

SERVICE PROVIDER AGREEMENT

THIS SERVICE PROVIDER AGREEMENT ("Agreement") is entered into this 14th day of November, 2018, by and between CITY OF ALAMEDA, a municipal corporation (the "City"), and **SCI CONSULTING GROUP**, a S-Corporation, whose address is **4745 MANGELS BOULEVARD, FAIRFIELD, CALIFORNIA 94534** (the "Provider"), in reference to the following:

RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. The City is in need of assistance from a qualified organization to conduct a comprehensive stormwater fee study. City staff issued a Request for Proposal (RFP) on September 7, 2018 and after a submittal period of 21 days received three (3) of timely submitted proposals. Staff reviewed the proposals, interviewed qualified firms and selected the service provider that best meets the City's needs
- C. Provider possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- D. City and Provider desire to enter into an agreement for conducting a comprehensive stormwater fee study (performing **Task Number 1 – Financial Planning**), 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 14th day of November 2018, and shall terminate on the 14th day of November 2019, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED:

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

3. COMPENSATION TO PROVIDER:

a. By the 7th day of each month, Provider shall submit to the City an invoice for the total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedule as set forth in Exhibit B and incorporated herein by this reference. Extra work must be approved in writing by the City Manager or his/her designee prior to performance and shall be paid on a Time and Material basis as set forth in Exhibit B.

ORIGINAL

b. The total compensation for **Task Number 1 – Financial Planning** under this Agreement is not to exceed **\$15,280**.

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

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

5. **STANDARD OF CARE:**

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

6. **INDEPENDENT PARTIES:**

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

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

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

8. **NON-DISCRIMINATION:**

Consistent with City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Provider or Provider's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Provider agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS:**

a. Provider shall indemnify, defend, and hold harmless the City, its City Council, boards, commissions, officials, employees, and volunteers ("**Indemnitees**") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable

attorneys' fees ("**Claims**"), arising from or in any manner connected to Provider's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Provider, Provider shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Provider. However, Provider shall not be obligated to indemnify Indemnitees from Claims arising from the sole negligence or willful misconduct of Indemnitees.

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

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

10. **INSURANCE:**

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

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

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

A. **COVERAGE:**

Provider shall maintain the following insurance coverage:

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000 each occurrence
	\$2,000,000 aggregate - all other

Property Damage: \$1,000,000 each occurrence
 \$2,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

(3) Automotive:

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

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

or

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

(4) Professional Liability:

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

\$1,000,000 each occurrence

B. SUBROGATION WAIVER:

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

C. FAILURE TO SECURE:

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

D. ADDITIONAL INSURED:

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

insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. SUFFICIENCY OF INSURANCE:

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

11. CONFLICT OF INTEREST:

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

12. PROHIBITION AGAINST TRANSFERS:

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

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

13. APPROVAL OF SUB-PROVIDERS:

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

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

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

14. PERMITS AND LICENSES:

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

15. REPORTS:

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

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

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

16. RECORDS:

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

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

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

17. NOTICES:

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

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

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

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

City of Alameda
Public Works Department
950 W. Mall Square #110
Alameda, CA 94501
ATTENTION: Liam Garland, Public Works Director
Andrew Nowacki, Associate Civil Engineer
Ph: (510) 747-7930 / Fax: (510) 769-6030

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

SCI Consulting Group
4745 Mangels Boulevard
Fairfield, CA 94534
ATTENTION: John W. Bliss, P.E., President
Ph: (707) 430-4300 / Fax: (707) 430-4319
John.bliss@sci-cg.com

18. SAFETY:

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

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

19. TERMINATION:

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

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

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

20. ATTORNEY'S FEES:

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

21. COMPLIANCE WITH ALL APPLICABLE LAWS:

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

22. CONFLICT OF LAW:

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

23. WAIVER:

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

24. INTEGRATED CONTRACT:

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

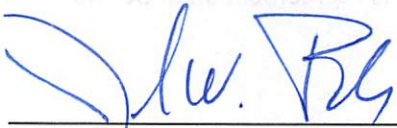
25. CAPTIONS:

