the public – residents and/or business owners – when applicable.
- B.03: Provide feedback to the City Project Manager on overall project schedule – compare what is being performed to what was proposed through an original or weekly update schedule.
- B.04: Notify the City Project Manager of any critical schedule slippage, likelihood of upcoming project milestones and any significant events that may occur.
- B.05: Maintain close contact with City Project Manager for any (potential) field issues, to ensure that the City is kept up to date on all project matters and any related critical timelines for a resolution.

- B.06: Thoroughly review all contract documents and compare with existing field conditions to ensure contract compliance and look ahead for potential project issues.
- B.07: Review all necessary sampling and testing of materials for the project, performed by the Contractor, in accordance with the specifications and City's Quality Assurance Program to ensure that all materials meet the contract requirements.
- B.08: Make sure that the Contractor performs necessary quality control sampling & testing required.
- B.09: We will review quality assurance testing as required. Testing will be performed in the frequencies required by the City's Quality Assurance Program and any other required State and Federal guidelines like the Caltrans Local Assistance Procedures Manual.
- B.10: Analyze records of materials used in the project in accordance with ASTM and California Standard Test Methods.
- B.11: Review quality control test data and materials certifications submitted by the contractor and suppliers for compliance with the contract requirements.
- B.12: Schedule and coordinate any acceptance and quality assurance sampling and testing necessary with City's QA testing firm, Ninyo & Moore.
- B.13: Perform all field inspection activities to monitor compliance with the contract plans and specifications. Record all items of work, labor, equipment, materials incorporated, materials tested, and any other pertinent information in a daily diary for permanent record of events.
- B.14: Project photographs and video documentation of project progress and major work components will be done on a weekly basis and kept for permanent records to support disputes and verify quality for acceptance.
- B.15: Monitor contractor's construction activities for conformance with the approved Water Pollution Control Plan, SWPPP, any local permit restrictions and NPDES General Permit requirements.

- B.16: Manage any necessary utility coordination for conflicts or relocation work required.
- B.17: Document all field activity for compliance with contract documents, noting any necessary corrective work needed prior to payment; ensure corrective work is performed and documented.
- B.18: Provide daily reports with corresponding pictures of activities to match the format & frequency required by the City.
- B.19: Monitor all traffic control activities – both vehicles and pedestrians – for compliance with approved Traffic Control Plans and ensure the planned features are working as intended; recommending improvements if possible and furnishing notifications on non-compliance.
- B.20: Ensure all walkway/street closure notifications are posted on time and accurately.
- B.21: Maintain and enforce safety awareness for the protection of workers and public.
- B.22: Act as the single point of contact for all communications and coordination between the contractor, utility companies, regulatory agencies, local businesses and residents, designer, and the City.
- B.23: Prepare a monthly progress report to meet the City's needs in presenting the project's key issues and updates on cost and schedule status.
- B.24: Manage submittals from the contractor, tracking date submitted, duration for review and making sure that submittals are reviewed and returned within the allotted time to prevent any delays.
- B.25: Coordinate, manage and respond to Requests for Information (RFI's) submitted by the contractor, including tracking RFI's sent to the designers and/or other agencies for their timely response.
- B.26: Park Engineering will use a contract management system, which is based on the Caltrans Construction Manual and Caltrans Local Assistance Procedures Manual. Electronic forms and document control system will be implemented at project start up that can be tailored to fit the needs of the City and other oversight and funding agencies.
- B.27: Coordinate and conduct meetings with the contractor, designer and oversight agencies for RFI's, when appropriate to resolve and clarify complex issues.
- B.28: Coordinate, conduct and summarize weekly progress meetings with the contractor during construction. Meeting may include design team and other oversight agencies.
- B.29: Attend and participate meetings and/or conferences as requested, such as Weekly Progress Meetings or Public Outreach Events.
- B.30: Review contractor's planned schedule for conformance with the specifications and for reasonableness of the sequence and duration of the activities.
- B.31: Review work progress as compared to the planned schedule and notify contractor of schedule slippage.
- B.32: Prepare and distribute accurate and timely Weekly Statement of Working Day reports to track project time.
- B.33: Identify actual and potential problems associated with the construction project and recommend sound engineering solutions to the City Project Manager.
- B.34: Evaluate contractor's change order requests and claims and make recommendations to the City based on the merit and circumstances.
- B.35: Review cost estimates and documentation for any contract change order work. Compare costs with our independent cost estimates for any additional work.
- B.36: Negotiate and prepare any contract change orders with justification memorandums for the City's approval.
- B.37: Prepare quantity calculations, including any contract change orders, and progress pay estimates on a monthly basis.
- B.38: Monitor and report on project budget and construction status and provide any necessary info needed for funding reimbursements.
- B.39: Provide construction contract accounting, filing and administration in accordance with State and Federal requirements.

