

LANDSCAPE MAINTENANCE MANAGEMENT CONTRACT
FOR THE CITY OF ALAMEDA ISLAND CITY LANDSCAPING AND
LIGHTING DISTRICT 84-2, ZONE 5 – HARBOR BAY BUSINESS PARK

This Landscape Maintenance Management Contract for the City of Alameda Island City Landscaping and Lighting District 84-2, Zone 5 – Harbor Bay Business Park (hereinafter “Landscape Maintenance Management Contract”) is entered into effective as of _____, 2016, by and between the City of Alameda, a California Municipal Corporation (hereinafter “City”), and the Harbor Bay Business Park Association, a California non-profit mutual benefit corporation (hereinafter “HBBPA”).

R E C I T A L S

This Landscape Maintenance Management Contract is entered into by the parties based upon the following facts, circumstances and understandings:

A. HBBPA has been performing landscape maintenance and management services for Zone 5 of the District, the Harbor Bay Business Park, under prior contracts with the City since November, 1985. Prior to 2004, HBBPA utilized its own in-house personnel for landscaping maintenance work and for management and supervision of the work. From 2004 to the present, HBBPA has utilized outside subcontractors for the maintenance work and has retained GS Management Company, a professional management firm, as its agent to manage, supervise and administer the maintenance work performed by the subcontractors. The term of the current Landscape Maintenance Management Contract, as extended by a First Amendment entered into between City and HBBPA on June 22, 2011, will expire on June 30, 2016.

B. City’s currently adopted Purchasing Policy provides in Personal/Professional Service section V.c.1 thereof that for Assessment District contractors: “All other factors being equal, the desires of the major property owners guaranteeing the contractor’s fee should be given strong consideration in the employment of the contractor.” The major property owners in the Harbor Bay Business Park, who comprise the major sources of District’s funding which pays the contractor’s fee, desire that the Harbor Bay Business Park Association be employed as the contractor for this Landscape Maintenance Management Contract. The major property owners in the Harbor Bay Business Park have already made substantial investments in the design and installation of attractive landscaping, entry features, and water features along Harbor Bay Parkway and the major spine roads of the Harbor Bay Business Park and along the lagoon and ferry terminal with the expectation that said improvements would be maintained at a high level of attractiveness appropriate for as first-class business park, and said major property owners are confident that HBBPA’s proven record in maintaining and managing said improvements at said high level of attractiveness would protect and enhance their prior and ongoing investments in said improvements during the term of this Landscape Maintenance Management Contract.

C. In its Development Agreement with the Harbor Bay Entities dated April 4, 1989, City agreed in Sections 2.1.2 and 2.1.3 thereof that the landscaping of the Shoreline Park along the Harbor Bay Business Park would be maintained at a high and enhanced level of maintenance

similar to that of the Harbor Bay Business Park, and the parties agreed that District would contribute fifty percent (50%) of the costs of such maintenance. The major property owners in the Harbor Bay Business Park desire that the Harbor Bay Business Park Association be employed as the contractor to oversee the maintenance of the landscaping within the Shoreline Park along the Business Park and in the Ferry Terminal to ensure continuity of attractiveness appropriate for a first-class business park.

D. Harbor Bay Isle Associates (HBIA) as the master developer of Harbor Bay Isle in 1984 entered into an Agreement with the San Francisco Bay Conservation and Development Commission (BCDC) known as the "Third Supplementary Agreement" for the development and ongoing maintenance of the Shoreline Park along the Bay edge of the Harbor Bay Business Park, an area which lies within the statutory jurisdiction of BCDC. The Third Supplementary Agreement was amended in 1990 when the plans for the improvements in the Shoreline Park along the Bay edge of the Harbor Bay Business Park were updated and finalized. Section 12 of the Third Supplementary Agreement as amended provides that the landscaping and other public access improvements in the Shoreline Park along the Bay edge of the Harbor Bay Business Park shall be maintained in good condition in perpetuity and according to the standards set forth in the 1989 Development Agreement, and that after dedication by HBIA to City of the parcels comprising the Shoreline Park, the maintenance responsibility of such portions of the Shoreline Park may be undertaken by the Harbor Bay Business Park Association.

E. HBBPA has entered into an Agreement with City for the Operation, Maintenance and Management of the Harbor Bay Ferry Terminal that commenced effective December 28, 1990 and was subsequently amended in 2004 and with a Second Amendment dated effective January 19, 2011 ("Second Amended Terminal Management Agreement") in anticipation of the transfer of the Harbor Bay Ferry Service to the San Francisco Bay Area Water Emergency Transportation Authority ("WETA"). The Second Amended Terminal Management Agreement provides that the costs of maintenance and repair of some areas and facilities at the Harbor Bay Ferry Terminal shall be funded from the LLMD 84-2 as well as from the Harbor Bay Transportation Improvements Fund (the "TIF").

F. HBBPA and the City desire to enter into a new Landscape Maintenance Management Contract for a term of five (5) years and to update the terms and conditions as set forth in the current Landscape Maintenance Management Contract in order to more accurately describe and address the maintenance and management activities and arrangements that will take place going forward.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties hereto as follows:

1. **Sub-Areas of Zone 5 for Performance of Work and Sources of Funds for Costs.** HBBPA shall arrange for the performance of landscape maintenance and related services as described below in the following sub-areas located in and around the Harbor Bay Business Park. The sub-areas to receive maintenance services are shown on the attached graphics and sections attached hereto and collectively referred to as Exhibit "A" and incorporated herein by reference.

The respective sources of funds for the costs of such maintenance services are specified for each sub-area.

A. **Harbor Bay Parkway – Doolittle Drive to Maitland (Off-site)**: Harbor Bay Parkway from Doolittle Drive to Maitland Drive, including the Harbor Bay Business Park identification feature and area at the southwest corner of Harbor Bay Parkway and Doolittle Drive, the landscape setback areas, the bikepath, the median, and the Business Park entry feature near the Maitland Drive, intersection, as shown on the graphic and Sections A-1 and A-2 in Exhibit “A” attached hereto.

B. **Harbor Bay Parkway – Maitland to Shoreline Park (On-site)**: Harbor Bay Parkway from Maitland Drive to the commencement of the Shoreline Park along the Port of Oakland lagoon as shown on the graphic and Section B-1 in Exhibit “A” attached hereto, inclusive of the medians and 50 foot setback areas along the Plazas and the water feature located adjacent to the Oakland Raiders Headquarters and landscape and hardscape improvements at the Harbor Bay Parkway and Ronald H. Cowan intersection. The cost of said work is paid totally from District funds.

C. **South Loop Road (On-site)**: Landscape setback area as shown on Section C-1 and Exhibit “A” attached hereto. The cost of said work is paid totally from District funds.

D. **North Loop Road (On-site)**: Landscape setback area as shown on Section D-1 and Exhibit “A” attached hereto. The cost of said work is paid totally from District funds.

E. **Catalina Avenue Edge (On-site)**: The south side of Catalina Avenue bordering the Harbor Bay Business Park as shown on Section E-1 and Exhibit “A” attached hereto. The cost of said work is paid totally from District funds.

F. **Lagoon Edges (On-site)**: The landscape setback area along the south side of the lagoon as shown on Section F-1 and Exhibit “A” attached hereto. The area to be maintained includes the median within Bay Edge Road. The cost of said work is paid totally from District funds.

G. **Harbor Bay Parkway running along Shoreline Park Phases 3A & 3B (On-site)**: Landscape setback and median areas of Harbor Bay Parkway and the Shoreline Park, as shown on Sections G-1, G-2, and H-1 and Exhibit “A” attached hereto. The cost of said work is paid totally from District funds.

H. **Shoreline Park Phases 3A & 3B (On-site)**: In the portions of the City’s Shoreline Park that extend along the Harbor Bay Business Park as shown in Section G-1, Section G-2, Section H-1, and Section I-I in Exhibit “A,” HBBPA shall arrange for landscape maintenance and repair work of the sidewalks and pedestrian walkways, jogging paths, bikepaths, bollards and chain railings, seating areas and planter facilities in the Promenade area, lawn areas and planted areas, including periodic inspections of the work areas to identify any potentially dangerous conditions that warrant repair or replacement of improvements. The cost of said work

is to be paid one-half by the District and one-half by City from funds other than the District. City will deposit funds for its one-half share of the costs to the District account annually.

I. **Public Ferry Terminal and Adjacent Portion of Shoreline Park:** The ferry terminal parking lot and related setback areas as shown in Section I-1 and Exhibit "A" attached hereto. The cost of maintenance services in the parking lot is paid totally from District funds. The cost of maintenance services in the portion of the Shoreline Park running through and along the ferry terminal, including public access facilities such as the Ferry Shelter and the public restroom facility, is to be paid one-half by the District and one-half by City from funds other than the District. City will deposit funds for its one-half share of the costs to the District account annually.

2. **Services to Be Performed.**

A. **Supervision and Administration.** HBBPA may retain a professional property management firm as its agent to manage, supervise and administer the work performed by subcontractors. Supervision services will include quality control of the work performed by outside subcontractors in order to meet the standards of attractive appearance, good condition, safety, and conservation of resources applicable to the work performed hereunder. Administration services will include administering all agreements with subcontractors and suppliers, documenting all items of overscope work as described in Section 2.B.2. herein, keeping financial books and records related to costs and payments for work performed and materials used hereunder, and providing insurance documentation and reports required by City.

B. **Landscape Maintenance Services.**

1. **Scope of Work.** HBBPA shall be responsible for arranging for all labor, materials, and use of equipment necessary for performing the landscape maintenance for the Sub-Areas of Zone 5 of the District as detailed in Exhibit "B" attached hereto and incorporated herein by reference. Said Exhibit "B" shall define the scope of work for this Landscape Maintenance Management Contract.

2. **Overscope Items.** Overscope items consist of those tasks listed on Exhibit "B" as required items of work to be arranged for by HBBPA hereunder that are above and beyond the routine landscape maintenance. The costs of the overscope items are not covered by the Monthly Contract Payment described in Exhibit C and instead are compensated for out of the contingency funds reserved for overscope work in the Annual Operating Budget. Some of the overscope items listed on Exhibit "B" do not involve dangerous conditions, and the maintenance or repair work for such items is not urgent and can be scheduled on a phased basis or delayed until sufficient funds are available for compensation, but overscope items that involve dangerous conditions that pose safety risks for the public shall be promptly implemented so that the dangerous conditions are remedied, removed and replaced. Compensation for overscope items is addressed in Paragraph 5.B. hereof.