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

Signatures on next page


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

SCI CONSULTING GROUP
A S-Corporation



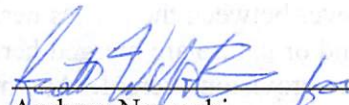
John Bliss
President and Secretary

CITY OF ALAMEDA
A Municipal Corporation




Liam Garland
Public Works Director

RECOMMENDED FOR APPROVAL



Andrew Nowacki
Associate Civil Engineer

APPROVED AS TO FORM:
City Attorney



Alan M. Cohen
Assistant City Attorney

PROPOSAL FOR

CITY OF ALAMEDA

TO PROVIDE

A COMPREHENSIVE STORMWATER FEE STUDY AND OTHER PROPOSITION 218-RELATED SERVICES

SEPTEMBER 2018

SUBMITTED BY

SCIConsultingGroup

4745 MANGELS BOULEVARD
FAIRFIELD, CALIFORNIA 94534
707.430.4300 (TELEPHONE)
707.430.4319 (FAX)
sci-cg.com



NCE
501 CANAL BOULEVARD, SUITE #1
RICHMOND, CA 94804
510.215.3620
NCENET.COM

September 27, 2018

ATTN: Liam Garland, Public Works Director
Andrew Nowacki, Associate Engineer
City of Alameda, Public Works Department
950 West Mall Square, Room 110
Alameda, CA 94501

Re: Comprehensive Stormwater Fee Study Proposal

Dear Liam and Andrew:

There is no greater challenge for California municipalities than securing new revenue, especially for the implementation of stormwater management programs, services and infrastructure. To be successful, a strategic approach, sound engineering analysis, and a well-executed outreach plan are essential.

SCI Consulting Group and Nichols Consulting Engineers (hereto collectively referred as "SCI Team") has direct experience analyzing existing programs and developing and implementing successful and comprehensive revenue approaches. We are pleased to submit our proposal to assist the City of Alameda ("City") with its Clean Stormwater Fee Study and other Proposition 218-Related Services. SCI and NCE have collaborated on stormwater funding projects over the last ten years and are currently working together on several complex stormwater funding projects, including the City of Los Altos, and the Tahoe Resource Conservation District in the Tahoe Basin, implementing approaches that are directly transferrable to the City. SCI and NCE recently completed the successful stormwater management polling, fee study and balloting project for the City of Berkeley. Through our experience working with many local agencies on stormwater management funding, we have developed a general approach which includes 1.) Financial planning, 2.) Community polling, 3.) Fee study engineering, and 4.) Balloting and community outreach as well as other related Proposition 218 consulting services, as described throughout this proposal.

Our team is exceptionally well-qualified to provide the requested professional services for the following additional reasons:

A UNIQUE STRATEGIC APPROACH Our team understands that specific Proposition 218 limitations on funding for stormwater management, combined with the general public's lack of understanding of this critical infrastructure, exacerbate the stormwater funding challenge. Traditional political approaches likely will not work. Accordingly, the SCI team proposes a unique, "hands-on" strategic approach which begins with the development of initial messaging and branding, followed by direct engagement with stakeholders, refinement of the messaging and branding through the polling, and finally, effective and authentic community outreach.

SUCCESSFUL BALLOTING RESULTS For large agency-wide ballot measures, such as the proposed fee measure for the City, SCI has a success rate of over 94% with over 130 successful Proposition 218-compliant ballot measures to date. This is more than the number of new agency-wide Proposition 218-compliant measures by all other consulting firms in California, combined. Our recent storm drainage and flooding measures are listed:

<u>Clients</u>	<u>SFR Rate</u>	<u>%Support</u>	<u>Year</u>
City of Berkeley	\$42.89	60.75%	2018
Reclamation District 150	\$128.71	85.78%	2018
Bethel Island Municipal Impr. District	\$132.69	68.00%	2015
Reclamation District 1001	\$216.25	82.27%	2014
City of San Mateo II	\$66.08	82.33%	2013
City of San Carlos	\$190.32	95.40%	2010
City of San Mateo I	\$89.41	79.60%	2009

PROPOSITION 218 AND STORMWATER FUNDING EXPERTISE Through the process of designing and establishing new Proposition 218-compliant fees and benefit assessments and working on these projects with many of the leading Proposition 218 specialized attorneys in the State, we have gained unparalleled legal and Proposition 218 compliance expertise. SCI and NCE were both featured speakers at the EPA's Stormwater Funding Forums in Alhambra and Oakland.

WORKING RELATIONSHIP WITH THE CITY OF ALAMEDA SCI is currently work with the City to provide local cannabis policy consulting (Contact: Lois Butler at lbutler@alamedaca.gov) and affordable housing fee consulting (Contact: Debbie Potter at dpotter@alamedaca.gov). NCE is actively working with the City to support implementation of its stormwater program including green infrastructure planning and trash amendment compliance.