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- B.40: Support all project work with documentation to meet the contract requirements for acceptance.
- B.41: Park Engineering will analyze, negotiate and resolve any potential claims.
- B.42: Review contractor's monthly invoices to verify accuracy and "sign-off" on construction progress pay estimates for City payment approval.
- B.43: Review and assists in approval of construction progress pay estimates.
- B.44: Prepare quantity calculations, including any contract change orders calculations, and progress pay estimates on a monthly basis.
- B.45: Review contractor's invoices to verify accuracy and "sign-off" on construction progress pay estimates for City's payment approval.
- B.46: Answer questions from the public concerning the project work and schedule, by meeting them in person (if possible) or at least via e-mail or phone call.
- B.47: Ensure all street closure notifications are posted timely and accurately. And the closures are approved by the appropriate agency prior to implementation. Accordingly, all the signs are posted accurately per approved plans for closures.
- B.48: Coordinate and communicate with adjacent businesses and residents to minimize impacts and maintain a neighborly reputation for the project. Address public concerns on a daily, weekly, and monthly basis, as needed.
- B.49: Our resident engineer will be available to answer questions on an ongoing basis and for any Community Meetings. He will report the current status of the project's schedule to the City on a daily, weekly and monthly basis through meetings and progress report requests.
- B.50: Coordinate and communicate with adjacent businesses and residents to minimize impact and maintain a neighborly reputation for the project. Address public concerns on a daily, weekly, and monthly basis.
- B.51: If requested, assist with the review of contractor's weekly certified payroll for compliance with prevailing wage requirements and conduct employee interviews of contractor & sub-contractor field personnel.

**Task C – Post Construction**

- C.01: Inspect work as it is completed. Develop punch list for any needed corrections as the work progresses.
- C.02: Conduct, review, and follow up on inspection work to assure completion of the contract including any punch list items of work.
- C.03: Perform final inspection with City Staff, the Contractor and Designer to ensure completion of all work for Project Acceptance.
- C.04: Work with the contractor's staff to prepare and transition, official and accurate construction record drawings and any necessary Operation/Maintenance Manuals.
- C.05: Finalize all bid item and change order totals for the project's Final Progress Payment and Release of Retention.
- C.06: Assist with construction contract accounting, filing and administration in accordance with City, State and Federal requirements.
- C.07: Provide recommendation and supporting information to resolve any outstanding potential claims.
- C.08: We will support the City to fight and resolve any outstanding issues, looking out for the best interests of the City.
- C.09: Prepare all required documents for project close-out for the City to assure federal funding reimbursements.
- C.10: Assist with the preparation of all required documents for project close-out.
- C.11: Submit all records and documents to the City upon final completion of the project.

Exhibit A



**City of Alameda**  
**Cross Alameda Trail Project, Main Street to Constitution Way**  
**Cost Proposal for Construction Management Services**

OVERHEAD RATE = 109.41%      FEE = 7.00%

Name/Classification	Rates			Task A - Pre-Construction			Task B - Construction						Task C - Close-out	Total Regular Hours	Total Overtime Hours	Cost	
	Base Rate	Regular Loaded Rate	Overtime Rate	Aug-18	Sept	Oct	Nov	Dec	Jan-19	Feb	March	April	May				
Steve Patterson, P.E. CM/Resident Engineer	\$ 77.25	\$173.09	\$ 173.09	16	8	24	96	80	60	40	60	80	80	80	624	0	\$ 108,010.08
Chris Kinser Sr. Construction Inspector	\$ 58.64	\$131.39	\$ 197.09			8	160	120	120	120	160	160	160	8	1,016	40	\$ 141,379.82
<b>Total = \$ 249,389.90</b>																	

1. Rate includes vehicle, mobile phone, laptop and all equipment required to perform required duties.
2. Based on 7-month duration as stated in the available contract documents, with an allowance for Pre & Post-Construction Services.
3. Any special requests from the City, such as reproduction or specialty sub-consultants, will be billed directly without additional mark-up.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
06/08/2018

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

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

PRODUCER		CONTACT NAME: Olga Brick	
Brick Insurance Agency 2975 Treat Blvd., Suite #D-2		PHONE (A/C. No. Ext.): (925) 687-6262	FAX (A/C. No.):
Concord CA 94518		E-MAIL ADDRESS: cs.brickins@pacbell.net	
INSURED		INSURER(S) AFFORDING COVERAGE	
Park Engineering 372 Village Square		INSURER A: TRAVELERS IND CO OF CT	NAIC # 25682
Orinda CA 94563		INSURER B: The Hartford Insurance Company	541330
		INSURER C: Travelers Casualty and Surety Company	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES CERTIFICATE NUMBER: 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	COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			680-7H167922-17	10/01/2017	10/01/2018	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:						
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			BA-1E255580-17	10/01/2017	10/01/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						
A	DED RETENTION S			CUP-6E750684-17	10/01/2017	10/01/2018	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N	N / A				<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liability			106002118	10/01/2017	10/01/2018	\$2,000,000 ea. claim/\$4,000,000 aggregate

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

If required by written contractual agreement Certificate Holder (the City, its Council, boards, commission, officials, employees and volunteers) shall be named as additional insured as per provisions of attached endorsement form: CG D3 81 09 15 and CA T4 20 02 15.

