CONSULTANT AGREEMENT

THIS AGREEMENT, entered into this 21 day of April, 2015, by and between CITY OF ALAMEDA, a municipal corporation (hereinafter referred to as "City"), and **BKF ENGINEERS**, a California corporation whose address is 1646 N. California Blvd., Suite 400, Walnut Creek, CA 94596, (hereinafter referred to as "Consultant"), 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. In February 2015, City issued a Request for Proposal for design services for the Cross Alameda Trail through Jean Sweeney Open Space Park, which is incorporated here by reference, and is bounded by Atlantic Avenue, Constitution Way, and Sherman Street, and also includes an on-street portion along Atlantic Avenue between Constitution Way and Webster Street. The City provided broad outreach to the City's bidders lists and Builder's Exchanges; interviewed qualified firms, and selected the firm that best meets the City's needs.

C. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement.

D. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

E. City and Consultant desire to enter into an agreement for the design of the Cross Alameda Trail through Jean Sweeney Open Space Park, 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 1st day of May 2015, and shall terminate on the 30th day of April 2017, unless terminated earlier as set forth herein. Consultant shall commence work after notification to proceed by the City's Contract Administrator, Recreation and Parks Director.

2. SERVICES TO BE PERFORMED:

Consultant agrees to perform 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, which is attached hereto and incorporated herein by this reference, as

requested. The Consultant acknowledges that the work plan included in Exhibit "A" is tentative and does not commit the City to request Consultant to perform all tasks included herein.

Consultant agrees that the documents specified in the scope of work in Exhibit "A" will conform to the satisfaction of City, and if applicable, the State and FHWA.

3. COMPENSATION TO CONTRACTOR:

Consultant shall be compensated for services performed pursuant to this Agreement in the amount and manner set forth in Exhibit "B" which is attached hereto and incorporated herein by this reference. Payment shall be made by checks drawn on the treasury of the City, to be taken from Fund 91309.

A. The method of payment for this contract will be based on actual cost plus a fixed fee. City will reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the work. Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant 's Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event, will Consultant be reimbursed for overhead costs at a rate that exceeds City's approved overhead rate set forth in the Cost Proposal. In the event, that City determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time or actual costs reimbursable by City shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by contract amendment.

B. In addition to the allowable incurred costs, City will pay Consultant a fixed fee of $162,863. The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.

C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

D. Payment will be made by the City in the following manner: On the first day of each month, Consultant shall submit a written estimate of the total amount of work done the previous month. Payment will be for time, a pro rate portion of Consultant's fixed fee, and direct costs and are not to exceed budget. Pricing and accounting of charges are to be according to the fee schedule in Exhibit "B" unless mutually agreed upon in writing. Extra work must be approved in writing by City prior to performance and shall be paid on a Time and Material basis using Exhibit "B" schedule. If Consultant fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, City shall have the right to delay payment or terminate this Contract in accordance with the provisions of Termination (Section 22).

F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.

G. Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by City's Contract Administrator of itemized invoices. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due City. The final invoice should be submitted within 60 calendar days after completion of Consultant's work. Invoices shall be mailed or emailed to City's Contract Administrator at the following address:

City of Alameda
Attn: Amy Wooldridge
2226 Santa Clara Avenue
Alameda, CA 94530
awooldridge@alamedaca.gov

H. The total amount payable by City shall not exceed $205,502.70, which includes the fixed fee and the reimbursable expenses (totaling $178,698), with a 15% contingency in the amount of $26,805 for a total not to exceed of $205,503.

I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by City's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

J. All subcontracts in excess of $25,000 shall contain the above provisions.

4. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS:

A. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

B. Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to City.

5. STATE PREVAILING WAGE RATES:

The State of California's General Prevailing Wage Rates are not applicable to this contract.

6. TIME IS OF THE ESSENCE:

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

7. STANDARD OF CARE:

Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals 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 nor have any contractual relationship with City.

8. INDEPENDENT PARTIES:

City and Consultant intend that the relationship between them created by this Agreement is that of employer-independent contractor. The manner and means of conducting the work are under the control of Consultant, 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 Consultant'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 Consultant, 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 Consultant. Payments of the above items, if required, are the responsibility of Consultant.

9. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

Consultant 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. Consultant shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Consultant.

10. NON-DISCRIMINATION:

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Consultant agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Consultant or Consultant'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. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

Consultant 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. Consultant 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.

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

Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of Consultant, 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.

Consultant 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 Consultant's commitments under this paragraph.

Consultant 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.

In accordance with applicable state and federal law, Consultant 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. Consultant 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.

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 Contractor has violated state and federal anti-discrimination laws shall constitute a finding by City that Consultant has violated the anti-discrimination provisions of Agreement.

The parties agree that in the event Consultant 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.

Consultant 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 Consultant receiving Federal Financial Assistance. In addition, Consultant shall comply with the Uniform Federal Accessibility Standards, and Contractor, Engineer, or Architect responsible for any design, construction or alteration shall certify compliance with those Standards.

Consultant's attention is directed to laws, including but not limited to:

A. CIVIL RIGHTS/EQUAL OPPORTUNITY

(1) 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.

(2) 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.

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:

(1) 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. Consultant shall also comply with the public accommodations requirements of Title III of the ADA, as applicable.

(2) 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.

(3) 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.

In resolving any conflict between the accessibility standards cited in paragraphs (1), (2) and (3) above, the more stringent standard shall apply.

11. HOLD HARMLESS:

Consultant 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 Consultant'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 Consultant, Consultant shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Consultant. However, Consultant shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

Indemnification for Claims for Professional Liability:

As to Claims for professional liability only, Consultant's obligation to defend Indemnitees (as set forth above) is limited to the extent to which its professional liability insurance policy will provide such defense costs.

12. INSURANCE:

On or before the commencement of the terms of this Agreement, Consultant 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 paragraphs 10A, B, C and D. Such certificates, which do not limit Consultant'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." is agreed that Consultant 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 as additional insured shall be submitted with the insurance certificates.

A. COVERAGE:

Consultant 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:	$2,000,000 each occurrence $3,000,000 aggregate - all other
Property Damage:	$1,000,000 each occurrence $1,000,000 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 in the following minimum limits:

Bodily injury:	$1,000,000 each occurrence
Property Damage:	$1,000,000 each occurrence
or	
Combined Single Limit:	$1,000,000 each occurrence

(4) **Professional Liability:**

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least $2,000,000.

B. **SUBROGATION WAIVER**:

Consultant 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, Consultant shall look solely to its insurance for recovery. Consultant hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or City with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of said Consultant may acquire against City by virtue of the payment of any loss under such insurance.

C. **FAILURE TO SECURE**:

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

E. **SUFFICIENCY OF INSURANCE**:

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

13. CONFLICT OF INTEREST:

Consultant warrants that it is not a conflict of interest for Consultant to perform the services required by this Agreement. Consultant may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant 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.

14. PROHIBITION AGAINST TRANSFERS:

Consultant 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 City. 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 by Consultant from City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to City by Consultant.

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

15. SUBCONTRACTOR APPROVAL:

A. Nothing contained in this contract or otherwise, shall create any contractual relation between City and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to City for the acts and omissions of its subconsultant(s) and of persons either directly or

indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from City's obligation to make payments to the Consultant.

B. Consultant shall perform the work contemplated with resources available within its own organization and only those subcontractors expressly identified in the approved Cost Proposal shall be subcontracted. Any other subcontractors require prior written authorization by City's Contract Administrator.

C. Consultant shall pay its subconsultant(s) within ten (10) calendar days from receipt of each payment made to Consultant by City.

D. Any subcontract in excess of $25,000 entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

E. Any substitution of subconsultant(s) must be approved in writing by City's Contract Administrator prior to the start of work by the subconsultant(s).

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

16. PERMITS AND LICENSES:

Consultant, 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, which may be required in connection with the performance of services hereunder.

17. REPORTS:

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement shall be the exclusive property of City. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to City the copyright to Reports created pursuant to this Agreement. Any Report, information and date acquired or required by this Agreement shall become the property of the City, and all publication rights are reserved by the City.

B. All Reports prepared by Consultant may be used by City in execution or implementation of:

(1) The original Project for which the Consultant was hired;
(2) Completion of the original Project by others;
(3) Subsequent additions to the original project; and/or
(4) Other City projects as appropriate.

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

D. All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on both sides of the paper except for one original, which shall be single-sided.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior approval by City.

18. RECORDS AND AUDITS:

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

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

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

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Consultant, subconsultants, and City shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, City, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and it's certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of $25,000 shall contain this provision.