STORMWATER AND SB 231 EXPERIENCE SCI and NCE are recognized as California leaders in stormwater policy, funding, management and implementation. This means we understand and appreciate every aspect of the City's stormwater program and how funding can be leveraged to meet local infrastructure needs and to ensure compliance with the current NPDES permit.

SCI has been actively working in the specific field of stormwater management funding for over 13 years. For example, at the annual CASQA conference in 2006, SCI introduced the concept of non-balloted approaches including realignment of traditional NPDES services. In 2010, SCI promoted Senate Bill 310 and other emerging approaches at the same conference. SCI continues to explore, review and promote a wide variety of approaches to funding, while ensuring the clients do not incur unacceptable levels of risk.

SCI is an active member of Senator Hertzberg's SB 231 Working Group and is working with several municipalities considering SB 231 implementations. (Please see our webinar: "Opportunities for Funding Stormwater Management without a Ballot Measure: SB 231 Changes Everything!" at [www.http://sci-cg.com/webinars-past.php](http://sci-cg.com/webinars-past.php)) The SCI Team has been active developing funding sources on Green Infrastructure. Finally, the SCI Team continues to explore the important funding and outreach relationship between stormwater management, local flood control and storm drainage asset management, as well as with broader "one water" concepts.

SCI is one of the few firms possessing comprehensive stormwater fee and ballot experience in California. NCE brings extensive regulatory, messaging and storm drainage design and engineering expertise to the team. Below is a listing of some of our stormwater clients:

SCI Stormwater Clients

City of Berkeley
City of Los Altos
City of Sacramento
City of San Mateo
City of Santa Clara
City of South Lake Tahoe
El Dorado County
Placer County
San Joaquin County

NCE Stormwater Clients

City of Alameda
City of Berkeley
City of Los Altos
City of Richmond
City of San Pablo
City of South Lake Tahoe
City of Walnut Creek
Contra Costa County
El Dorado County

San Mateo County
Town of Moraga

Placer County

COMMUNITY OUTREACH EXPERTISE The SCI Team has a long history of developing and implementing successful stormwater-related and other community outreach initiatives and programs for our clients, including the critical development of key branding and messaging. Our approach is based on the distribution of key messages and supporting information as part of our comprehensive community outreach through talking points, FAQs, newsletters, mailers, e-mail, text, social media such as nextdoor.com, door-to-door contact, website, hotline, small group meetings, community-wide open house meetings and public hearings.

Over the last 24 months, political communication and discourse have gone through a profound change throughout the United States and especially here in California. The SCI Team has identified three major communication themes for this project:

- **Straightforward messaging, with significant supporting detail and analysis**
Rigorous engineering and financial analysis give much-needed heft and credibility to an effort to increase local revenues.
- **Authenticity and credibility are critical**
Authentic communication means communication should be professional but not slick, it should be honest but not overly rehearse, and it should be passionate not theatrical. The public does not demand perfection from local government, however they do now demand absolute credibility, and full truthfulness and transparency.
- **Direct public engagement is a must**
Authenticity also means direct, uninhibited communication with the public, often in the form of face-to-face community meetings. E-mails and phone calls from known sources can also be effective.

KNOWLEDGE OF ALAMEDA COUNTY AND THE BAY AREA We have provided consulting and revenue engineering services to many public agencies in Alameda County, including cities, school districts and other special districts. The same is true in eight of the nine other counties around the Bay area. Our work includes revenue for stormwater, flood control, parks, landscape and lighting, mosquito and vector control, and other critical infrastructure and services.

Below is a listing of our local clients:

SCI's Local Clients

Alameda Contra Costa Transit District
Alameda County Community
Development Agency (Cannabis Services)
Alameda County Household Hazardous Waste Program
Alameda County Mosquito Abatement District
Alameda County Vector Control Program
Cities of Alameda, Albany, Berkeley, Hayward and Pleasanton
Unified School Districts: Alameda, Albany,
Dublin, Fremont, Hayward, New Haven,
Pleasanton and San Leandro

NCE's Local Clients

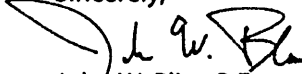
City of Alameda
City of Fremont
City of Moraga
City of Richmond
City of Walnut Creek
Contra Costa County

NCE is currently providing stormwater program support services to several cities and counties in the Bay Area so the NCE team is intimately familiar with the Municipal Regional Permit, local stormwater plans and the financial resources necessary to support local stormwater programs.