**CITY OF ALAMEDA**  
Risk Management

*6-14-18*

CERTIFICATE HOLDER	Date <u>6-14-18</u>	CANCELLATION
Lucretia Akil, City Risk Manager		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
City of Alameda 950 West Mall Square  Alameda CA 94501		AUTHORIZED REPRESENTATIVE <i>Olga Brick</i>

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

## **AUTO COVERAGE PLUS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- A. BLANKET ADDITIONAL INSURED**
- B. EMPLOYEE HIRED AUTO**
- C. EMPLOYEES AS INSURED**
- D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS**
- E. TRAILERS – INCREASED LOAD CAPACITY**
- F. HIRED AUTO PHYSICAL DAMAGE**
- G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT**
- H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT**
- I. WAIVER OF DEDUCTIBLE – GLASS**
- J. PERSONAL PROPERTY**
- K. AIRBAGS**
- L. AUTO LOAN LEASE GAP**
- M. BLANKET WAIVER OF SUBROGATION**

#### **A. BLANKET ADDITIONAL INSURED**

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

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

#### **B. EMPLOYEE HIRED AUTO**

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

An "employee" of yours is an "insured" while operating a covered "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while

performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., Other Insurance, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

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

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

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

#### **C. EMPLOYEES AS INSURED**

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

## COMMERCIAL AUTO

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

### D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2) of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:
  - (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
2. The following replaces Paragraph A.2.a.(4) of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:
  - (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

### E. TRAILERS – INCREASED LOAD CAPACITY

The following replaces Paragraph C.1. of **SECTION I – COVERED AUTOS**:

1. "Trailers" with a load capacity of 3,000 pounds or less designed primarily for travel on public roads.

### F. HIRED AUTO PHYSICAL DAMAGE

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

#### Hired Auto Physical Damage Coverage

If hired "autos" are covered "autos" for Covered Autos Liability Coverage but not covered "autos" for Physical Damage Coverage, and this policy also provides Physical Damage Coverage for an owned "auto", then the Physical Damage Coverage is extended to "autos" that you hire, rent or borrow subject to the following:

- (1) The most we will pay for "loss" to any one "auto" that you hire, rent or borrow is the lesser of:
  - (a) \$50,000;
  - (b) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
  - (c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

- (2) An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
- (3) If a repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.
- (4) A deductible equal to the highest Physical Damage deductible applicable to any owned covered "auto".
- (5) This Coverage Extension does not apply to:
  - (a) Any "auto" that is hired, rented or borrowed with a driver; or
  - (b) Any "auto" that is hired, rented or borrowed from your "employee".

### G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

### H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT

Paragraph C.1.b. of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted.

### I. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph D., **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

### J. PERSONAL PROPERTY

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

#### Personal Property Coverage

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and
- (2) In or on your covered "auto".

This coverage only applies in the event of a total theft of your covered "auto".

No deductibles apply to Personal Property coverage.

**K. AIRBAGS**

The following is added to Paragraph B.3., Exclusions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

**L. AUTO LOAN LEASE GAP**

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

**Auto Loan Lease Gap Coverage for Private Passenger Type Vehicles**

In the event of a total "loss" to a covered "auto" of the private passenger type shown in the Schedule or Declarations for which Physical Damage Coverage is provided, we will pay any unpaid amount due on the lease or loan for such covered "auto" less the following:

- (1) The amount paid under the Physical Damage Coverage Section of the policy for that "auto"; and

**(2) Any:**

- (a) Overdue lease or loan 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.

**M. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph A.5., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV – BUSINESS AUTO CONDITIONS:

**5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies, or in connection with premises owned by or rented to you.

The person or organization does not qualify as an additional insured:

- With respect to the independent acts or omissions of such person or organization; or
- For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- This insurance does not apply to the rendering of or failure to render any "professional services".
- In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section III – Limits Of Insurance.

h. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with the other insurance, provided that:

- The "bodily injury" or "property damage" for which coverage is sought occurs; and
- The "personal injury" for which coverage is sought arises out of an offense committed;

after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.

## COMMERCIAL GENERAL LIABILITY

3. The following is added to Paragraph 8., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the DEFINITIONS Section:

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

- a. After you have signed that written contract;
- b. While that part of the written contract is in effect; and
- c. Before the end of the policy period.