19. AUDIT REVIEW PROCEDURES:

A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by City's Chief Financial Officer.

B. Not later than 30 days after issuance of the final audit report, Consultant may request a review by City's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by City will excuse Consultant from full and timely performance, in accordance with the terms of this contract.

D. Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by City contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by City at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

20. RESTRICTIONS ON LOBBYING:

This Agreement is subject to 24 CFR 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.

Consultant shall require that the language of this certification be included in all lower-tier subcontracts, which exceed $100,000 and that all such sub recipients shall certify and disclose accordingly.

21. CONFLICT OF INTEREST:

A. Consultant shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this contract, or any ensuing City construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.

B. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

C. Any subcontract in excess of $25,000 entered into as a result of this contract, shall contain all of the provisions of this Section.

D. Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

E. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

22. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION:

Consultant warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

23. DEBARMENT AND SUSPENSION CERTIFICATION:

A. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to City.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

24. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION:

A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. The goal for DBE participation for this contract is 11%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as City deems appropriate.

D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.

E. A DBE firm may be terminated only with prior written approval from City and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting City consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the, contract is commensurate with the work it is actually performing, and other relevant factors.

G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion

of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

I. Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

K. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to City Contract Administrator within 30 days.

25. NOTICES:

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

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

City of Alameda
Recreation and Parks Department
2226 Santa Clara Avenue
Alameda, CA 94501
Attn: Amy Wooldridge, Recreation and Parks Director
Ph: (510) 747-7570 / Fax: (510) 523-4071
Email: awooldridge@alamedaca.gov

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

BKF Engineers
1646 N. California Blvd., Suite 400
Walnut Creek, CA 94596
Attn: Dan Schaefer, PE
Ph: (925) 940-2200 / Fax: (925) 940-2299
Email: dschaefer@bkf.com

26. TERMINATION:

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

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

27. DISPUTES:

A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of City's Contract Administrator and the Public Works Director, who may consider written or verbal information submitted by Consultant.

B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, Consultant may request review by City Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

C. Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this contract.

28. COMPLIANCES:

Contractor shall comply with all laws, state or federal and all ordinances, rules and regulations enacted or issued by City.

29. INSPECTION OF WORK:

Consultant and any subconsultant shall permit City, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at

all reasonable times during the performance period of this contract including review and inspection on a daily basis.

30. CONFIDENTIALITY OF DATA:

A. All financial, statistical, personal, technical, or other data and information relative to City's operations, which are designated confidential by City and made available to Consultant in order to carry out this contract, shall be protected by Consultant from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by City relating to the contract, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.

C. Consultant shall not comment publicly to the press or any other media regarding the contract or City's actions on the same, except to City's staff, Consultant own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

D. Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by City, and receipt of City's written permission.

E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

F. All information related to the construction estimate is confidential, and shall not be disclosed by Consultant to any entity other than City.

31. RETENTION OF FUNDS:

A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.

B. No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

32. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

33. CONFLICT OF LAW:

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

Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

34. ADVERTISEMENT:

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

35. 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.

36. INTEGRATED CONTRACT:

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 Consultant.

37. INSERTED PROVISIONS:

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

38. **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.

Signatures on Next Page

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

BKF ENGINEERS
A California Corporation

Name: Daniel Schaefer
Title: Principal/Vice President

Name: Robert Stevens
Title: Principal/Vice President

CITY OF ALAMEDA
A Municipal Corporation

John Russo
City Manager

RECOMMENDED FOR APPROVAL

Amy Wooldridge
Recreation and Parks Director

APPROVED AS TO FORM:
City Attorney

Michael Roush
Interim Assistant City Attorney

EXHIBIT A

Alameda Cross Trail
Work Plan

Task 1. Project Initiation/Ongoing Tasks

The BKF team will work closely with the City of Alameda staff to initiate the project through the following subtasks.

1.1. Project Kick-Off Meeting

BKF's team and the City staff will meet to review the scope of work, schedule, budget, and associated details to discuss any changes. This meeting will allow the team to gather pertinent documents, determine informational needs, site history, programmatic intent, potential funding, and construction budget and discuss expectations for the process.

The project schedule will be reviewed and dates will be established for meetings with the vested stakeholder interviews, agencies, inter-city departments, as well as milestone deliverables. It is recommended that staff from Traffic Operations, Maintenance, Electrical Services/AMP and other pertinent departments be invited to the meeting. These departments should be represented as part of the project sub-committee to ensure their concerns and needs are addressed from the outset of the project

Deliverables: Comments to Meeting Summary, Adjusted Finalized Scope, Project Schedule

1.2. Work Plan and Timeline Updates

BKF will work to update the City and team throughout the project with updates to the schedule, progress reports, and status updates.

Task 1 Deliverables: ***Bi-weekly updated progress/status update report***

Task 2. Existing Conditions

In this phase, the BKF team will visit the site and review existing data for the project.

2.1. Field Review and Conditions Walk

a. Review Background Information

BKF's team will review existing data, record drawings and any previous studies provided by the City from the right of way corridor and the previous community engagement process for the trail visioning. In reviewing this data, the BKF team will consider the following issues relative to the project area:

- Adjacent properties
- Lifecycle costs
- Views and unique features
- Reuse of existing elements
- Community features and access
- Street crossings and access points

- Utility points of connection
- Safety
- Maintenance issues
- Drainage patterns and infrastructure
- Stakeholders
- Geotechnical and Soils Information

The City will provide pertinent data including City standards for details, construction documentation, available aerial photography, and right of way drawings. City staff will also provide information on the history of the site and the neighborhood including current items of concern.

b. Site Visit

BKF and PlaceWorks will visit the site with the project team and City staff. The goal of the site visit will be to ensure design issues and constraints are understood prior to preparing conceptual designs. Our team will be able to verify the constraints and discuss possible approaches with City staff while on site.

2.2 Base Mapping and Traffic Analysis

BKF's team will provide the base map and topography information. Additionally, Parikh will review available geology and geotechnical data to prepare a geotechnical recommendations letter based on prior studies. Kittelson will perform a traffic analysis to determine the existing conditions associated with potential modifications to Atlantic Avenue and the multi-modal influences to intersections.

2.3 Preliminary Hydraulic Analysis

BKF will analyze the stormwater hydrology and hydraulics (based on the City of Alameda criteria) to evaluate the need for stormwater systems and to determine our approach for treating urban runoff from the paved areas of the project. We anticipate that flow through planting will be utilized to capture and treat the stormwater according to the City and County C.3 requirements and provisions.

2.4 Existing Conditions Plan and Basis of Design Report

Based on the surveys, reports, and site visit, BKF will prepare an existing conditions plan identifying the site, boundary, utility, and traffic constraints associated with the trail alignment and location. Additionally, we will prepare a Basis of Design Report to document the conditions, requirements, code, hydrology, geotechnical, and other measures critical to the design.

Task 2 Deliverables: Existing Conditions Plan, Basis of Design Report including appendices for Geotechnical Recommendations, Hydrology

Task 3. Design Development and Stakeholder Input

3.1 Design Development

Our team will prepare design development plans/sections and visual simulations to illustrate alternative pathway layouts and details. The trail plan will illustrate pathway layout, circulation and site cross-connections identified, and four enlarged plans showing more detailed concepts and preliminary details for:

- Atlantic Avenue between Webster Street and Constitution Avenue,
- Webster Street connection to the RAMP trail connection,

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- Sherman Avenue gateway.

These plans will be submitted in draft form to the City for feedback prior to the first stakeholder meeting and will be schematic, providing opportunity for community feedback regarding the theme, layout and detailing of the placemaking elements. We have included two internal meetings with you to review these plans.

3.2 Stakeholder Input

We will utilize the Design Development plans along with illustrative color mockups and detail concept photographs from similar projects for the stakeholder presentation materials.

BKF and Placeworks will support your efforts in participating two stakeholder workshops that focus on the park and on the Webster to Constitution segment.

Task 3 Deliverables: Design Development Drawings, and Stakeholder Presentation Materials

Task 4. Project Finalization

In this task, the BKF team will prepare construction documents for public bid and construction.