This proposal and associated fee cover all work described in the City of Alameda's Request for Proposal. This proposal is binding for one year. The SCI Team has reviewed the City's standard "Service Provide Agreement" and would be willing to sign it without exception.

We look forward to this opportunity to assist the City with this important project and stand ready to proceed. If you have any questions or require additional information, please do not hesitate to contact me. I can be reached at (707) 430-4300 or via email at john.bliss@sci-cg.com.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Bliss". The signature is fluid and cursive, with a large initial "J" and "W".

John W. Bliss, P.E.,
President

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GENERAL ORGANIZATION QUALIFICATIONS

ABOUT SCICONSULTINGGROUP

SCIconSultingGroup is a public finance consulting firm with over 32 years of expertise in assisting public agencies in California with planning, justifying and successfully establishing new revenues for their service and capital improvement needs and objectives and managing special assessment levies. SCI also offers extensive expertise with the important legal and procedural issues involving benefit assessments, special taxes and fees. The principals at SCI are acknowledged experts on these public financing mechanisms and were involved with the cleanup legislation for Proposition 218.

SCI possesses extensive property-related fee and benefit assessment engineering and formation expertise, particularly for agency-wide assessments in politically challenging areas. These successful agency-wide assessments include all of the largest successful assessments in the State as well.

SCI provides year-round special tax and assessment administration services and planning services for clients throughout California. SCI's planning projects have included hundreds of development impact studies, facility and financing plans, demographic studies, cost of service and fee justification studies, and other planning and real estate studies.

ABOUT NCE

Founded in 1990, NCE is a client-focused professional consulting firm integrating the disciplines of engineering, science and planning to address the infrastructure and resources challenges facing our communities today and in the future. With five offices and more than 100 employees located across California and Nevada, our commitment to provide value and quality driven services provides our clients confidence in the work we perform. NCE's highly qualified technical staff consists of engineers, planners, scientists and stormwater professionals that work collaboratively with our clients to ensure successful outcomes. Fostering strong relationships is the core of NCE's practice and we have developed relationships and delivered services to federal, state, local and private clients throughout California including the City of Alameda. As a result, NCE has a thorough understanding and awareness of the stormwater issues facing the Bay Area and the City of Alameda. NCE provides innovative thinking and delivers accurate technical solutions through the following services:

- Stormwater Fiscal Analysis
- Stormwater Management
- Stormwater Program Implementation Support
- Stormwater Outreach & Education
- NPDES Permit Compliance
- Compliance and Performance Monitoring

PROPOSER QUALIFICATIONS

To assist reviewers the SCI Team has provided concise answers to the key qualifications requested in the RFP. More details are provided in the following sections of the proposal.

1. Shall have at least five (5) years of experience in providing to, or working with, public agencies.

SCI has been providing services to public agencies for 33 years and NCE has been providing services to public agencies for 28.

2. Shall have developed multiple stormwater rate studies (or their close equivalent) for cities in the last five (5) years.

The SCI team has developed numerous stormwater rate studies in the last five years including Berkeley, Los Altos, and Moraga within the last 12 months.

3. Shall have managed multiple projects for cities to adjust stormwater rates through a balloting process in the last (5) years.

The SCI team has managed numerous projects for cities to adjust stormwater rates through a balloting in the last five years including Berkeley, Los Altos, and Moraga within the last 12 months.

4. Shall have the appropriate professional and technical background as well as access to adequate resources to fulfill the stated scope of services.

The SCI Team has registered professional engineers, stormwater scientists and policy specialist with direct and recent experience working on stormwater rate studies, ballot measures and public outreach campaigns that includes the Cities of Berkeley, Los Altos, Moraga, San Mateo, South Lake Tahoe and the Counties of Contra Costa, Placer and El Dorado. Our team members are intimately familiar with the Municipal Regional Permit (MRP) and the City of Alameda stormwater program through our ongoing consulting support of the City's stormwater program.