3. **Changes to Scope of Work.** Changes to the scope of work to be performed under this Landscape Maintenance Management Contract shall be made only in writing, which

shall expressly described such changes, and must be approved by both HBBPA and the City. Changes to the scope of work which involve expanded areas of work or require additional personnel or special equipment shall be reflected in adjustments to the compensation due HBBPA according to the provisions of Paragraph 5 hereof.

C. **Authorization to Use Subcontractors.** HBBPA is hereby authorized to use subcontractors to perform maintenance services, provided: (a) that HBBPA rather than the City shall be responsible for their selection, supervision and payment, and HBBPA is authorized to use a professional property management firm to assist the HBBPA Board in selecting, supervising and paying such subcontractors; (b) that all subcontractors doing work within the City limits shall be required by HBBPA to obtain a business license allowing them to do business in the City of Alameda; (c) that HBBPA provide City with documentation of the required insurance coverages to be maintained by the subcontractors pursuant to Paragraph 12.B. herein; (d) that the subcontracts require such subcontractors to comply with all applicable terms and conditions of this Landscape Maintenance Management Contract; and (e) that HBBPA complies with the bid procedures described in Section 2.E. herein.

D. **Authorization to Use Specialist Consultants.** HBBPA is hereby authorized to use professional consultants, such as architects or arborists, when advice from a professional with specialized experience is desired and appropriate to guide the work to be performed by the subcontractors, provided: (a) that HBBPA rather than the City shall be responsible for their selection, supervision and payment, and HBBPA is authorized to use a professional property management firm to assist the HBBPA Board in selecting, supervising and paying such specialist consultants; (b) that their experience and credentials demonstrate their suitability for the assignment; and (c) that their fees and reimbursable expenses are reasonable and comparable to fees and expenses charged by such professionals providing similar or equivalent professional services in the area.

E. **Bid Procedures.** In recognition that public funds are used in paying for the costs of work furnished under this Landscape Maintenance Management Contract, HBBPA agrees that for subcontracts in an amount exceeding \$100,000 annually, HBBPA shall have its professional property management agent periodically, but not less than one (1) time every three (3) years, obtain bids from at least three (3) subcontractors that have had prior or equivalent experience with the tasks involved in the scope of work herein and then provide City with documentation that the selected subcontractor has presented the lowest qualified bid. For subcontracts in an amount less than \$100,000.00 annually, informal bids from qualified subcontractors may be utilized, with documentation furnished to City that the selected subcontractor has presented the lowest qualified bid or that the compensation rate is less than or comparable to that of other subcontractors providing similar or equivalent work in the area.

3. **Term.** Subject to and upon the terms and conditions set forth herein, the term of this Landscape Maintenance Management Contract shall commence on July 1, 2016 and shall continue in full force and effect for five (5) years until June 30, 2021, unless earlier terminated or extended by the parties hereto, except that the indemnification provisions hereof shall survive the end of the term of this Landscape Maintenance Management Contract.

4. **Termination as Remedy for Default.** A party may unilaterally terminate this Landscape Maintenance Management Contract prior to the term hereof only if there is a material default by the other party that remains uncured after its respective cure period. The cure period for a default in fulfilling an obligation to make a monetary payment is ten (10) days after delivery of written notice thereof to the other party, and the cure period for a non-monetary default is thirty (30) days after delivery of written notice thereof to the other party; provided, however, if any such monetary or non-monetary default cannot reasonably be cured within the designated cure period, the party shall be deemed to be not in default if the party commences to cure the default within the specified cure period and continues to pursue satisfaction of the obligation until completed. Notwithstanding the above, City reserves the right to issue a stop work notice to HBBPA if acts or omissions of subcontractors working hereunder amount to a threat to public health or safety or comprise a public nuisance.

5. **Compensation.** In consideration of the full and faithful performance of the covenants and agreements on the part of HBBPA and the satisfactory performance and completion of the work described in this Landscape Maintenance Management Contract, recognizing that HBBPA will be making monthly expenditures for materials, equipment and to subcontractors and occasionally to specialized consultants, City shall compensate HBBPA as follows:

A. **Annual Operating Budget.** In the Spring of each calendar year, HBBPA shall provide City staff with projected costs for the work and services to be performed hereunder under the next Fiscal Year so that City can develop an Annual Operating Budget for the services performed hereunder for each Fiscal Year beginning with the year commencing July 1, 2016. The Annual Operating Budget for compensation due under this Landscape Maintenance Management Contract shall be that specified in the Engineer's Report that is accepted and approved by the Alameda City Council for Zone 5 of LLMD 84-2. The funding provided in association with the Annual Operating Budget shall represent the total District funds available for maintenance services. No other City funds shall be made available to pay for the maintenance of landscaping within Zone 5.

B. **Contingency for Overscope Items.** With input from HBBPA, City shall include within the Annual Operating Budget a reasonable contingency amount for overscope items that involve dangerous conditions that pose safety risks for the public so that the dangerous conditions can be promptly remedied, removed and replaced. When estimating the reasonable contingency amount for each Fiscal Year, City shall take into account that in sub-areas of work for which the City contributes a share of the costs from funds other than the District, such as along Harbor Bay Parkway from Doolittle to Maitland (Sections A-1 and A-2 in Exhibit "A") and in the Shoreline Park (Sections G-1, G-2, H-1, and I-1 in Exhibit "A"), site improvements observed to be in a condition such that they pose potential safety concerns that warrant prompt repair can be addressed through temporary repairs such as asphalt fillets or concrete grinding, provided that the temporary repair work will result in safe access and use conditions for pedestrians and bicyclists. If the costs of work performed on overscope items during a Fiscal Year substantially deplete the funds budgeted for overscope items in the Annual Operating Budget, then non-urgent overscope projects shall be postponed or suspended until the next Fiscal Year so that funding remains available within the Fiscal Year for overscope items that address dangerous conditions that pose safety risks for the public. In March of each Fiscal Year during

the term of this Landscape Maintenance Management Contract, City and HBBPA shall review the remaining overscope budget and the list of permanent repairs or replacements that had been identified but postponed due to funding constraints and instead addressed through temporary repairs and then determine which permanent repairs and replacements can be made while staying within the approved budget. For overscope items costing less than Five Thousand Dollars (\$5,000.00), HBBPA may proceed with the work without prior authorization by the City provided that the number of such overscope projects does not exceed three (3) per Fiscal Year. For any such overscope projects costing less than Five Thousand Dollars (\$5,000.00) but which amount to a work item numbered in excess of the limit of three (3) for that fiscal year, the prior authorization of the City shall be required. For overscope items costing in excess of Five Thousand Dollars (\$5,000.00), HBBPA shall proceed with the work only upon prior authorization by the City, which authorization shall not be unreasonably withheld or delayed.

C. **Invoicing and Payment Schedule.** HBBPA shall invoice the City monthly and shall include all appropriate documentation of work performed. A schedule of the anticipated monthly payments is attached hereto as Exhibit C. Reimbursement for special services and costs advanced on behalf of City shall be due within thirty (30) days of presentation to City by HBBPA. Payments due HBBPA hereunder shall be made in the same manner that claims of a like character are paid by the City, and moneys to cover checks issued to make such payments shall be taken only from the funds of the City of Alameda Island Landscaping and Lighting District 84-2 which are held and managed by City. If utilization of the bidding procedures described in Paragraph 2.E. should result in variances from the monthly payment schedule anticipated at the commencement of each year hereunder, HBBPA may ask the City to adjust the monthly contract billing, but such adjustment is limited to the funds available to the District.

HBBPA will pay the monthly costs to subcontractors directly from funds received from the City. All payments to subcontractors must comply with the terms of this Landscape Maintenance Management Contract, and those costs should not exceed those set forth in Exhibit "C" unless HBBPA has received prior written authorization from City.

D. **Funding Limitations.** Payments to HBBPA under this contract are limited to funds collected by the District. Adjustments to the Zone 5 annual assessment billed to property owners within the Harbor Bay Business Park may be made annually by City, but any increases in the annual assessment in an amount greater than the current year's CPI will require a majority vote of the owners of the Harbor Bay Business Park.

6. **Designated Representatives.**

A. **Principal Representatives.** City and HBBPA shall each designate in writing to the other a principal representative with decision-making authority for coordination of services performed hereunder, with contact information.

B. **Supervisor of Sub-contractors.** HBBPA shall designate a person who can be reasonably available to supervise the sub-contractors performing services hereunder. As of the commencement of the term of this Landscape Maintenance Management Contract, HBBPA designates Marcy Marks of GS Management Company or, in case of her unavailability, her

assistant property manager, to act as the supervisor of the subcontractors performing services hereunder. HBBPA may change its designated supervisor by delivering written notice thereof to City.

C. Representatives for Timely Responses to Dangerous Conditions. If employees or contractors or sub-contractors of either City or HBBPA become aware of any potential dangerous conditions that pose safety risks to the public within the Sub-Areas of Zone 5 designated herein for the performance of maintenance or repair work, including, without limitation, pathways or asphalt paved areas with cracks or irregularities in their surfaces which pose risks to the public of tripping or falling, whether as a result of inspections, complaints from the public regarding such conditions, or claims of accidents resulting from such conditions, then notice of such dangerous conditions shall be promptly conveyed to the designated representatives of both the City and HBBPA so that corrective work can be promptly mobilized and implemented. For such notices to City, the designated representative is Liz Acord, at City of Alameda – City Hall West, 950 West Mall Square, Suite 110, Alameda, CA, 94501, telephone: (510) 747-7900, email: LAcord@alamedaca.gov, or her designee; and the designated representative of HBBPA is Property Manager Marcy Marks c/o GS Management Company, 5674 Sonoma Drive, Pleasanton, CA 94566, telephone: (925) 468-1611, email: mmarks@gsmanagement.com, or her assistant property manager in case of her unavailability. The parties may change their respective designated representative(s) or their contact information by delivery of written notice thereof to the designated representative(s) of the other party.

7. Guarantees and Warranties. HBBPA warrants that all work performed under this Landscape Maintenance Management Contract shall be performed in a professional and workmanlike manner commensurate with industry standards in the community and that all services shall be performed by experienced and qualified personnel who are not employed by the City. In arranging for the performance of the agreed-upon services hereunder, HBBPA in no way warrants or guarantees that landscaping on the properties and parcels in the Sub-Areas receiving maintenance services hereunder, including trees, grasses, and other plantings, will remain healthy and of robust appearance, or that hardscape surfaces will be smooth or free from cracks, or that said areas and any facilities therein will be free from vandalism or litter. HBBPA, however, agrees to use its best efforts to ensure that the properties and parcels in the Sub-Areas receiving maintenance services hereunder will be maintained in a professional and workmanlike manner.