4.1. 60% PS&E Submittal

The BKF team will prepare a 60% submittal set including plans, technical specifications and cost estimate, and submit the set for review. The City will provide a sample bid set of acceptable content to be used as a reference.

a. Design Plans

The construction document set will include:

- Layout plan showing site elements and furnishings
- Cross-sections showing design elements, widths, and sections
- Accessibility improvements at roadway crossings
- Drainage plan with stormwater calculations to meet C.3 and sustainability goals
- Supplemental Irrigation specifications
- Planting plan and planting details
- Traffic signal modifications
- Atlantic Avenue "Complete Street" modifications
- Construction details
- Water Efficient Ordinance Submittals and Calculations
- Bay Friendly Scorecard. PlaceWorks will use Bay Friendly guidelines and scorecard to confirm that the project meets the requirements throughout the duration of the project design. PlaceWorks will work with BKF to conduct a soils test and prepare a soil preparation spec to optimize tree/plant establishment without irrigation.

b. Technical Specifications (CSI Format)

BKF team will prepare detailed construction specifications using the CSI format. Each section will identify standards, materials, and execution criteria and will indicate measurement and payment. The draft specifications will be submitted with the construction drawings at the 60% submittal stage.

c. Engineer's Estimates

BKF will also produce detailed estimates for the construction of the project at the 60% stage. The format will include estimated quantities as appropriate for the City to prepare a bid form in the final bid proposal.

d. City Staff Meeting – 60% Review

Following an anticipated three week review period by City staff, BKF will meet with City staff to review comments on the 60% set and clarify any questions that may arise. Prior to this meeting, the City will provide BKF with one set of consolidated review comments.

4.2. Final PS&E Submittal

a. 95% PSE

After review of final comments from the City, BKF will incorporate comments and finalize the construction documents for the City. These will be developed into a Permit Package (~95% design level drawings).

b. Central Permit Office

BKF will work with the City to initiate the official Central Permit permitting process. We will also work with public utilities if work is needed to their facilities.

c. City Meeting(s) – Permit Review

BKF will work with the City to process the permit comments and 'holds' from City departments to address their comments and/or concerns.

d. Final Plans for Bid and Construction

BKF will finalize the plans and issue final signed plans and specifications for Bid along with an Engineer's Estimate to assist the City in bidding the project.

e. Record Drawings

Once the project construction is complete, BKF will transfer red-line as-built markup drawings from the Contractor into the Final Construction Plans and issue Record Drawings for the City's official archive files.

Task 4 Deliverables: 60% PS&E Submittal; 95% PS&E Submittal; Final PS&E for Construction; and Record Drawings.

Optional Task 5. Bidding and Construction Management

While not requested by the RFP, BKF and our team can assist the City with bidding, design assistance during construction, construction management, and project close-out services if requested. We can prepare a scope and fee for this effort once a scope is defined.

EXHIBIT B

Cross Alameda Trail
Jean Sweeney Open Space Park

Fee Matrix, March 27, 2015

	BKF Engineers				Plareworks				TEE				Parikh						Construction Survey, Inc.		Kittelson & Associates			Totals
	PM, Civil & Traffic Engineering				Community, Planning & Landscaping				Electrical				Geotechnical						Surveying		Transportation			
	Schaefer Principal / Project Manager	Swanson Lead Engineer	Traffic/Traffic Signal - Project Engineer	Design Engineer	Sutton Principal	Associate Landscape Arch	Project Landscape Arch	Landscape Design	Martin Principal	Fox Associate	Electrical Designer	CAD Tech	Project Manager	Project Soils Engineer	Staff Engineer	Field Engineer	Lab Tech	Draftsperson	Office	Field Crew	Principal Transportation Engineer	Associate Transportation Planner	Transportation Analyst	
BASE SERVICES:																								
TASK 1. PROJECT INITIATION AND ON-GOING TASKS																								
1.1 Project Initiation and Kickoff	2	4			4	6																		
1.2 Work Plan and Timeline Updates (project management)	16	16																						
Subtotal	18	20	0	0	4	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	48
TASK 2. EXISTING CONDITIONS																								
2.1 Field Review and Conditions Walk																								
Review Background Information	2	4			2	4	2			1	2			1	8						8	40	40	
Site Visit		4		4	4	4		4			4									20				
2.2 Base Mapping and Reports	2	8		16	1	4		4		2	2		4	9	19	9	10	4	16					
2.3 Preliminary Hydraulic Analyses	1	2	8																					
2.4 Existing Conditions Plan	1	4		8	2	4	2	8																
Subtotal	6	22	8	28	9	16	4	16	0	3	8	0	4	10	27	9	10	4	16	20	8	40	40	308
TASK 3. DESIGN DEVELOPMENT/STAKEHOLDER INPUT																								
3.1 Design Development	10	20		48	20	16	16	24																
3.3 Stakeholder Input	4	6		8	4		4	16																
Subtotal	14	26	0	56	24	16	20	40	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	196
TASK 4. PROJECT FINALIZATION																								
4.1 Draft Construction Plans and Specifications	8	40	24	40	24	30	30	48	4	5	16	10									4	4		
4.2 Final Construction Plans and Specifications	10	40	40	72	19	30	30	40	4	4	14	8												
4.3 Record "As-Built" Construction Plans	1	6	8	24	1	4	4	16			2	2												
Subtotal	19	86	72	136	44	64	64	104	8	9	32	20	0	0	0	0	0	0	0	0	4	4	0	666
Project Labor Hours	57	154	80	220	81	102	88	160	8	12	40	20	4	10	27	9	10	4	16	20	12	44	40	1,218
Fringe Benefits	61.2%				60.0%				0.0%				0.0%						60%		86.32%			
Overhead	117.2%				142.0%				120.0%				150.0%						150%		118.73%			
Profit	10.0%				10.0%				15.0%				10.0%						10%		12.00%			
Multiplier	3.062				3.322				2.530				2.750						3.41		3.42			
Base	$85.00	$48.00	$46.00	$38.50	$69.00	$38.00	$25.00	$21.00	$98.00	$57.00	$46.00	$41.50	$91.22	$46.03	$30.60	$42.90	$31.10	$34.02	$38.00	$66.00	$64.84	$49.22	$31.71	
Labor Rate	$260	$147	$141	$118	$229	$126	$83	$70	$248	$144	$116	$105	$251	$127	$84	$118	$86	$94	$130	$225	$222	$168	$108	
Project Labor Fee	$ 74,683				$ 49,913				$ 10,469				$ 6,833						$ 6,574		$ 14,391			$ 162,863
Reimbursable Expenses																								
Plotting and Reproductions				$ 1,100		$ 400							$ 100											$ 1,600
Irrigation Design							$ 7,200																	$ 7,200
Aerial Survey																			$ 4,200					$ 4,200
Field Work													$ 950											$ 950
Office Expenses				$ 885		$ 1,000																		$ 1,885
BASE TOTAL LABOR AND REIMBURSABLE EXPENSES	$ 76,668				$ 58,513				$ 10,469				$ 7,883						$ 10,774		$ 14,391			$ 178,698

FIRST AMENDMENT TO CONSULTING AGREEMENT

This Amendment of the Consulting Agreement, entered into this 16th day of November 2016, between the City of Alameda, a municipal corporation ("City") and BKF Engineers., a California corporation, whose address is 1646 N. California Blvd., Suite 400, Walnut Creek, CA 94596, ("Consultant"), is made with reference to the following:

RECITALS:

A. On April 21, 2015, City and Consultant entered into an agreement (the "Agreement") by which Consultant would provide design services for the Cross Alameda Trail through Jean Sweeney Open Space Park.

B. City and Consultant desire to modify the Agreement on the terms and conditions set forth herein.

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

1. Section 1 ("Term") of the Agreement is modified to read as follows: "The term of this Agreement shall commence on 1st day of May 2015 and shall terminate on the 30th day of April 2019, unless terminated earlier as set forth herein."

2. Section 2 ("Services to be Performed") of the Agreement is modified to read as follows: "Consultant agrees to perform all necessary work at its own expense, to furnish all labor, tools, equipment, materials, except as otherwise specific, and to do all necessary work included in Exhibit A and in Exhibit A-1, both of which are attached hereto and incorporated herein by this reference. The Consultant agrees that the documents specific in the scope of work in Exhibit A and Exhibit A-1 will confirm to the satisfaction of City, and if applicable, the State and FHWA.

3. Section 3 ("Compensation to Consultant") of the Agreement is modified to read as follows:

   First Paragraph: "Consultant shall be compensated for services performed pursuant to this Agreement in the amount and manner set forth in Exhibit B in the amount not to exceed $178,698 for the services described in Exhibit A and in the amount not to exceed $50,000 for the services described Exhibit A-1 for a total not to exceed $228,698. Payment shall be made by checks drawn on the treasury of the City, to be taken from the Jean Sweeney Open Space Park Capital Improvement Project (CIP) fund."

   Paragraph H: The total amount payable by City shall not exceed $255,503, which includes:
   (1) the fixed fee and the reimbursable expenses (totaling $178,698) in Exhibit A;
   (2) a 15% contingency in the amount of $26,805; and
   (3) fees set forth in Exhibit A-1 (totaling $50,000).

4. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

Signatures on next page

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

BKF Engineers

A California Corporation

By_____

Title_____

By_____

Title_____

CITY OF ALAMEDA

A Municipal Corporation

By_____

Title_____

RECOMMENDED FOR APPROVAL:

By_____

Title_____

APPROVED AS TO FORM:

City Attorney

By_____

Title_____

Alameda Cross Trail
Work Plan

Task 1. Project Initiation/Ongoing Tasks

The BKF team will work closely with the City of Alameda staff to initiate the project through the following subtasks.

1.1. Project Kick-Off Meeting

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The project schedule will be reviewed and dates will be established for meetings with the vested stakeholder interviews, agencies, inter-city departments, as well as milestone deliverables. It is recommended that staff from Traffic Operations, Maintenance, Electrical Services/AMP and other pertinent departments be invited to the meeting. These departments should be represented as part of the project sub-committee to ensure their concerns and needs are addressed from the outset of the project

Deliverables: Comments to Meeting Summary, Adjusted Finalized Scope, Project Schedule

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BKF will work to update the City and team throughout the project with updates to the schedule, progress reports, and status updates.

Task 1 Deliverables: ***Bi-weekly updated progress/status update report***

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In this phase, the BKF team will visit the site and review existing data for the project.

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BKF's team will review existing data, record drawings and any previous studies provided by the City from the right of way corridor and the previous community engagement process for the trail visioning. In reviewing this data, the BKF team will consider the following issues relative to the project area:

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- Reuse of existing elements
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- Safety
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- Drainage patterns and infrastructure
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Based on the surveys, reports, and site visit, BKF will prepare an existing conditions plan identifying the site, boundary, utility, and traffic constraints associated with the trail alignment and location. Additionally, we will prepare a Basis of Design Report to document the conditions, requirements, code, hydrology, geotechnical, and other measures critical to the design.

Task 2 Deliverables: Existing Conditions Plan, Basis of Design Report including appendices for Geotechnical Recommendations, Hydrology

Task 3. Design Development and Stakeholder Input

3.1 Design Development
Our team will prepare design development plans/sections and visual simulations to illustrate alternative pathway layouts and details. The trail plan will illustrate pathway layout, circulation and site cross-connections identified, and four enlarged plans showing more detailed concepts and preliminary details for:

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BKF and Placeworks will support your efforts in participating two stakeholder workshops that focus on the park and on the Webster to Constitution segment.

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In this task, the BKF team will prepare construction documents for public bid and construction.

4.1. 60% PS&E Submittal

The BKF team will prepare a 60% submittal set including plans, technical specifications and cost estimate, and submit the set for review. The City will provide a sample bid set of acceptable content to be used as a reference.

a. Design Plans

The construction document set will include:

- Layout plan showing site elements and furnishings
- Cross-sections showing design elements, widths, and sections
- Accessibility improvements at roadway crossings
- Drainage plan with stormwater calculations to meet C.3 and sustainability goals
- Supplemental Irrigation specifications
- Planting plan and planting details
- Traffic signal modifications
- Atlantic Avenue "Complete Street" modifications
- Construction details
- Water Efficient Ordinance Submittals and Calculations
- Bay Friendly Scorecard. PlaceWorks will use Bay Friendly guidelines and scorecard to confirm that the project meets the requirements throughout the duration of the project design. PlaceWorks will work with BKF to conduct a soils test and prepare a soil preparation spec to optimize tree/plant establishment without irrigation.

b. Technical Specifications (CSI Format)

BKF team will prepare detailed construction specifications using the CSI format. Each section will identify standards, materials, and execution criteria and will indicate measurement and payment. The draft specifications will be submitted with the construction drawings at the 60% submittal stage.

c. Engineer's Estimates

BKF will also produce detailed estimates for the construction of the project at the 60% stage. The format will include estimated quantities as appropriate for the City to prepare a bid form in the final bid proposal.

d. City Staff Meeting – 60% Review

Following an anticipated three week review period by City staff, BKF will meet with City staff to review comments on the 60% set and clarify any questions that may arise. Prior to this meeting, the City will provide BKF with one set of consolidated review comments.

4.2. Final PS&E Submittal

a. 95% PSE

After review of final comments from the City, BKF will incorporate comments and finalize the construction documents for the City. These will be developed into a Permit Package (~95% design level drawings).

b. Central Permit Office

BKF will work with the City to initiate the official Central Permit permitting process. We will also work with public utilities if work is needed to their facilities.

c. City Meeting(s) – Permit Review

BKF will work with the City to process the permit comments and 'holds' from City departments to address their comments and/or concerns.

d. Final Plans for Bid and Construction

BKF will finalize the plans and issue final signed plans and specifications for Bid along with an Engineer's Estimate to assist the City in bidding the project.

e. Record Drawings

Once the project construction is complete, BKF will transfer red-line as-built markup drawings from the Contractor into the Final Construction Plans and issue Record Drawings for the City's official archive files.

Task 4 Deliverables: 60% PS&E Submittal; 95% PS&E Submittal; Final PS&E for Construction; and Record Drawings.

Optional Task 5. Bidding and Construction Management

While not requested by the RFP, BKF and our team can assist the City with bidding, design assistance during construction, construction management, and project close-out services if requested. We can prepare a scope and fee for this effort once a scope is defined.

Exhibit A-1

Cross Alameda Trail **Jean Sweeney Open Space Park** **May 5, 2016** **Fee Matrix**	**BKF Engineers**					**Placeworks**				**TEE**		**Totals**
	PM, Civil & Traffic Engineering					munity, Planning & Landsca				Electrical		
	Principal	**Project Manager**	**Lead Engineer**	**Project Engineer**	**Design Engineer**	**Principal**	**Senior Associate**	**Associate**	**Project Landscape Designer**	**Principal**	**Project Engineer**	
BASE SERVICES: CONSTRUCTION ADMINISTRATION SUPPORT AND AS BUILT CONSTRUCTION PLANS												
TASK: DESIGN SERVICES DURING CONSTRUCTION												
1 Pre Bid Meeting	2	4				3						
2 Bid Evaluation Assistance	1	2		8		4						
3 Pre-Construction Meeting		4				3		4				
4 Contractor Submittals Review		8			20	8		4	8		16	
5 Respond to Requests for Information		8			40	2		6				
6 Bay Friendly Rater Support								16				
7 Construction Site Meetings (maximum of 16 for BKF, 8 for Placeworks)	4	56				4		24			15	
8 Record Drawings	1	4			16	1		4	12			
Subtotal	**8**	**86**	**0**	**8**	**76**	**25**	**0**	**58**	**20**	**0**	**31**	**312**
Project Labor Hours	8	86	0	8	76	25	0	58	20	0	31	**312**
Labor Rate	$184	$157	$157	$138	$120	$190	$160	$135	$85	$210	$130	
Project Labor Fee	$ 25,198					$ 14,280				$ 4,030		$ 43,508
Reimbursable Expenses												
Mileage												
Plotting and Reproductions			$ 1,000				$ 200					$ 1,200
Irrigation Subconsultant (allowance)							$ 3,000					$ 3,000
Deliveries			$ 500				$ 300					$ 800
Office Expenses			$ 492				$ 1,000					$ 1,492
BASE TOTAL LABOR AND REIMBURSABLE EXPENSES	$ 27,190					$ 18,780				$ 4,030		$ 50,000