5. Shall have the ability to provide technical and strategic advice in the development and execution of the project.

The SCI Team has both the technical and strategic knowledge and experience to assist the City. Our team leaders Mr. John Bliss and Mr. Jason Drew have been working together to deliver sound advice and recommendations on stormwater finance for over a decade with cities, counties, special districts, state agencies and the Environmental Protection Agency (EPA). As part of this experience we have completed comprehensive stormwater program financial analysis, engineering rate studies, ballot measures, public outreach campaigns and public polling. In addition, our experience has provided great insight into connecting with elected officials and providing the strategic direction necessary for successful stormwater ballot measures.

6. Shall have the ability to deliver concise, cogent presentations to City Council on the engineering, financial, and non-engineering and non-financial aspects of this work.

The SCI Team has developed and delivered over a hundred presentations to Planning Commissions, Community Oversight Boards, City Councils, Boards of Supervisors, and Regulatory Agency Boards. We understand how to work with staff to support the development of sound staff reports and deliver compelling presentations that get to the point.

7. Shall have sufficient availability to complete requested services in a reasonable amount of time.

The SCI Team has the necessary resources to support this project and with the recent completion of the successful City of Berkeley stormwater ballot initiative the timing is ideal to support the City of Alameda with the same endeavor.

EXPERIENCE WITH SIMILAR PROJECTS AND CLIENT REFERENCES

Below are summaries of the work from recent and relevant projects. We encourage you to contact these clients regarding our experience and approach.

City of Berkeley: Clean Storm Drain Fee Initiative Study

2180 Milvia Street, 3rd Floor, Berkeley, CA 94704

Contact: Sean O'Shea, Administrative & Fiscal Manager

(213) 485-0587

Email: soshea@cityofberkeley.info

Team: NCE and SCI

The City of Berkeley sought to explore and possibly implement a stormwater funding mechanism to fund an array of stormwater-related needs as outlined in their 2012 Watershed Management Plan. SCI was hired to work through the process in three stages: Program needs evaluation and funding options; public opinion survey to ascertain the community's priorities and willingness to fund this critical infrastructure program; and implementation of a funding mechanism if sufficient support existed. After completing the first phase, SCI conducted an opinion survey that showed approximately 60% of the community supported investment Green Infrastructure to protect the environment and make improvements to the aging storm drain system.

SCI was authorized to proceed with a Stormwater Fee Rate Study and implementation of a property-related fee process. The initiative won soundly with 60.75% support.

This project had the added complexity of being combined with a street light assessment proceeding simultaneously. The opinion survey contained questions on both the storm drain system and street lighting system. While the street lighting was required to follow a different procedure (stipulated for benefit assessments as opposed to property-related fees), the ballots will contain both questions.

City of San Mateo

330 West 20th Avenue, San Mateo, CA 94403

Contact: Larry Patterson, City Manager

(650) 522-7303

Email: lpatterson@cityofsanmateo.org

Team: SCI

As an initial phase, SCI conducted a scientific survey of property owners to measure the level of support for flood control improvements and a benefit assessment to fund these improvements. This survey found that property owners highly supported the proposed improvements and assessments, if they clearly understood the need for enhanced flood control and the benefits to their property. As a next phase, SCI assisted the City and other project team members with outreach efforts with property owners to build consensus for the proposed improvements and assessments. Thereafter, SCI prepared the Engineer's Report and conducted a successful assessment ballot proceeding that is generating ongoing annual revenues for the maintenance and improvement of levees and other flood control improvements.

Town of Moraga: Stormwater Fee Initiative

329 Rheem Blvd Moraga, CA 94556

Contact: Edric Kwan, Public Works Director/Town Engineer
(925) 888-7025

Email: ekwan@moraga.ca.us

Team: SCI

The Town of Moraga sought to explore and possibly implement a stormwater funding mechanism to fund an array of stormwater-related needs as outlined in their 2015 Storm Drain Master Plan. The Town had performed a community priorities survey in 2016 and found that the residents considered the aging and failing storm drain system to be one of the top three priorities in town (presumably due to the presence of a large sink hole at a major intersection).

SCI was hired to work through the process in three stages: Program needs evaluation and funding options; public opinion survey to ascertain the community's priorities and willingness to fund this critical infrastructure program; and implementation of a funding mechanism if sufficient support existed. Approximately two-thirds of the community expressed support for investing in the aging storm drain system, so SCI was authorized to proceed with a Stormwater Fee Rate Study and implementation of a property-related fee ballot process. Unfortunately, due to a vigorous organized opposition to the fee ballot measure, the initiative was narrowly defeated with only 48% support.