8. Indemnification/Hold Harmless. HBBPA shall indemnify, defend and hold harmless City, its City Council, boards, commissions, officials, and employees (“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 any negligence or omission of HBBPA or its agents, subcontractors or consultants, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Landscaping Maintenance Management Contract. If claims are filed against Indemnities, which allege negligence on behalf of HBBPA or its agents, subcontractors or consultants, HBBPA shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of HBBPA or its agents, subcontractors or consultants. However, HBBPA

shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

9. **Independent Contractor.** HBBPA, including its agents, subcontractors, and consultants, in arranging for the performance of landscape maintenance services hereunder, is an independent contractor, and under no conditions are persons doing work hereunder to be considered as employees of City. The manner and means of conducting the work are under the control of HBBPA, except to the extent that they are limited by statute, rule or regulation and the express terms of this Landscape Maintenance Management Contract. No civil service status or other right of employment will be acquired by virtue of the services provided by HBBPA. 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 HBBPA, 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 fees due HBBPA. Payments of the above items, if required, are the responsibility of HBBPA, and HBBPA shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising therefrom.

10. **Assignment.** HBBPA shall not assign, subcontract, hypothecate, or transfer this Landscape Maintenance Management Contract or any interest therein directly or indirectly, by operation of law or otherwise, without the prior written consent of City, which consent shall not be unreasonably withheld. Any attempt to assign, subcontract, hypothecate, or transfer this Landscape Maintenance Management Contract or any interest therein without City's consent shall be null and void, and any assignee, subcontractor, hypothecate or transferee shall acquire no right or interest therein by reason of such attempted assignment, subcontract, hypothecation or transfer. Any expenses incurred by City in reviewing the documentation of a proposed assignment, subcontract, hypothecation, or transfer hereunder shall be reimbursed to City by the respective, assignee, subcontractor, hypothecate, or transferee.

11. **Insurance.**

A. **Coverage to be Maintained by HBBPA.** HBBPA shall procure and maintain at all times during the term of this Landscape Maintenance Management Contract and for a reasonable time thereafter with an insurance company that is acceptable to City and licensed to do business in the State of California a policy or policies of Comprehensive General Liability Insurance for bodily injury and property damage liability, covering all of the operations of HBBPA and HBBPA's directors, officers, agents and subcontractors performing landscape maintenance services for Zone 5 of the District, in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit.

B. **Coverage to be Maintained by Subcontractors.** During the pendency of this Landscape Maintenance Management Contract, HBBPA shall require as a condition of any subcontracting agreement with any person or entity for the performance of work hereunder that the respective subcontractor shall maintain in full force and effect during the life of the respective subcontracting agreement the following: (1) Comprehensive General Liability Insurance for bodily injury and property damage liability with a minimum coverage of Two

Million Dollars (\$2,000,000.00) combined single limit; (2) Workers' Compensation Insurance in conformance with the laws of the state of California and with the laws of the United States; (3) Employers' Liability Insurance with a minimum coverage of Two Million Dollars (\$2,000,000.00) combined single limit; and (4) Vehicle Liability Insurance with a minimum coverage of Two Million Dollars (\$2,000,000.00) combined single limit.

C. **Additional Insureds.** HBBPA and any subcontractors performing work hereunder shall obtain endorsements naming the City, its Council, Boards, and Commissions, officers, and employees as additional insureds under all insurance coverages required by this Landscape Maintenance Management Contract except Workers' Compensation. Any additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on such policy or any extension thereof. Any other insurance held by an additional insured, including self-insurance, shall not be required to contribute anything toward any loss or expense covered by the insurance provided by such policy.

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

E. **Certificates of Insurance.** On or before the commencement of the term of this Landscape Maintenance Management Contract, HBBPA shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements of this Paragraph 11. Such certificates, which do not limit HBBPA'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 by certified mail, "Attention: Risk Manager." It is agreed that HBBPA shall maintain in force at all times during the performance of this Landscape Maintenance Management Contract all appropriate coverages of insurance required herein with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming City as additional insured shall be submitted with the insurance certificates.

F. **Failure to Secure.** If HBBPA at any time during the term hereof should fail to secure or maintain the forgoing required insurance coverage, City shall be permitted to obtain such insurance in HBBPA's name or as an agent for HBBPA and shall be compensated by HBBPA 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.

12. **Permits, Licenses and Certificates.** HBBPA, at its sole expense with respect to City, shall obtain and maintain during the term of this Landscape Maintenance Management Contract all appropriate permits, licenses and certificates that may be required in connection with

the performance of services hereunder, including City's business license. HBBPA shall require all subcontractors performing work under this Landscape Maintenance Management Contract to comply with the terms of this provision, and HBBPA shall file with the City copies of current City's business license for all such subcontractors.

13. **Compliance with Applicable Laws and Regulations.** HBBPA shall comply with all laws, state or federal, and all ordinances, rules and regulations enacted or issued by City applicable to this Landscape Maintenance Management Contract.

14. **Notices.** Notices given pursuant to this Landscape Maintenance Management Contract shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first class, postage prepaid, and addressed as follows:

City: City Manager
City of Alameda City Hall
2263 Santa Clara Avenue, Rm 320
Alameda, CA 94501

With a copy to:

City Attorney
City of Alameda City Hall
2263 Santa Clara Avenue, Rm 280
Alameda, CA 94501

HBBPA: Harbor Bay Business Park Association
c/o Joseph Ernst at srmErnst Development Partners
2220 Livingston Street, Suite 208
Oakland, CA 94606

With a copy to:

Daniel F. Reidy
Law Offices of Daniel F. Reidy
3701 Sacramento Street, # 386
San Francisco, CA 94118

And a copy to:

Marcy Marks, Property Manager
GS Management Company
5674 Sonoma Drive
Pleasanton, CA 94566

15. **Enforceability.** If any term or provision of this Landscape Maintenance Management Contract, or the application thereof to any person or circumstance shall, to any extent, be in contravention of law or declared void as against public policy, the remainder of this Landscape Maintenance Management Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Landscape Maintenance Management Contract shall be valid and be enforced to the fullest extent permitted by law.

16. **Governing Law.** This Landscape Maintenance Management Contract shall be governed by, and construed in accordance with, the laws of the State of California.

17. **Entire Agreement; Amendment.** This Landscape Maintenance Management Contract supersedes any prior agreed or verbal or written understanding between HBBPA and City with respect to providing landscape maintenance services for Zone 5 of the District for the term covered by this Landscape Maintenance Management Contract and constitutes, with respect to the District, the entire understanding between the parties, excluding the prior arrangements and agreements regarding funding for these landscape maintenance services. The parties acknowledge that HBBPA and City have a separate agreement whereby HBBPA provides certain management services for the ferry terminal facility at Harbor Bay and nothing in this Landscape Maintenance Management Contract shall affect, or be affected by, the terms and conditions of that agreement. This Landscape Maintenance and Management Contract may not be changed or amended except by an instrument in writing signed by duly authorized representatives of the parties.

IN WITNESS WHEREOF, City and HBBPA have executed this Landscape Maintenance Management Contract consisting of thirteen (13) pages and Exhibits "A," "B," and "C" on the dates below.

City: CITY OF ALAMEDA,
A California Municipal Corporation


By: _____
Jill Keimach, City Manager

Date: _____

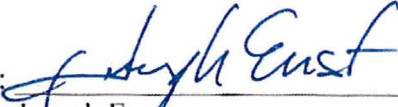
RECOMMENDED FOR APPROVAL:


Public Works Director

APPROVED AS TO FORM:

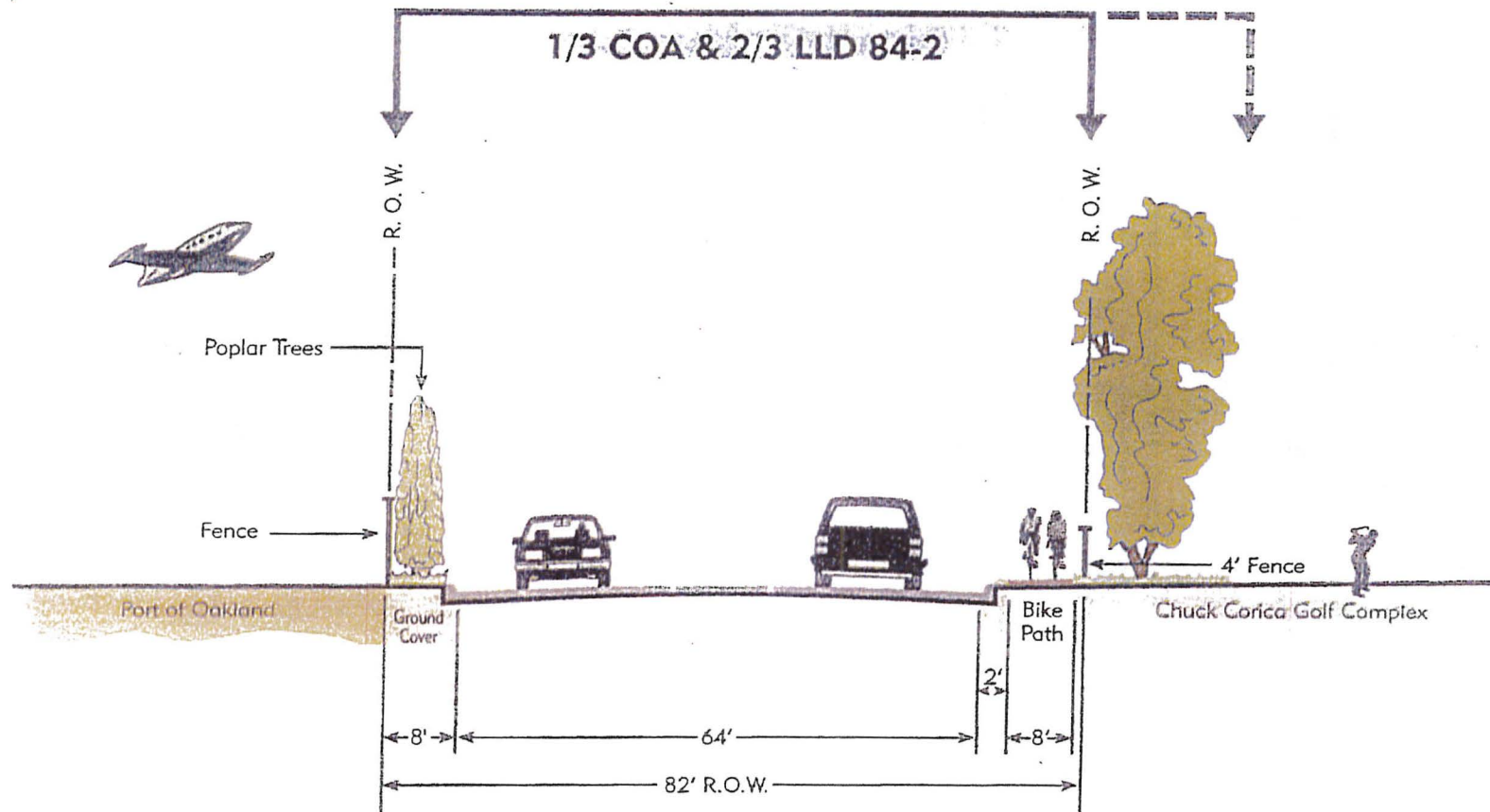

Andrico Q. Penick
Assistant City Attorney

HBBPA: HARBOR BAY BUSINESS PARK ASSOCIATION,
A California Nonprofit Mutual Benefit Corporation