EXHIBIT B

Cross Alameda Trail
Jean Sweeney Open Space Park

Fee Matrix, March 27, 2015

	BKF Engineers				Placeworks				TEE				Parikh						Construction Survey, Inc.		Kittelson & Associates			Totals
	PM, Civil & Traffic Engineering				Community, Planning & Landscaping				Electrical				Geotechnical						Surveying		Transportation			
	Schaefer Principal / Project Manager	Swanson Lead Engineer	Traffic/Traffic Signal - Project Engineer	Design Engineer	Sutton Principal	Associate Landscape Arch	Project Landscape Arch	Landscape Design	Martin Principal	Fox Associate	Electrical Designer	CAD Tech	Project Manager	Project Soils Engineer	Staff Engineer	Field Engineer	Lab Tech	Draftsperson	Office	Field Crew	Principal Transportation Engineer	Associate Transportation Planner	Transportation Analyst	
BASE SERVICES:																								
TASK 1. PROJECT INITIATION AND ON-GOING TASKS																								
1.1 Project Initiation and Kickoff	2	4			4	6																		
1.2 Work Plan and Timeline Updates (project management)	16	16																						
Subtotal	18	20	0	0	4	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	48
TASK 2. EXISTING CONDITIONS																								
2.1 Field Review and Conditions Walk																								
Review Background Information	2	4			2	4	2			1	2			1	8						8	40	40	
Site Visit		4		4	4	4		4			4									20				
2.2 Base Mapping and Reports	2	8		16	1	4		4		2	2		4	9	19	9	10	4	16					
2.3 Preliminary Hydraulic Analyses	1	2	8																					
2.4 Existing Conditions Plan	1	4		8	2	4	2	8																
Subtotal	6	22	8	28	9	16	4	16	0	3	8	0	4	10	27	9	10	4	16	20	8	40	40	308
TASK 3. DESIGN DEVELOPMENT/STAKEHOLDER INPUT																								
3.1 Design Development	10	20		48	20	16	16	24																
3.3 Stakeholder Input	4	6		8	4		4	16																
Subtotal	14	26	0	56	24	16	20	40	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	196
TASK 4. PROJECT FINALIZATION																								
4.1 Draft Construction Plans and Specifications	8	40	24	40	24	30	30	48	4	5	16	10									4	4		
4.2 Final Construction Plans and Specifications	10	40	40	72	19	30	30	40	4	4	14	8												
4.3 Record "As-Built" Construction Plans	1	6	8	24	1	4	4	16			2	2												
Subtotal	19	86	72	136	44	64	64	104	8	9	32	20	0	0	0	0	0	0	0	0	4	4	0	666
Project Labor Hours	57	154	80	220	81	102	88	160	8	12	40	20	4	10	27	9	10	4	16	20	12	44	40	1,218
Fringe Benefits	61.2%				60.0%				0.0%				0.0%						60%		86.32%			
Overhead	117.2%				142.0%				120.0%				150.0%						150%		118.73%			
Profit	10.0%				10.0%				15.0%				10.0%						10%		12.00%			
Multiplier	3.062				3.322				2.530				2.750						3.41		3.42			
Base	$85.00	$48.00	$46.00	$38.50	$69.00	$38.00	$25.00	$21.00	$98.00	$57.00	$46.00	$41.50	$91.22	$46.03	$30.60	$42.90	$31.10	$34.02	$38.00	$66.00	$64.84	$49.22	$31.71	
Labor Rate	$260	$147	$141	$118	$229	$126	$83	$70	$248	$144	$116	$105	$251	$127	$84	$118	$86	$94	$130	$225	$222	$168	$108	
Project Labor Fee	$ 74,683				$ 49,913				$ 10,469				$ 6,823						$ 6,574		$ 14,391			$ 162,853
Reimbursable Expenses																								
Plotting and Reproductions				$ 1,100		$		400					$					100						$ 1,600
Irrigation Design								$ 7,200																$ 7,200
Aerial Survey																			$ 4,200					$ 4,200
Field Work													$					950						$ 950
Office Expenses				$ 885		$		1,000																$ 1,885
BASE TOTAL LABOR AND REIMBURSABLE EXPENSES	$ 76,668				$ 58,513				$ 10,469				$ 7,883						$ 10,774		$ 14,391			$ 178,698

Client#: 45 BKFENGINE

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/07/2016

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: Nancy Ferrick
Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090	PHONE (A/C, No, Ext): 510 465-3090 FAX (A/C, No): 510 452-2193 E-MAIL ADDRESS: nferrick@dealeyrenton.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : American Automobile Ins. Co.	21849
INSURER B : XL Specialty Insurance Co.	37885
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
BKF Engineers
255 Shoreline Drive, Suite 200
Redwood City, CA 94065-1428

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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X Contractual Liab X Cross Liability GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:	X	X	MZG80972255	09/01/2016	09/01/2017	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$1,000,000 $1,000,000 $10,000 $1,000,000 $2,000,000 $2,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	X	X	MZG80972255	09/01/2016	09/01/2017	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$1,000,000 $ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $	X	X	CGX58059999	09/01/2016	09/01/2017	EACH OCCURRENCE AGGREGATE	$5,000,000 $5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	WZP81033735	07/01/2016	07/01/2017	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$1,000,000 $1,000,000 $1,000,000
B	Professional Liability			DPR9806501	07/01/2016	07/01/2017	$5,000,000 per Claim $7,000,000 Annl Aggr.	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
General Liability Policy excludes claims arising out of the performance of professional services.
30 Days Notice of Cancellation (10 Days for Non-Payment of Premium).
PROJECT NAME/LOCATION: Cross Alameda Trail through Jean Sweeney Open Space Park.
The City of Alameda, its City Council, boards, commissions, officials and employees are additional insureds to general & auto liability. A waiver of subrogation applies to general & auto liability. 30 Days
(See Attached Descriptions)

CITY OF ALAMEDA Risk Management
Lucretia Akil, City Risk Manager Date 11-10-16

CERTIFICATE HOLDER
City of Alameda
Attn:Amy Wooldridge
2226 Santa Clara Avenue
Alameda, CA 94501

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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DESCRIPTIONS (Continued from Page 1)

Notice of Cancellation (10 Days for Non-Payment of Premium).

MZG80972255

ABC MultiCover - AB 91 89 08 07

This endorsement modifies insurance provided under the following:

American Business Coverage

Your policy is broadened and clarified as follows:

1. Non Employment Discrimination Liability

   Unless **Personal Injury** or **Advertising Injury** is excluded from this policy:

   A. **Section III - Definitions**, Item 17. Personal Injury is amended to include:

      f. **Discrimination**

   B. **Section III - Definitions**, Item 2. Advertising Injury is amended to include:

      e. **Discrimination**

   C. **Section III - Definitions** is amended to include:

      30. **Discrimination** means the unlawful treatment of individuals based on race, color, ethnic origin, gender, religion, age, or sexual preference.

   D. **Section II - Liability Coverage, Part H. Exclusions**, Item 1.p **Personal Injury** or **Advertising Injury** is amended to include:

      (11) Arising out of **discrimination** directly or indirectly related to the past employment, employment or prospective employment of any person or class of persons by any insured; or

      (12) Arising out of **discrimination** directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any dwelling, permanent lodging, or premises by or at the direction of any insured; or

      (13) Arising out of **discrimination**, if insurance thereof is prohibited by law; or

      (14) Fines, penalties, specific performance, or injunctions levied or imposed by a governmental entity, or governmental code, law, or statute because of **discrimination**.

2. Blanket Additional Insured

   Section II - Liability Coverage, Part I. Who Is An Insured, Item 2. is amended to include:

   f. Any person or organization that you are required by a written **insured contract** to include as an insured, subject to all of the following provisions:

      (1) Coverage is limited to their liability arising out of:

         (a) the ownership, maintenance or use of that part of the premises, or land owned by, rented to, or leased to you; or

         (b) your ongoing operations performed for that insured; or

         (c) that insured's financial control of you; or

         (d) the maintenance, operation or use by you of equipment leased to you by such person(s) or organization(s); or

This Form must be attached to Change Endorsement when issued after the policy is written.
One of the **Fireman's Fund Insurance Companies** as named in the policy

Secretary

Michael E. LaRocco
President

CITY OF ALAMEDA
Risk Management
Date 11-10-16
Lucretia Akil, City Risk Manager

AB9189 8-07

(e) a state or political subdivision permit issued to you.

(2) Coverage does not apply to any **occurrence** or offense:

(a) which took place before the execution of, or subsequent to the completion or expiration of, the written **insured contract**, or

(b) which takes place after you cease to be a tenant in that premises.

(3) With respect to architects, engineers, or surveyors, coverage does not apply to **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of the rendering or the failure to render any professional services by or for you including:

(a) The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; and

(b) Supervisory, inspection, or engineering services.

If an Additional Insured endorsement is attached to this policy that specifically names a person or organization as an insured, then this coverage does not apply to that person or organization.

3. Blanket Additional Insured for Vendors

Unless the **Products-Completed Operations Hazard** is excluded from this policy, **Section II - Liability Coverage, Part I. Who Is an Insured**, Item 2. is amended to include:

g. Any vendor 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 the 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 usual 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.

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.

If an Additional Insured - Vendors endorsement is attached to this policy that specifically names a person or organization as an insured, then this coverage does not apply to that person or organization.

4. Blanket Waiver of Subrogation

Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions, is amended to include:

6. Transfer of Rights of Recovery Against Others to us and Blanket Waiver of Subrogation

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 those rights. 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 operations or your work for that person or organization.

5. Broadened Named Insured

Section II - Liability Coverage, Part I. Who Is An Insured, Item 4. is replaced with:

4. All of your subsidiaries, companies, corporations, firms, or organizations, as now or hereafter constituted, qualify as Named Insured under this policy if:

(a) you have the responsibility of placing insurance for each 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.