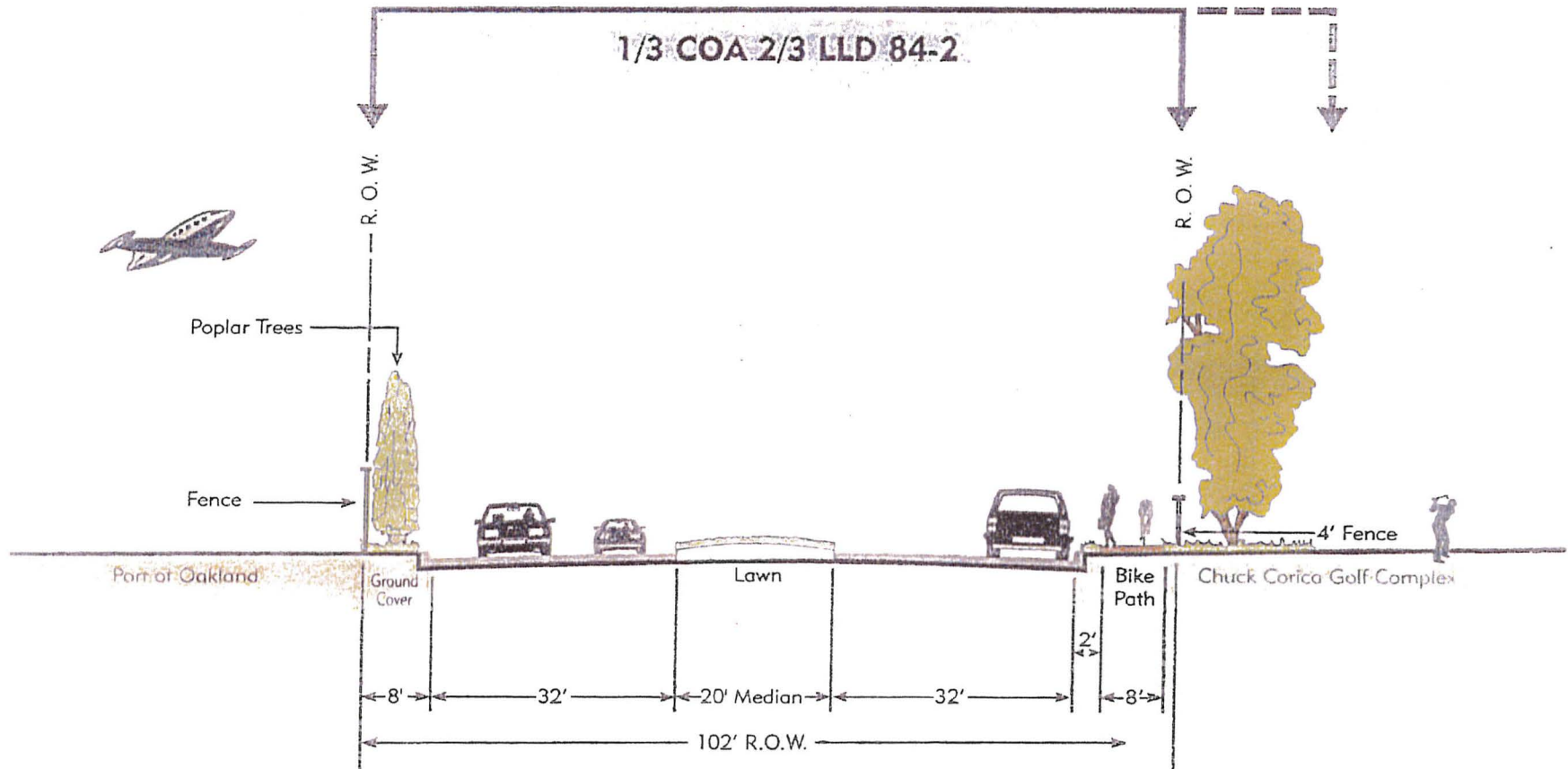
By: 
Joseph Ernst
Its: President

Date: 6.15.16

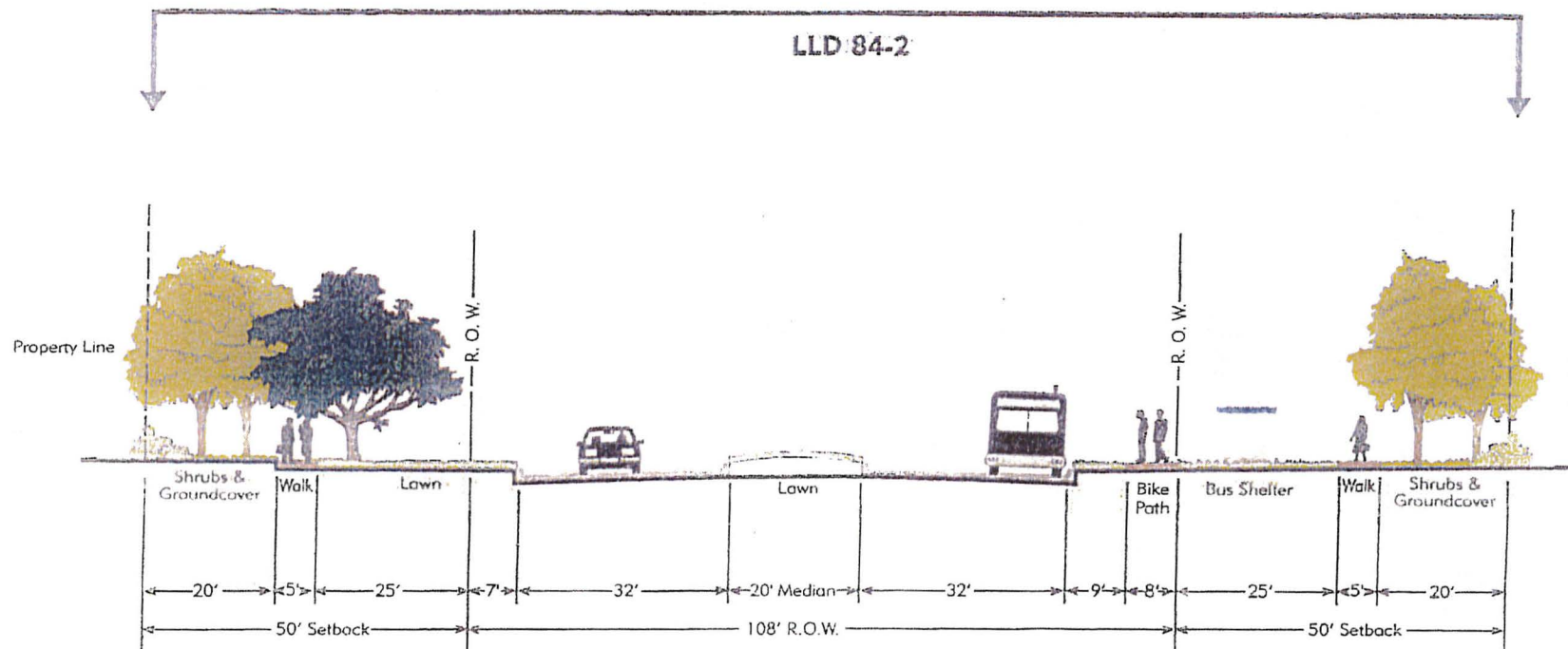




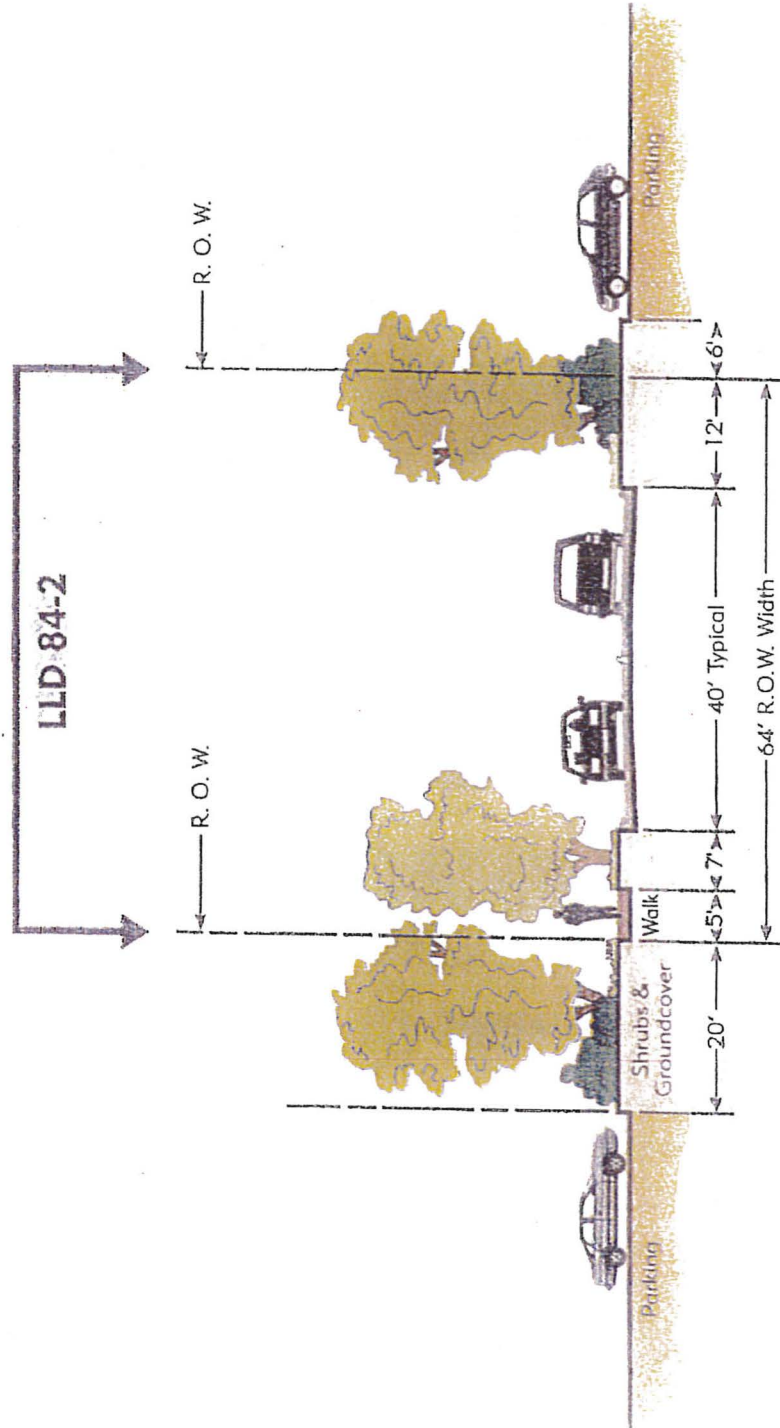
**TYPICAL SECTION AT HARBOR BAY PARKWAY
DOOLITTLE TO MAITLAND
Section A-1**