But each entity is insured only while you own, during the policy period, a controlling interest in such entity of greater than 50% of the stock or assets. However:

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

(b) Coverage C does not apply to **bodily injury** or **property damage** that occurred before you acquired or formed the organization;

(c) Coverage C does not apply to **personal injury** or **advertising injury** arising out of an offense committed before you acquired or formed the organization.

6. Medical Payments

Unless **Coverage D. Medical Payments** is excluded from this policy:

A. **Section II - Liability Coverage, Part H. Exclusions**, Item 2.f. is replaced with:

f. Included within the **products-completed operations hazard**. However, this exclusion does not apply to expenses for dental services.

B. **Section II - Liability Coverage, Part G. Coverage, Item 2.**, is amended to include:

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

7. Tenant's Legal Liability

A. **Section III - Liability Coverage, Part J. Liability and Medical Payments Limits of Insurance**, Item 3. is replaced with:

3. The most we will pay under Coverage C - Liability for damages because of **property damage** 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. arising out of any Covered Cause of Loss shall be the greater of:

(1) $1,000,000; or

(2) The Tenant's Legal Liability limit shown in the Declarations.

8. Chartered Aircraft

Section II - Liability Coverage, Coverage C, Part H. Exclusions, Item 1.g. is amended to include:

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

9. Coverage Territory Broadened

Section III - Definitions, Item 5.a. is replaced with:

a. The United States of America (including its territories and possessions), Puerto Rico, Canada, Bermuda, the Bahamas, the Cayman Islands and the British Virgin Islands.

10. Broadened Advertising Injury

Unless **Advertising Injury** is excluded from this policy:

A. **Section III - Definitions**, Item 2. is replaced with:

2. **Advertising Injury** means injury arising out of one or more of the following offenses:

a. Oral, written, televised or videotaped publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

b. Oral, written, televised or videotaped publication of material that violates a person's right of privacy;

c. Misappropriation of advertising ideas or style of doing business; or

d. Infringement of trademark, copyright, title or slogan.

B. **Section II - Liability Coverage, Coverage C, Part H. Exclusions**, Items 1.p.(1) and (2) are replaced with:

(1) Arising out of oral, written, televised or videotaped publication of material, if done by or at the direction of the insured with knowledge of its falsity;

(2) Arising out of oral, written, televised or videotaped publication of material whose first publication took place before the beginning of the policy period;

11. Broadened Personal Injury

Unless **Personal Injury** is excluded from this policy, **Section III - Property, Liability and Medical Payments Definitions**, Items 17.b., d. and e. are replaced with:

b. Malicious prosecution or abuse of process;

d. Oral, written, televised or videotaped publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral, written, televised or videotaped publication of material that violates a person's right of privacy;

12. Broadened Personal or Advertising Injury

Unless **Personal Injury** or **Advertising Injury** is excluded from this policy, **Section II - Liability Coverage, Coverage C, Part H. Exclusions, Item 1.p.(4) Exclusions** is deleted in its entirety.

13. Fellow Employees Coverage

Section II - Liability Coverage, Part I. Who Is an Insured, Item 2.a.(1) is amended as follows:

(1) **Personal Injury** to you or to a co-employee while in the course of his or her employment, or the spouse, child, fetus, embryo, parent, brother, sister or any member of the household of that employee or co-employee as a consequence of such **Personal Injury**, or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or

14. Mental Anguish Is Included in Bodily Injury

Section III - Definitions, Item 4. is replaced with:

4. **Bodily injury** means **bodily injury**, sickness or disease sustained by a person. It includes death or mental anguish which result at any time from such physical harm, physical sickness or physical disease. Mental anguish means any type of mental or emotional illness or disease.

15. Unintentional Failure to Disclose Hazards

Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions, is amended to include:

6. Unintentional Failure to Disclose Hazards

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

16. Supplementary Payments, Increase Limits

Section II - Liability Coverage, Part G. Coverage, Items 1.e. (2) and (4) are replaced with:

(2) 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.

(4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or suit including substantiated loss of earnings up to $500 a day because of time off work.

17. Per Location Aggregate

A. **Section II - Liability Coverage, Part J. Limits of Insurance**, Item 4. is amended to include:

The 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.

B. **Section III - Property, Liability and Medical Payments Definitions**, is amended to include:

31. **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 railroad.

18. Amended Duties in the Event of an Occurrence, Offense Claim or Suit

Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions, Items 2.a. and b. are replaced with:

a. In the event of an **occurrence**, offense, claim, or **suit**, you must promptly notify us. Your duty to promptly notify us is effective when your executive officers, partners, members, or legal representatives are aware of the General Liability **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.

b. To the extent possible, notice to us should include:

(1) How, when and where the **occurrence** or offense took place;

(2) The names, addresses, and telephone numbers 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**.

19. **Common Policy Conditions (AB 00 09 A 01 87), Part H. Other Insurance**, Item 2. is replaced with:

2. Coverage C - Liability

If other valid and collectible insurance is available to **any** insured for a loss we cover under Coverage C of this Coverage Part our obligations are limited as follows:

a. The insurance provided under this policy is primary if you are required by a written **insured contract** to include any person or organization as an insured, but only with respect to that insured's liability arising out of the ownership, maintenance, or use of that part of the premises owned by or rented to **you**, or **your work** for that insured by or for you. Any other insurance available to that person or organization is excess and noncontributory with this insurance, or;

b. Except for the circumstance described in 2.a., above, the insurance provided under this policy is excess over any other liability insurance available to any insured whether such other insurance is written as primary, excess, contingent or any other basis. An exception applies when any insured specifically has purchased excess insurance to apply in excess of the limits of insurance shown in the Declarations of this Coverage Part for Coverage C.

20. Damage to Invitees' Automobiles from Falling Trees or Tree Limbs - Limited Coverage

    The policy applies to direct physical damage to automobiles owned by invitees subject to all of the following:

    1. Provided such damage originates from premises owned, managed, leased or rented by an insured;

    2. Coverage applies only to invitees of an insured or an insured's tenant;

    3. Such damage is directly caused by wind-driven falling trees or tree limbs;

    4. The most we will pay for any one loss is the lesser of the actual cash value of the damaged automobile as of the time of the loss; or the cost of repairing or replacing the damaged automobile with another automobile of like kind and quality; subject to a limit of $25,000 in any one policy period; and

    5. This coverage is not subject to the General Liability General Aggregate Limit.

21. Expected or Intended Injury - Amendment to Exclusion

    SECTION I. - 2. EXCLUSIONS a. Expected or Intended Injury, is replaced by the following:

    a. Expected or Intended Injury

    Bodily injury or **property damage** expected or intended from the standpoint of the insured. This exclusion does not apply to **bodily injury or property damage** resulting from the use of reasonable force to protect persons or property.

All other terms and conditions of the policy apply.

MZG80972255

FleetCover® Endorsement - CA 70 18 03 10

Policy Amendment(s) Commercial Business Auto Coverage Form - Motor Carrier Coverage Form

A. **Broadened Named Insured**

Section II - Liability Coverage, A. Coverage, 1. Who Is An Insured, the following is added:

Any organization you own on the inception of this policy, or newly acquire or form during the policy period, and over which you maintain during the policy period, majority ownership or majority interest will qualify as a Named Insured if:

(1) There is no other similar insurance available to that organization; and

(2) The first Named Insured shown in the Declarations of this policy has the responsibility of placing insurance for that organization; and

(3) The organization is incorporated or organized under the laws of the United States of America.

However:

(a) Coverage under this provision is afforded only until the next occurring 12 month anniversary of the beginning of the policy period shown in the Declarations, or the end of the policy period, whichever is earlier; and

(b) Coverage under this provision does not apply to **bodily injury** or **property damage** that results from an **accident** that occurred before you acquired or formed the organization; and

(c) No person or organization is an **insured** with respect to any current or past partnership, or joint venture that is not shown as a Named Insured in the Declarations; and

(d) Coverage under A.(1), (2) and (3) above does not apply to any organization that is covered as an **insured** under any other automobile liability insurance policy whose limits of insurance have been exhausted or whose insurer has become insolvent.