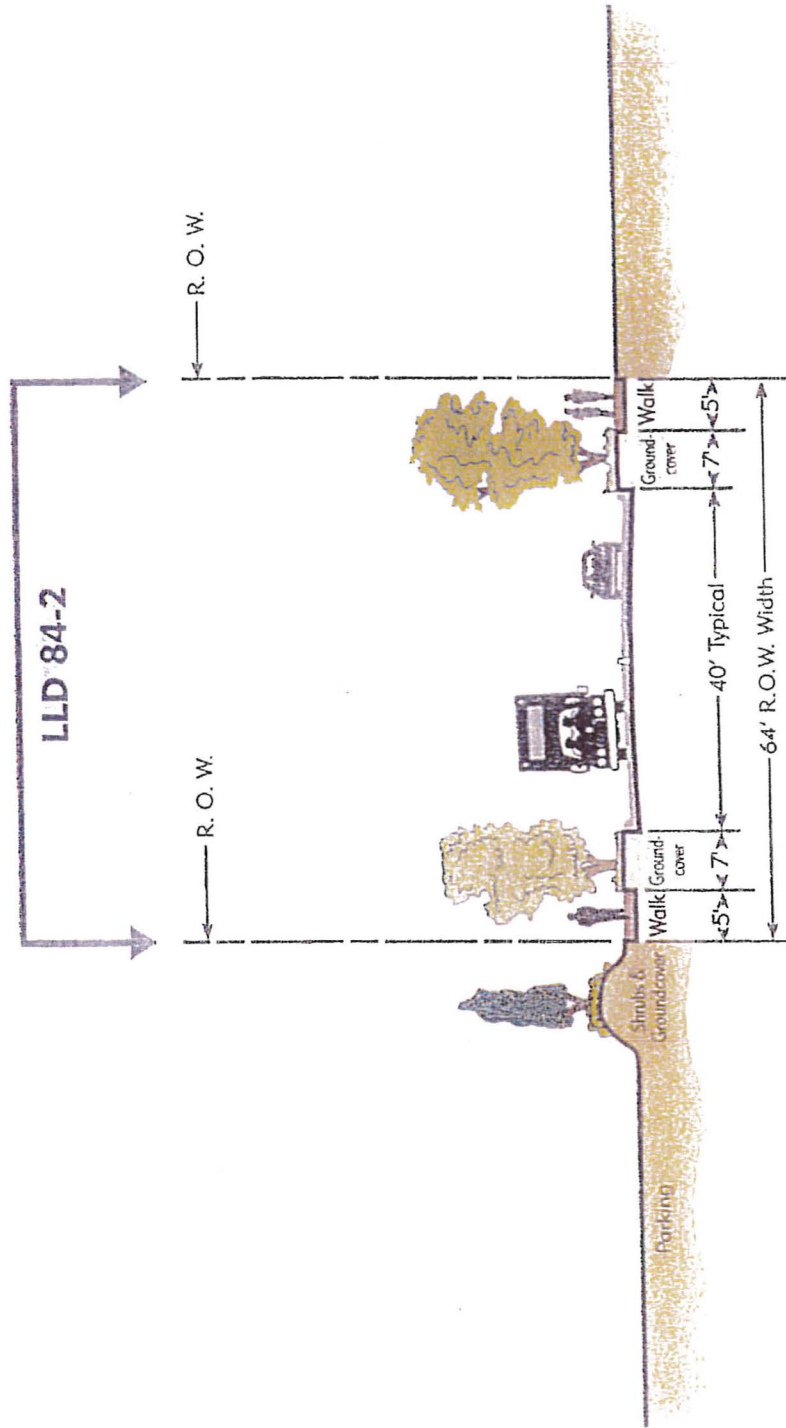
**TYPICAL SECTION AT HARBOR BAY PARKWAY
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Section A-2**



**TYPICAL SECTION AT HARBOR BAY PARKWAY
MAITLAND TO SHORELINE PARK
Section B-1**

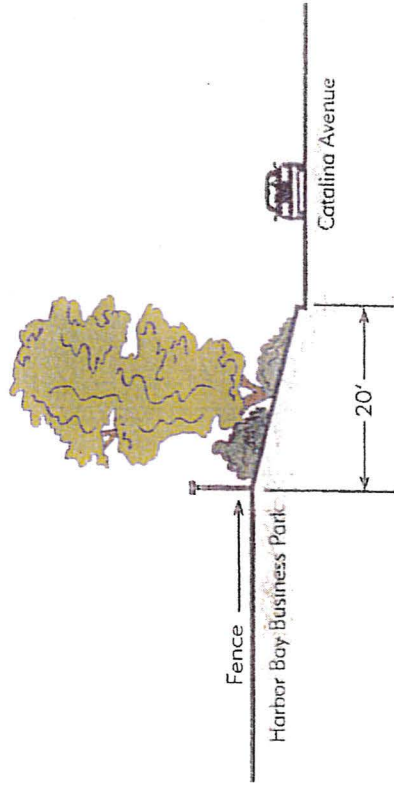


TYPICAL SECTION AT SOUTH LOOP ROAD
Section C-1



TYPICAL SECTION AT NORTH LOOP ROAD
Section D-1

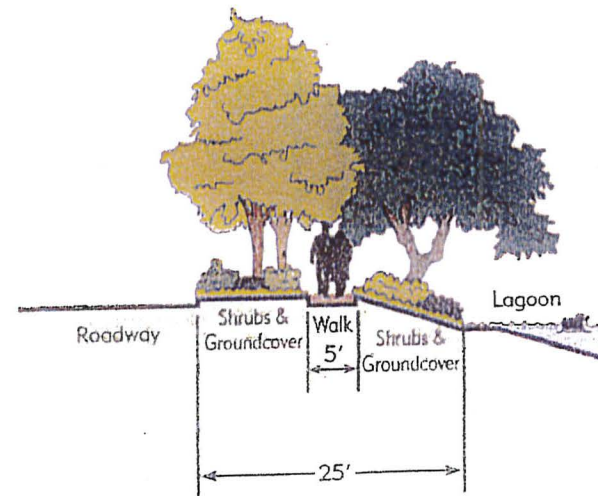
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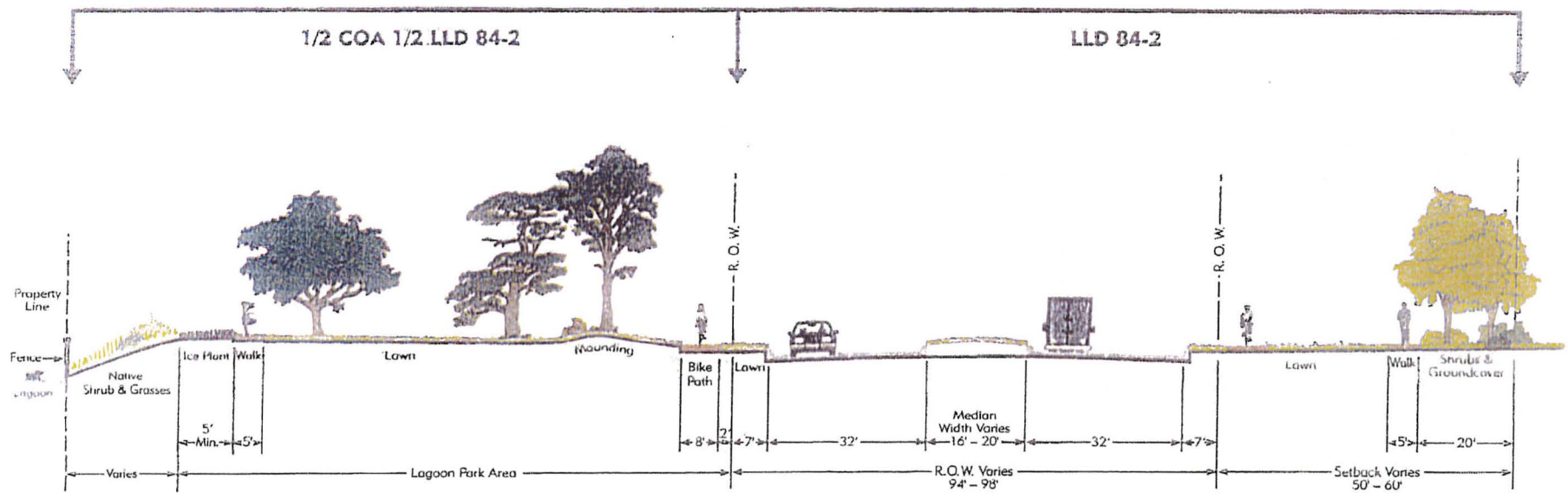
TYPICAL SECTION AT CATALINA AVENUE

Section E-1

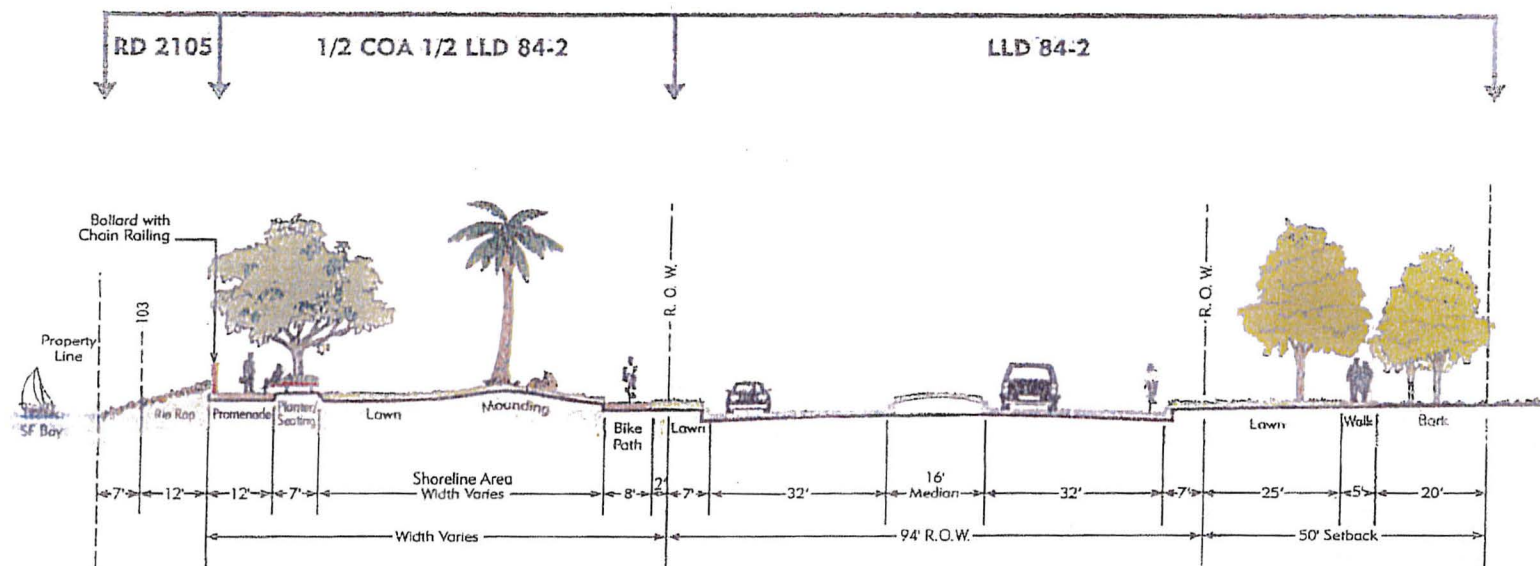
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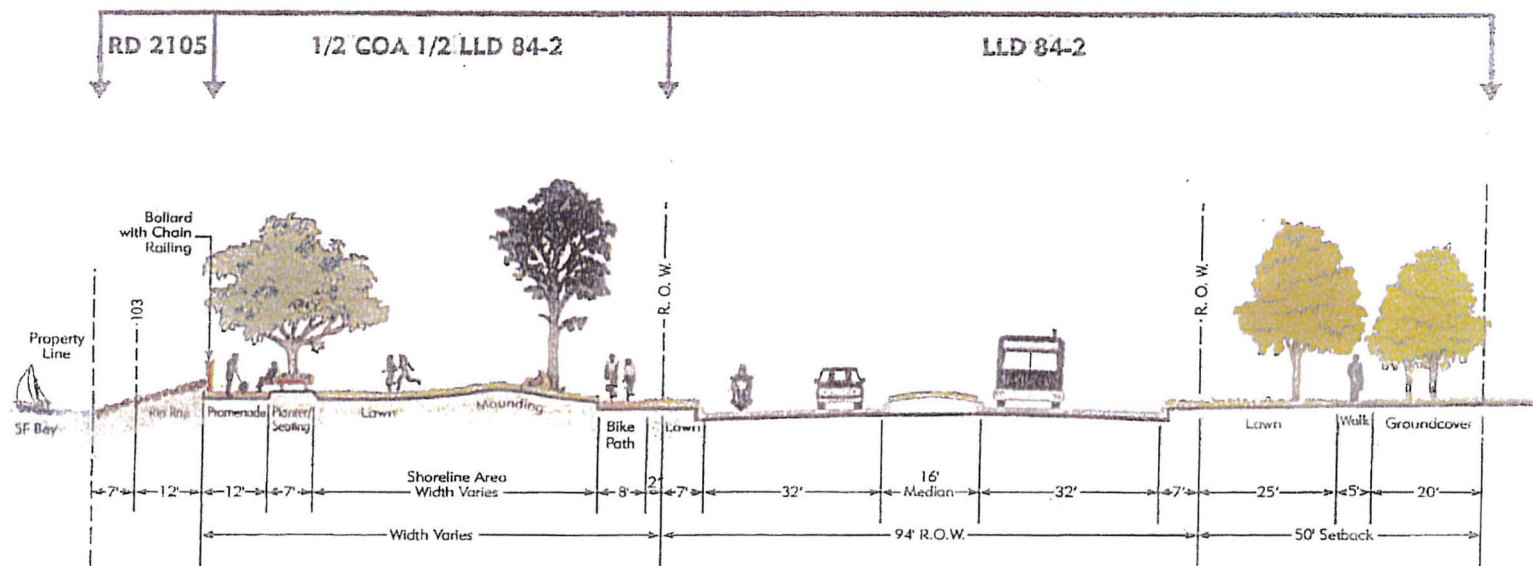
TYPICAL SECTION AT LAGOON EDGE
Section F-1



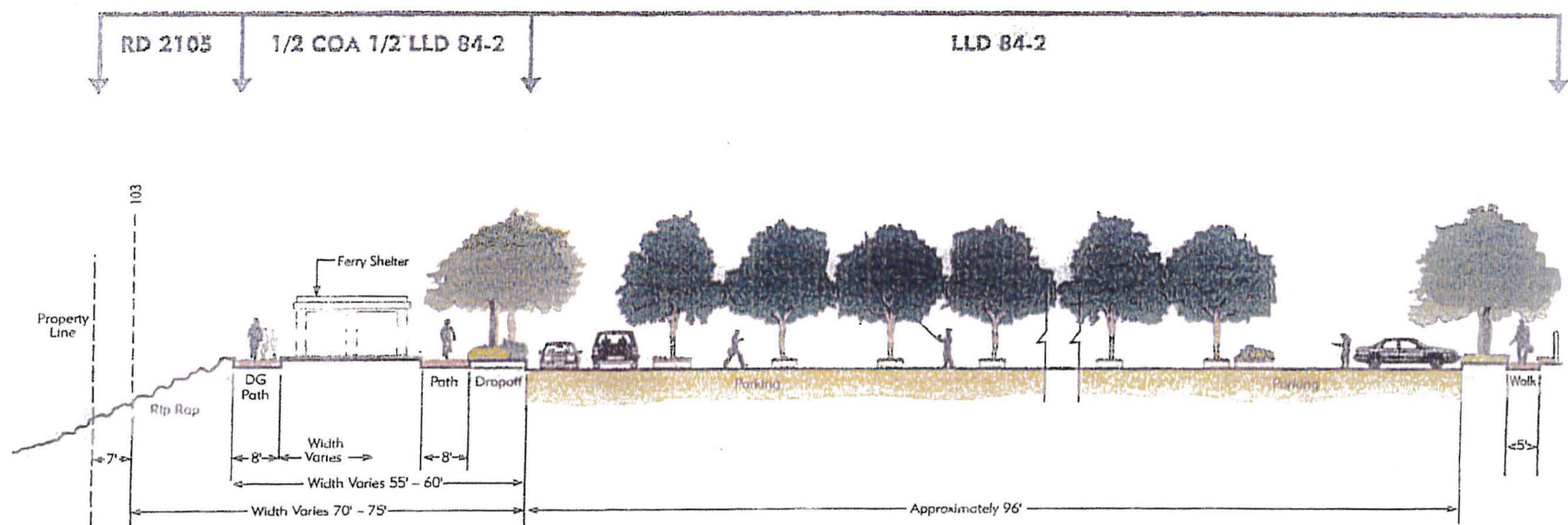
TYPICAL SECTION AT HARBOR BAY PARKWAY & SHORELINE PARK 3-A
Section G-1



TYPICAL SECTION AT HARBOR BAY PARKWAY & SHORELINE PARK 3-A
Section G-2



TYPICAL SECTION AT HARBOR BAY PARKWAY & SHORELINE PARK 3-B
Section H-1



TYPICAL SECTION AT SHORELINE PARK 3-B/FERRY TERMINAL
 Section I-I

Harbor Bay Business Park – LLD 84-2 Scope of Work

Location:

Harbor Bay Parkway – Doolittle Drive to Maitland Drive (Off-site)

Funding:

1/3 City of Alameda

2/3 Landscape Maintenance District 84-2

Scope of Work:

Included in Monthly Contract Payment:

- Maintenance of lawns: mowing, edging, fertilization, weeding, aerating and dethatching
- Blowing and clean-up of hardscape including pathways and curbs
- Maintenance of perennials and annuals, including seasonal replacement
- Maintenance of shrubs and groundcovers: weeding, pruning, fertilization and insect control
- Tree care including removal of excess growth and routine pruning
- Irrigation: monitoring, adjustment, repair and replacement of broken irrigation lines and sprinkler heads
- Daily removal of all trash, debris and graffiti
- Maintenance of area directly behind the fence line of the Golf Complex including pruning of trees, trimming ice plant and debris pick up
- Maintenance of all signage and flags, including repair and replacement
- Monitoring and recording reclaimed water use (EBMUD report)
- Maitland Drive: maintenance of landscaping including trees, lawn and irrigation along Maitland Drive between Harbor Bay Parkway and the entrance to RV Self Storage and the golf complex (approximately .10 mile)
- Supervision and Administration

Excluded from Monthly Contract Payment (Overscope):

- Major renovation of lawn
- Pruning and shaping of trees above 12 feet in height
- Tree removal and replacement
- Repairs to vandalized irrigation, landscape and hardscape
- Major irrigation repairs (broken main lines or under hardscape) and retrofitting
- Repairs, removals and replacements required due to acts of God, including earthquake, fire or flooding

Harbor Bay Business Park – LLD 84-2 Scope of Work

Location:

Harbor Bay Parkway – Maitland Drive to Shoreline Park (On-site)

Includes: Intersection of Harbor Bay Parkway and Ronald H. Cowan Parkway

Funding:

Landscape Lighting District 84-2

Scope of Work:

Included in Monthly Contract Payment:

- Maintenance of lawns: mowing, edging, fertilization, weeding, aerating and dethatching
- Blowing and clean-up of hardscape: pathways, curbs and gutters
- Maintenance of perennials, shrubs and groundcovers: weeding, pruning, fertilization, insect control and replacement if necessary
- Maintenance of barked areas: weeding, clean-up and replacement
- Tree care including maintaining stakes, removal of excess growth and routine pruning
- Irrigation: monitoring, adjustment, repair and replacement of broken irrigation lines and sprinkler heads
- Daily removal of all trash, debris and graffiti
- Maintenance of all signage and flags, including repair and replacement
- Maintenance of bus stops and shelters
- Repairs of street and pathway lights
- Maintaining and updating address pylons
- Monitoring backflow testing
- Maintenance of the water feature located adjacent to the Raiders headquarters
- Supervision and Administration

Excluded from Monthly Contract Payment (Overscope):

- Major renovation to lawn
- Pruning and shaping of trees above 12 feet in height
- Tree removal and replacement
- Repairs to vandalized irrigation, landscape and hardscape
- Major irrigation repairs (broken main lines or under hardscape) and retrofitting
- Repairs and replacement of sidewalks and pathways
- Repairs to bus shelters
- Repairs, removals and replacements required due to acts of God, including earthquake, fire or flooding

Harbor Bay Business Park – LLD 84-2 Scope of Work

Location:

South Loop Road (On-site)

Funding:

Landscape Lighting District 84-2

Scope of Work:

Included in Monthly Contract Payment:

- Maintenance of lawns: mowing, edging, fertilization, weeding, aerating and dethatching
- Blowing and clean-up of hardscape: sidewalks curbs and gutters
- Maintenance of perennials, shrubs and groundcovers: weeding, pruning, fertilization, insect control and replacement if necessary
- Tree care including removal of excess growth and routine pruning
- Irrigation: monitoring, adjustment, repair and replacement of broken irrigation lines and sprinkler heads
- Daily removal of all trash, debris and graffiti
- Maintenance of all signage including repair and replacement
- Maintenance of bus stops and shelters
- Repairs of street lights
- Maintaining and updating address pylons
- Monitoring backflow testing
- Supervision and Administration

Excluded from Monthly Contract Payment (Overscope):

- Major renovation to lawn
- Pruning and shaping of trees above 12 feet in height
- Tree removal and replacement
- Repairs to vandalized irrigation, landscape and hardscape
- Major irrigation repairs (broken main lines or under hardscape) and retrofitting
- Repairs and replacement of sidewalks
- Repairs to bus shelters
- Repairs, removals and replacements required due to acts of God, including earthquake, fire or flooding

Harbor Bay Business Park – LLD 84-2 Scope of Work

Location:

North Loop Road (On-site)

Funding:

Landscape Lighting District 84-2

Scope of Work:

Included in Monthly Contract Payment:

- Maintenance of lawns: mowing, edging, fertilization, weeding, aerating and dethatching
- Blowing and clean-up of hardscape: sidewalks curbs and gutters
- Maintenance of perennials, shrubs and groundcovers: weeding, pruning, fertilization, insect control and replacement if necessary
- Tree care including removal of excess growth and routine pruning
- Irrigation: monitoring, adjustment, repair and replacement of broken irrigation lines and sprinkler heads
- Daily removal of all trash, debris and graffiti
- Maintenance of all signage including repair and replacement
- Maintenance of bus stops and shelters
- Repairs of street lights
- Monitoring backflow testing
- Supervision and Administration

Excluded from Monthly Contract Payment (Overscope):

- Major renovation to lawn
- Pruning and shaping of trees above 12 feet in height
- Tree removal and replacement
- Repairs to vandalized irrigation, landscape and hardscape
- Major irrigation repairs (broken main lines or under hardscape) and retrofitting
- Repairs and replacement of sidewalks
- Repairs to bus shelters
- Repairs, removals and replacements required due to acts of God, including earthquake, fire or flooding

Harbor Bay Business Park – LLD 84-2 Scope of Work

Location:

Catalina Avenue bordering the Harbor Bay Business Park (On-site)

Funding:

Landscape Lighting District 84-2

Scope of Work:

Included in Monthly Contract Payment:

- Blowing and clean-up of hardscape: curbs and gutters
- Maintenance of perennials, shrubs and groundcovers: weeding, pruning, fertilization, insect control and replacement if necessary
- Maintenance of barked areas: weeding, clean-up and replacement
- Tree care including maintaining stakes, removal of excess growth and routine pruning
- Irrigation: monitoring, adjustment, repair and replacement of broken irrigation lines, emitters and sprinkler heads
- Daily removal of all trash and debris
- Maintenance of all signage including repair and replacement
- Monitoring backflow testing
- Supervision and Administration

Excluded from Monthly Contract Payment (Overscope):

- Pruning and shaping of trees above 12 feet in height
- Tree removal and replacement
- Repairs to vandalized irrigation and landscaping
- Major irrigation repairs (broken main lines or under hardscape) and retrofitting
- Repairs, removals and replacements required due to acts of God, including earthquake, fire or flooding

Harbor Bay Business Park – LLD 84-2 Scope of Work

Location:

Lagoon Edges – South Side adjacent to Business Park (On-site)

Includes:

Maintenance of median located within Bay Edge Road

Funding:

Landscape Lighting District 84-2

Scope of Work:

Included in Monthly Contract Payment:

- Maintenance of lawns: mowing, edging, fertilization, weeding, aerating and dethatching
- Blowing and clean-up of hardscape: sidewalks, pathways, curbs and gutters
- Maintenance of perennials, shrubs and groundcovers: weeding, pruning, fertilization, insect control and replacement if necessary
- Maintenance of barked areas: weeding, clean-up and replacement
- Tree care including maintaining stakes, removal of excess growth and routine pruning
- Irrigation: monitoring, adjustment, repair and replacement of broken irrigation lines and sprinkler heads
- Daily removal of all trash, debris
- Maintenance of all signage including repair and replacement
- Repairs of pathway lights
- Monitoring backflow testing
- Supervision and Administration

Excluded from Monthly Contract Payment (Overscope):

- Major renovation to lawn
- Pruning and shaping of trees above 12 feet in height
- Tree removal and replacement
- Repairs to vandalized irrigation, landscape and hardscape
- Major irrigation repairs (broken main lines or under hardscape) and retrofitting
- Repairs and replacement of sidewalks and pathways
- Repairs, removals and replacements required due to acts of God, including earthquake, fire or flooding

Harbor Bay Business Park -- LLD 84-2 Scope of Work

Location:

Harbor Bay Parkway -- Shoreline Park Phases 3A & 3B (On-site)

Funding:

½ City of Alameda

½ Landscape Lighting District 84-2

Scope of Work:

Included in Monthly Contract Payment:

- Maintenance of lawns: mowing, edging, fertilization, weeding, aerating and dethatching
- Blowing and clean-up of hardscape: pathways, curbs and gutters
- Maintenance of perennials, shrubs and groundcovers: weeding, pruning, fertilization, insect control and replacement if necessary
- Maintenance of barked areas: weeding, clean-up and replacement
- Tree care including maintaining stakes, removal of excess growth and routine pruning
- Irrigation: monitoring, adjustment, repair and replacement of broken irrigation lines and sprinkler heads
- Daily removal of all trash, debris and graffiti
- Maintenance of all signage and flags, including repair and replacement
- Maintenance of bus stops and shelters
- Repairs of street and pathway lights
- Maintaining and updating address pylons
- Monitoring backflow testing
- Supervision and Administration

Excluded from Monthly Contract Payment (Overscope):

- Major renovation of lawn
- Pruning and shaping of trees above 12 feet in height
- Tree removal and replacement
- Repairs to vandalized irrigation, landscape and hardscape
- Major irrigation repairs (broken main lines or under hardscape) and retrofitting
- Repairs and replacement of sidewalks and pathways
- Repairs to bus shelters
- Repairs, removals and replacements required due to acts of God, including earthquake, fire or flooding

EXHIBIT C
Harbor Bay Business Park – LLD 84-2 (Zone 5) – Compensation Schedule

ZONE 5

Offsite Budget:	Annual	Monthly
Landscaping Contract	16,020.00	1,335.00
Landscape Overscope	32,429.10	2,702.43
Supervision & Admin	6,472.56	539.38
Pest Control	1,200.00	100.00
Exterior Maintenance	10,611.06	884.26
	<u>66,732.72</u> Note 1	<u>5,561.06</u>

Onsite Budget:		
Landscaping Contract	151,980.00	12,665.00
Median Landscaping Contract	34,332.00	2,861.00
Landscape Overscope	187,164.33	15,597.03
Janitorial	16,945.00	1,412.08
Supervision & Admin	70,496.03	5,874.67
Terminal Sweeping	1,440.00	120.00
Fountain Maintenance	6,240.00	520.00
Pest Control	3,600.00	300.00
Exterior Maintenance	67,588.94	5,632.41
Lighting	3,800.00	316.67
Dock & Related Maintenance	13,200.00	1,100.00
Property Taxes	1,563.48	130.29
	<u>558,349.78</u> Note 2	<u>46,529.15</u>

Note 1	Offsite Budget Per City Engineer	93,781.65
	Less: Utilities - Electric	(3,115.32) Paid by City
	Less: Water	(23,933.61) Paid by City
	Budgeted to be Paid by HBBPA & Reimb by City	<u>66,732.72</u>

Note 2	Onsite Budget per City Engineer	767,384.42
	Less: Utilities - Electric	(21,804.03) Paid by City
	Less: Water	(187,230.61) Paid by City
	Budgeted to be Paid by HBBPA & Reimb by City	<u>558,349.78</u>

This Compensation Schedule is based on the Annual Operating Budget for Year 1 commencing July 2016. It is anticipated that that the line items in this Compensation Schedule will be subject to an approximately Three Percent (3%) annual increase that will be included in the Annual Operating Budget set forth in the Engineer's Report for Zone 5 for subsequent years.