B. **Broadened Who Is an Insured**

1. Form CA0001 (if attached to this policy), **Section II - Liability Coverage,** 1. Who Is An Insured, item b.(2) is deleted, and d. is added as follows:

   d. Your **employee** while using with your permission his owned **auto,** or an **auto** owned by a member of his or her household, in your business or your personal affairs, provided you do not own, hire or borrow that **auto.**

2. Form CA0020 (if attached to this policy), **Section II - Liability Coverage,** 1. Who Is An Insured, item b.(2) is deleted, and f. is added as follows:

   f. Your **employee** or agent while using with your permission his owned **private passenger type auto**, or a **private passenger type auto** owned by a member of his or her household, in your business or personal affairs, provided you do not own, hire, or borrow that **auto.**

C. **Additional Insured Coverage and Waiver of Subrogation**

1. Form CA0001 (if attached to this policy), **Section II - Liability Coverage,** 1. Who Is An Insured, the following is added as item e.; and form CA0020 (if attached to this policy), **Section II - Liability Coverage,** 1. Who Is An Insured; the following is added as item g.:

This Form must be attached to Change Endorsement when issued after the policy is written.
One of the **Fireman's Fund Insurance Companies** as named in the policy

Secretary

President

CITY OF ALAMEDA
Risk Management
Date 11-10-16
Lucretia Akil, City Risk Manager

Any person or organization with respect to the operation, maintenance, or use, of a covered **auto**, provided that you and such person or organization have agreed under an expressed provision in a written **insured contract** or written agreement, or a written permit issued to you by a governmental or public authority, to add such person, organization, or governmental or public authority to this policy as an **insured**

However, such person or organization is an **insured**:

(1) Only with respect to the operation, maintenance, or use, of a covered **auto**; and

(2) Only for **bodily injury** or **property damage** caused by an **accident** which takes place after:

(a) You executed the **insured contract** or written agreement; or

(b) The permit has been issued to you.

2. Form CA0001 (if attached to this policy), **Section IV - Business Auto Conditions,** A. Loss Conditions, item 5.; and form CA0020 (if attached to this policy), **Section V - Motor Carrier Conditions,** A. Loss Conditions, item 6.; the following is added:

Waiver of Subrogation

If required by a:

a. Written **insured contract** or written agreement executed prior to the **accident;** or

b. Written permit issued to you by a governmental or public authority prior to the **accident;**

we waive any right of recovery we may have against any person or organization named in such contract, agreement or permit, because of payments we make for injury or damage arising out of the ownership, maintenance or use of a covered **auto**.

D. **Auto Medical Payments - Increased Limit**

For each covered **auto** described in the Declarations or shown in the Schedule as having Auto Medical Payments Coverage, the Medical Payments Limit of Insurance for those **autos** is revised to the greater of:

1. $5,000; or

2. The limit shown in the Declarations

E. **Hired Auto Physical Damage Coverage and Loss of Use Expenses**

Hired Auto Physical Damage Coverage

If Physical Damage Coverage is provided by this policy on your owned covered **autos**, the following applies:

Any **auto** that you lease, hire, rent or borrow without a driver, will be covered under this policy for Physical Damage Coverage. However any such **auto**:

1. Will be covered only for the same Physical Damage Coverage that applies to your owned covered **autos**;

2. Will be subject to the same applicable deductible shown in the Declarations that applies to your most similar owned covered **auto**, except any Comprehensive Coverage deductible does not apply to **loss** caused by fire or lightning; and

3. The most we will pay for any one **loss** in any one **accident** is the lesser of the following:

a. Actual cash value of the damaged or stolen property as of the time of the **loss** as determined by us; or

b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

In addition, we will pay costs and fees associated with such covered **loss** only for a maximum time period of seven days beginning with the date of **loss**, subject to a maximum of $500.

However:

1. If form CA0001 is attached to this policy, this coverage does not apply to **autos** you lease, hire, rent or borrow from any of your **employees**, partners (if you are a partnership), members (if you are a limited liability company) or members of their households; and

2. If form CA0020 is attached to this policy, this coverage does not apply to any **private passenger type auto** you lease, hire, rent or borrow from any member of your household, any of your **employees**, partners (if you are a partnership), members (if you are a limited liability company), or agents or members of their households.

Hired Auto Loss of Use Expenses

Form CA0001 (if attached to this policy), **Section III - Physical Damage Coverage, A. Coverage, 4. Coverage Extensions, b. Loss of Use Expenses;** and form CA0020 (if attached to this policy), **Section IV - Physical Damage Coverage, A. Coverage, 4. Coverage Extensions, b. Loss of Use Expenses;** is deleted and replaced by the following:

b. For Hired Auto Physical Damage, we will pay expenses for which an **Insured** becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

(1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered **auto;**

(2) Specified Causes of Loss only if the Declarations indicate that Specified Causes of Loss is provided for any covered **auto;** or

(3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered **auto.**

However, the most we will pay for any expenses for loss of use is $100 per day, to a maximum of $1,000.

F. **Coverage Territory - Hired Auto**

Form CA 0001, (if attached to this policy), **Section IV - Business Auto Conditions, B. General Conditions, 7. Policy Period, Coverage Territory, b.(5).(a)** is replaced by the following:

(a) A covered **auto** of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 180 days or less; and

Form CA0020 (if attached to this policy), **Section V - Motor Carrier Conditions, B. General Conditions, 7. Policy Period, Coverage Territory, b.(5).(a);** is replaced by the following:

(a) A covered **auto** of the **private passenger type** is leased, hired, rented or borrowed without a driver for a period of 180 days or less; and

G. **Communication Equipment Coverage**

1. Form CA 0001 (if attached to this policy), **Section III - Physical Damage Coverage, C. Limit of Insurance, Paragraph 2.** is deleted and replaced by the following:

2. $1,500 is the most we will pay for **loss** in any one **accident** to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of the **loss,** is:

2. Form CA0020 (if attached to this policy), **Section IV - Physical Damage Coverage,** Limits of Insurance, Paragraph 2. is deleted and replaced by the following:

2. $1,500 is the most we will pay for **loss** in any one **accident** to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of the **loss,** is:

H. **Tapes, Records, CDs and DVD Coverage**

A. Under Comprehensive Coverage, we will pay for **loss** to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

1. Are your property, or that of a family member; and

2. Are in a covered **auto** at the time of a **loss.**

B. The most we will pay for **loss** is $250.

C. **Physical Damage Coverage** provisions apply to this coverage, except that no deductible applies.

I. **Personal Effects Coverage**

Form CA0001 (if attached to this policy), **Section III - Physical Damage Coverage, A. Coverage, 4. Coverage Extensions;** and form CA0020 (if attached to this policy), **Section IV - Physical**

Damage Coverage, A. Coverage, 4. Coverage Extensions; item d. is added as follows:

d. Personal Effects Coverage

We will pay up to $500 for **loss** for clothing items or other personal effects that are owned by an **insured** and are in an Owned **auto** at the time of a covered **loss.**

Personal Effects do not include audio visual or electronic devices, money, giftcards, securities, jewelry, or tools.

This coverage is excess over any other collectible insurance.

No deductible applies to this coverage.

J. **Airbag Coverage**

1. Form CA0001 (if attached to this policy), **Section III - Physical Damage Coverage,** B. Exclusions, 3.a.; and form CA0020 (if attached to this policy), **Section IV - Physical Damage Coverage,** B. Exclusions, 3.a.; the following is added:

However, **mechanical breakdown** does not mean the unintended discharge of an airbag, provided that any **loss** covered under this provision is excess over any other collectable insurance or warranty designed to cover such unintended discharge.

K. **Rental Reimbursement**

Form CA0001 (if attached to this policy), **Section III - Physical Damage Coverage,** A. Coverage, 4. Coverage Extensions; and form CA0020 (if attached to this policy), **Section IV - Physical Damage Coverage,** A. Coverage, 4. Coverage Extensions; item c. is added as follows:

c. Rental Reimbursement or Transportation Expenses

If **loss** occurs to a covered **auto** described or designated in the Declarations or Schedule and covered for **Physical Damage Coverage,** we will pay for rental expenses for the rental of a similar replacement **auto** and additional transportation expenses, incurred by you. This payment applies in addition to the otherwise applicable amount of each coverage you have on the covered **auto**. No deductible applies to this coverage. However:

(1) We will pay only for those expenses incurred by you that begin 24 hours after the covered **loss.**

(2) We will cease paying for those expenses, regardless of the policy's expiration date, at the earlier of the following dates:

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

(b) 45 days from the date this coverage begins.

(3) Our payment is limited to the lesser of the following amounts:

(a) Necessary and actual expenses incurred by you; or

(b) $1,500.

(4) This coverage does not apply while there are spare or reserve **autos** available to you for your operations.

(5) If **loss** results from the total theft of a covered **private passenger type auto** (if CA0020 is attached to this policy), or a covered private passenger **auto** (if CA0001 is attached to this policy), we will pay under this coverage only that amount of your covered rental expenses or additional transportation expenses which are not already provided for under the Physical Damage Coverage Extensions.