EXHIBIT C
Harbor Bay Business Park – LLD 84-2 (Zone 5) – Compensation Schedule

ZONE 5

Offsite Budget:	Annual	Monthly
Landscaping Contract	16,020.00	1,335.00
Landscape Overscope	32,429.10	2,702.43
Supervision & Admin	6,472.56	539.38
Pest Control	1,200.00	100.00
Exterior Maintenance	10,611.06	884.26
	<u>66,732.72</u> Note 1	<u>5,561.06</u>

Onsite Budget:		
Landscaping Contract	151,980.00	12,665.00
Median Landscaping Contract	34,332.00	2,861.00
Landscape Overscope	187,164.33	15,597.03
Janitorial	16,945.00	1,412.08
Supervision & Admin	70,496.03	5,874.67
Terminal Sweeping	1,440.00	120.00
Fountain Maintenance	6,240.00	520.00
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Note 1	Offsite Budget Per City Engineer	93,781.65
	Less: Utilities - Electric	(3,115.32) Paid by City
	Less: Water	(23,933.61) Paid by City
	Budgeted to be Paid by HBBPA & Reimb by City	<u>66,732.72</u>

Note 2	Onsite Budget per City Engineer	767,384.42
	Less: Utilities - Electric	(21,804.03) Paid by City
	Less: Water	(187,230.61) Paid by City
	Budgeted to be Paid by HBBPA & Reimb by City	<u>558,349.78</u>

This Compensation Schedule is based on the Annual Operating Budget for Year 1 commencing July 2016. It is anticipated that that the line items in this Compensation Schedule will be subject to an approximately Three Percent (3%) annual increase that will be included in the Annual Operating Budget set forth in the Engineer's Report for Zone 5 for subsequent years.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/20/2016

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: Monica Castaneda
NFP P & C Services, Inc. - San Jose	PHONE (A/C, No, Ext): (408) 792-5400
Lic # 0F15715	FAX (A/C, No): (408) 792-3670
160 W. Santa Clara St. Ste. 575	E-MAIL ADDRESS: monica.castaneda@nfp.com
San Jose CA 95113	INSURER(S) AFFORDING COVERAGE
	INSURER A: Peerless Ins Co
	INSURER B: Golden Eagle Ins Corp
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

COVERAGES	CERTIFICATE NUMBER: 16-17 GL/EXC	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 SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		CBP8757620	1/19/2016	1/19/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		CU8757820	1/19/2016	1/19/2017	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: Per Written Contract/Agreement with the Named Insured.
City of Alameda, its Council, Boards, and Commissions, officers, and employees as additional insureds named as Additional Insured as respects to General Liability per form GECG602 0111 attached. GL Waiver of Subrogation applies per form GECG602 0111 attached. GL Primary Wording applies per form CG0001 1001 attached.
Form CIR Attached

CERTIFICATE HOLDER	CANCELLATION
City of Alameda Attention: Risk Manager 2263 Santa Clara Avenue Alameda, CA 94501	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE M Melendez/MMELEN <i>Marilyn P. Melendez</i>

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COMMENTS/REMARKS

CONTRACTUAL INSURANCE REQUIREMENTS

The attached Certificate of Insurance is provided as part of our service to our client, the Insured. If special endorsements have been provided, they also are indicated attached. You may find that these documents do not comply with all the terms and conditions of the underlying contract between the Certificate Holder and the Insured due to the insurance company's insuring conditions, limitations, exclusions and other terms. If you have any questions, please contact the undersigned.

NFP Property and Casualty Services, Inc.
160 West Santa Clara Street, Suite #575
CA License #0F15715

TELEPHONE: 408.792.5400
FAX: 408.792.3670

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL LIABILITY GOLD ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

2. Exclusions

Item 2.g. 2) is replaced with the following:

- 2.g. 2) A watercraft you do not own that is:
 - a) less than 50 feet long; and
 - b) Not being used to carry persons or property for a charge.

Item 2.g. 6) is added:

- 6) An aircraft in which you have no ownership interest and that you have chartered with crew.

The last paragraph of 2. Exclusions is replaced with the following:

Exclusions c. through n. do not apply to damage by fire, explosion, sprinkler leakage, or lightning to premises while rented to you, temporarily occupied by you with the permission of the owner, or managed by you under a written agreement with the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits of Insurance.

SECTION I – COVERAGES

COVERAGE C. MEDICAL PAYMENTS

If Medical Payments Coverage is provided under this policy, the following is changed:

3. Limits

The medical expense limit provided by this policy shall be the greater of:

- a. \$10,000; or
- b. The amount shown in the declarations.

Coverage C. Medical Payments is primary and not contributing with any other insurance, even if that other insurance is also primary.

The following is added:

COVERAGE D. PRODUCT RECALL NOTIFICATION EXPENSES

Insuring Agreement

We will pay "product recall notification expenses" incurred by you for the withdrawal of your products, provided that:

- a. Such withdrawal is required because of a determination by you during the policy period, that the use or consumption of your products could result in "bodily injury" or "property damage"; and
- b. The "product recall notification expenses" are incurred and reported to us during the policy period.

The most we will pay for "product recall notification expenses" during the policy period is \$100,000.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

Item b. and d. are replaced with:

- b. The cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit" including actual loss of earnings up to \$500 a day because of time off from work.

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SECTION II – WHO IS AN INSURED

Item 4. is replaced with:

4. Any subsidiaries, companies, corporations, firms, or organizations you acquire or form during the policy period over which you maintain a controlling interest of greater than 50% of the stock or assets, will qualify as a Named Insured if:
 - a) you have the responsibility of placing insurance for such entity; and
 - b) coverage for the entity is not otherwise more specifically provided; and
 - c) the entity is incorporated or organized under the laws of the United States of America.

However; coverage under this provision does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the entity, or "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the entity.

Coverage under this provision is afforded only until the end of the policy period, or the twelve (12) month anniversary of the policy inception date whichever is earlier.

SECTION III – LIMITS OF INSURANCE

Paragraph 2 is amended to include:

The General Aggregate Limit of Insurance applies separately to each "location" owned by you, rented to you, or occupied by you with the permission of the owner.

Paragraph 6. is replaced with the following:

6. Subject to 5. above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises while rented to you, temporarily occupied by you with permission of the owner, or managed by you under a written agreement with the owner, arising out of any one fire, explosion or sprinkler leakage incident.

The Fire Damage Limit provided by this policy shall be the greater of:

- a. \$500,000; or
- b. The amount shown in the Declarations.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

Item 2. a. is replaced with:

2. Duties In The Event of Occurrence, Offense, Claim or Suit

- a. You must promptly notify us. Your duty to promptly notify us is effective when any of your executive officers, partners, members, or legal representatives is aware of the "occurrence", offense, claim, or "suit". Knowledge of an "occurrence", offense, claim or "suit" by other employee(s) does not imply you also have such knowledge. To the extent possible, notice to us should include:
 - 1) How, when and where the "occurrence" or offense took place;
 - 2) The names and addresses of any injured persons and witnesses; and
 - 3) The nature and location of any injury or damage arising out of the "occurrence", offense, claim or "suit".

Item 4. b. 1) b) is replaced with:

b. Excess Insurance

- 1) b) That is Fire, Explosion or Sprinkler Leakage insurance for premises while rented to you, temporarily occupied by you with permission of the owner, or managed by you under a written agreement with the owner; or

Item 6. is amended to include:

6. Representations

- d. If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

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Item 8. is replaced with:

8. Transfer of Rights Of Recovery Against Others To Us

- ★ a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.
- b. If required by a written "insured contract", we waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under that written "insured contract" for that person or organization and included in the "products-completed operations hazard".

Item 10. and Item 11. are added:

10. Cancellation Condition

If we cancel this policy for any reason other than nonpayment of premium we will mail or deliver written notice of cancellation to the first Named Insured at least 60 days prior to the effective date of cancellation.

11. Liberalization

If we adopt a change in our forms or rules which would broaden your coverage without an extra charge, the broader coverage will apply to this policy. This extension is effective upon the approval of such broader coverage in your state.

SECTION V – DEFINITIONS

The following definitions are added or changed:

9. "Insured contract"

a. Is changed to:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, explosion or sprinkler leakage to premises while rented to you, or temporarily occupied by you with permission of the owner, or managed by you under a written agreement with the owner is not an "insured contract".

23 and 24 are added:

23. "Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
24. "Product recall notification expenses" means the reasonable additional expenses (including, but not limited to, cost of correspondence, newspaper and magazine advertising, radio or television announcements and transportation cost), necessarily incurred in arranging for the return of products, but excluding costs of the replacement products and the cash value of the damaged products.

The following Provisions are also added to this Coverage Part:

A. ADDITIONAL INSURED – BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph 2. under **SECTION II – WHO IS AN INSURED** is amended to include as an insured any person or organization when you and such person or organization have agreed in writing in a contract, agreement or permit that such person or organization be added as an additional insured on your policy to provide insurance such as is afforded under this Coverage Part. Such person or organization is not entitled to any notices that we are required to send to the Named Insured and is an additional insured only with respect to liability arising out of:

- a. Your ongoing operations performed for that person or organization; or
- b. Premises or facilities owned or used by you.

With respect to provision 1.a. above, a person's or organization's status as an insured under this endorsement ends when your operations for that person or organization are completed.

With respect to provision 1.b. above, a person's or organization's status as an insured under this endorsement ends when their contract or agreement with you for such premises or facilities ends.

CITY OF ALAMEDA
Risk Management
6-20-10
Date
City Risk Manager
Acretia Ak

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2. This endorsement provision A. does not apply:

- a. Unless the written contract or agreement has been executed, or permit has been issued, prior to the "bodily injury", "property damage" or "personal and advertising injury";
- b. To "bodily injury" or "property damage" occurring after:
 - (1) All work, including materials, parts or equipment furnished in connection with such work, in the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site 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. To the rendering of or failure to render any professional services including, but not limited to, any professional architectural, engineering or surveying services such as:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - (2) Supervisory, inspection, architectural or engineering activities;
- d. To "bodily injury", "property damage" or "personal and advertising injury" arising out of any act, error or omission that results from the additional insured's sole negligence or wrongdoing;
- e. To any person or organization included as an insured under provision B. of this endorsement;
- f. To any person or organization specifically designated an additional insured for ongoing operations by a separate ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS endorsement issued by us and made a part of this policy.

→ **B. ADDITIONAL INSURED – VENDORS**

Paragraph 2. under SECTION II – WHO IS AN INSURED is amended to include as an insured any person or organization (referred to below as "vendor") with whom you agreed, in a written contract or agreement to provide insurance such as is afforded under this policy, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

- 1. The insurance afforded the vendor does not apply to:
 - a. "Bodily Injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - b. Any express warranty unauthorized by you;
 - c. Any physical or chemical change in the product made intentionally by the vendor;
 - d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the course of business, in connection with the distribution or sale of the products;
 - f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
 - h. To "bodily injury" or "property damage" arising out of any act, error or omission that results from the additional insured's sole negligence or wrongdoing.
- 2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

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

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

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

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:


a. Primary Insurance

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

b. Excess Insurance

This insurance is excess over:

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

CITY OF ALAMEDA
Risk Management

Date 6-20-16
Lucretia Akil, City Risk Manager