L. **Extended Towing Coverage**

1. Form CA0001 (if attached to this policy), **Section III - Physical Damage Coverage,** A. Coverage, 2. Towing, is replaced by the following:

2. Extended Towing

We will pay up to $750 per disablement for towing and labor costs you incur each time your covered **auto** is disabled. However:

a. All labor must be performed at the place of disablement; and

b. If the covered **auto** is of the private passenger type, no deductible applies; and

c. If the covered **auto** is not of the private passenger type, our obligation to pay will be reduced by a $250 deductible per disablement.

d. If the covered **auto** is not of the private passenger type and the disablement results from a **loss** covered under **Section III - Physical Damage Coverage, A. Coverage,** Paragraphs 1, a., b., or c., there is no separate deductible for the Extended Towing Coverage.

For purposes of this coverage, disablement means a breakdown of the covered **auto** including mechanical breakdown, engine failure, or tire blowout, where repairs cannot be made roadside and a tow is required to remove the auto from the roadway and to seek additional services and repair.

2. Form CA0020 (if attached to this policy), **Section IV - Physical Damage Coverage,** A. Coverage, 2. Towing - Private Passenger Autos, is replaced by the following:

2. Extended Towing

We will pay up to $750 per disablement for towing and labor costs you incur each time your covered **auto** is disabled. However:

a. All labor must be performed at the place of disablement; and

b. If the covered **auto** is of the **private passenger type** no deductible applies; and

c. If the covered **auto** is not of the **private passenger type** our obligation to pay will be reduced by a $250 deductible per disablement.

d. If the covered **auto** is not of the **private passenger type** and the disablement results from a **loss** covered under **Section III - Physical Damage Coverage, A. Coverage,** Paragraphs 1, a., b., or c., there is no separate deductible for the Extended Towing Coverage.

For purposes of this coverage, disablement means a breakdown of the covered **auto** including mechanical breakdown, engine failure, or tire blowout, where repairs cannot be made roadside and a tow is required to remove the auto from the roadway and to seek additional services and repair.

M. **Cancellation - 120 Days Notice**

If we cancel this policy for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured at the last mailing address known to us, written notice of cancellation at least 120 days prior to the effective date of cancellation.

N. **Supplementary Payments - Increased Limits**

Section II - Liability Coverage, 2. Coverage Extensions, a. Supplementary Payments, items (2) and (4) are replaced by the following:

(2) Up to $2,500 for the 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.

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

O. **Duties in the Event of Accident, Claim, Suit or Loss - Amended**

Form CA0001 (if attached to this policy) **Section IV - Business Auto Conditions,** A. Loss Conditions, item 2. a.; and form CA0020 (if attached to this policy) **Section V - Motor Carrier Conditions,** A. Loss Conditions, item 2. a.; is replaced by the following:

a. In the event of **accident**, claim, **suit** or **loss**, you must promptly notify us or our authorized representative when it becomes known to:

(1) You, if you are an individual;

(2) Your partner or member, if you are a partnership or joint venture;

(3) Your member, if you are a limited liability company;

(4) Your executive officer if you are an organization other than a partnership, joint venture or limited liability company; or

(5) Your authorized representative or insurance manager.

Knowledge of an **accident**, claim, **suit** or **loss** by other persons does not imply that the persons listed above have such knowledge.

Notice should include:

(1) How, when and where the **accident** or **loss** occurred; and

(2) The **insured's** name and address; and

(3) To the extent possible, the names and address of any injured persons and witnesses.

P. **Unintentional Failure to Disclose Hazards**

Form CA0001 (if attached to this policy), **Section IV - Business Auto Conditions,** B. General Conditions, item 2.; and form CA0020 (if attached to this policy), **Section V - Motor Carrier Conditions,** B. General Conditions, item 2.; the following is added:

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

Q. **Fellow Employee Coverage**

Section II - Liability Coverage, B. Exclusions, 5. Fellow Employee, the following is added:

However, this exclusion does not apply if the **bodily injury** results from the use of a covered **auto** you own or hire, and provided that any coverage under this provision only applies in excess over any other collectible insurance.

R. **Limited Mexico Coverage**

WARNING

AUTO ACCIDENTS IN MEXICO ARE SUBJECT TO THE LAWS OF MEXICO ONLY - NOT THE LAWS OF THE UNITED STATES OF AMERICA. THE REPUBLIC OF MEXICO CONSIDERS ANY AUTO ACCIDENT A CRIMINAL OFFENSE AS WELL AS A CIVIL MATTER.

IN SOME CASES THE COVERAGE PROVIDED HERE MAY NOT BE RECOGNIZED BY THE MEXICAN AUTHORITIES AND WE MAY NOT BE ALLOWED TO IMPLEMENT THIS COVERAGE AT ALL IN MEXICO. YOU SHOULD CONSIDER PURCHASING AUTO COVERAGE FROM A LICENSED MEXICAN INSURANCE COMPANY BEFORE DRIVING IN MEXICO.

THIS ENDORSEMENT DOES NOT APPLY TO ACCIDENTS OR LOSSES WHICH OCCUR OUTSIDE OF 25 MILES FROM THE BORDER OF THE UNITED STATES OF AMERICA.

Form CA0001 (if attached to this policy), **Section IV - Business Auto Conditions,** B. General Conditions, item 7.; and form CA0020 (if attached to this policy), Section V - **Motor Carrier** Conditions, B. General Conditions, item 7.; the following is added:

The coverage territory is extended to include Mexico, but only:

a. For **accidents** or **losses** occurring within 25 miles of the United States border; and

b. For trips into Mexico of 10 days or less; and

c. If the covered **auto** is principally garaged and principally used in the United States; and

d. If the **insured** is a resident of the United States.

If a **loss** to a covered **auto** occurs in Mexico, we pay for such **loss** in the United States. If the covered **auto** must be repaired in Mexico in order to be driven, we will not pay for more than the actual cash value of such **loss** as determined by us at the nearest United States point where the repairs can be made.

Any insurance provided under this provision will be excess over any other collectible insurance.

S. **Extended Glass Coverage**

Form CA0001 (if attached to this policy), **Section III - Physical Damage Coverage,** A. Coverage, item 3.a.; and form CA0020 (if attached to this policy), **Section IV - Physical Damage Coverage,** A. Coverage, item 3.a.; is replaced by the following:

a. Glass breakage. If glass must be replaced, the deductible will be $100 or the deductible shown in the Declarations, whichever is less. If glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

T. **Broadened Definition of Bodily Injury**

Form CA0001 (if attached to this policy), **Section V - Definitions,** item C.; and Form CA0020 (if attached to this policy), SECTION VI - DEFINITIONS, item C.; is replaced by the following:

C. **Bodily Injury** means bodily injury, sickness or disease sustained by a person including death or mental anguish resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

U. **Customer Lease or Loan Physical Damage Coverage Extension**

Form CA0001 (if attached to this policy), **Section III - Physical Damage Coverage,** C. Limit Of Insurance; and form CA0020 (if attached to this policy), **Section IV - Physical Damage Coverage,** C. Limits Of Insurance; item 5. is added as follows:

5. If your covered owned **auto** is:

(1) Shown in the Schedule and designated as covered for Physical Damage Coverage; and

(2) Shown in this policy as having a loss payee or additional-insured-lessor; and

(3) Incurs a covered total **loss**;

we will pay the greater of:

(a) The actual cash value, as determined by us, of the damaged or stolen property as of the time of the total **loss**; or

(b) The **outstanding indebtedness** under the initial finance agreement for the covered **auto** and its equipment.

As used here, **outstanding indebtedness** means the amount you owe on the finance agreement at the time of total **loss**:

(i) Less any amounts representing taxes, overdue payments, penalties, interest, or charges resulting from overdue payments, additional mileage, excess wear and tear, or lease termination fees; and

(ii) Less any administrative costs or overhead fees assessed by the finance company who has leased the covered **auto** to you; and

(iii) Less security deposits not returned by the lessor; and

(iv) Less costs for extended warranties, Credit Life Insurance, Health, **Accident** or Disability Insurance purchased with the loan or lease; and

(v) Less carry-over balances from previous loans or leases.

V. **Two or More Deductibles**

Section III - Physical Damage Coverage, D. Deductible, the following is added:

If another Fireman's Fund Insurance Company policy or coverage form that is not an automobile policy or coverage form applies to the same **accident** or **loss,** the following applies:

(1) If the deductible under this **Business Auto Coverage Form** is the lesser of (or least) deductible, it will be waived.

(2) If the deductible under this **Business Auto Coverage Form** is not the lesser, (or least) deductible, it will be reduced by the amount of the lesser (or least) deductible.