City of Alameda

950 West Mall Square, Alameda CA 94501

Contact: Jim Barse, Clean Water Program Specialist
(510) 747-7950

Email: jbarse@alamedaca.gov

Team: NCE

NCE has been the City's on call stormwater consultant since 2015 working on a variety of stormwater planning, compliance and reporting priority needs. Our work has included assisting the City to comply with the C.10 trash capture and C.3 green infrastructure planning requirements. NCE has taken a practical approach which focuses on identifying the most cost-effective and maintenance friendly solutions. As an example, NCE facilitated interdisciplinary meetings with the City's Maintenance, Public Works, and Clean Water Program staff to identify key locations for the cost-effective installation of trash capture devices. In addition, NCE assisted the City in responding to a letter received from the Water Board at the 11th hour, which required the City to identify additional measures for trash capture compliance within an extremely short deadline. Our team quickly adapted our scope and priority tasks to tailor a rapid evaluation of the areas in question and develop a comprehensive and legally defensible response to the Water Board, which was delivered on-time and within the original budget. Additionally, NCE worked with the City, to provide cost estimates on stormwater needs included as part of the general obligation bond proposed to council in February of 2018. Using our knowledge of the City as an organization, its local priorities and infrastructure needs, NCE has worked closely with City staff to implement a proactive and practical approach to MRP compliance.

Bethel Island Municipal Improvement District

3085 Stone Road, Bethel Island, CA 94511

Contact: Jeff Butzlaff, Executive Director (925) 684-2210

bimid@sbcglobal.net

Team: SCI

Bethel Island is the most heavily populated Delta island and had suffered from severe property tax revenue deflation loss and local economic hardships. The local population had considerable skepticism toward the local governing agency, the Bethel Island Municipal Improvement District ("BIMID"). In fact, BIMID had proposed a special tax in 2010 which was soundly defeated. To complicate matters even more, there was a long-stalled development project (called Delta Cove) that was beginning to be revived and potentially include more than one-third of all the houses on the island. Negotiations between the developer and BIMID were difficult and the proposed assessment was a major point of contention. The community was distrustful of both BIMID and the developer.

SCI was hired to manage all aspects of a proposed new revenue mechanism in order to leverage Department of Water Resources grant funding by providing the required local funding share, and to fund inadequate maintenance. SCI realized that considerable effort would have to be made to regain credibility in the community. A comprehensive, multi-faceted community outreach plan was developed that included direct meetings with major property owners, as well as community meetings, wherein property owners could engage Board members and engineering experts. Several community meetings were conducted along with special one-on-one meetings with major property owners and developers.

SCI developed a proposition 218 compliant engineering approach and Engineer's Report that captured the unique attributes of flood depths and housing stock (i.e., many houses are built on stilts) with a strict goal to create a fair, equitable, and easy-to-understand rate structure. The rate structure was well-accepted by the community and served to help it win widespread support.

SCI assisted the District and other project team members with outreach efforts with property owners and developers. The Assessment was ultimately approved with over 68% support, only four years after a similar tax (Measure X) managed by a different consultant, received only 41% support.

PROJECT TEAM AND PROJECT ORGANIZATION

If the SCI Team is selected, the project would be staffed as follows:

<u>Leadership Roles</u>	<u>Staff</u>	<u>Firm</u>
Project Manager	John Bliss	SCI
Strategic Implementation Lead	Jason Drew	NCE
 <u>Support Roles</u>		
Fee Engineer	Jerry Bradshaw	SCI
Polling/Balloting/Outreach	Melanie Lee	SCI
Stormwater Services Analysis	Marcy Kamerath	NCE

The project team members would interact in a collaborative and iterative manner, with Mr. Bliss overseeing the entire process from start to finish. All 5 team members will be involved in the following:

<u>Phase of Project</u>	<u>Team Members</u>
Financial Planning	Jerry and Melanie
Community Polling	Jerry and Melanie
Fee Study Engineering	Jerry and Marcy
Balloting and Community Outreach	Jason and Melanie

The day-to-day contact will vary, depending on the project phase.

The assigned team members do not have work commitments that would interfere with their ability to successfully complete this project in the timeframe given, and, if selected for a project, the SCI Team will not assign other projects to them which would interfere with our ability perform the scope of work for such a project. Each team member is available to focus primarily on this project with between 20% and 50% of their time.

JOHN BLISS, M.ENG., P.E., PRESIDENT, LICENSE NO. C52091

SCI

Mr. Bliss, a professional engineer and President of SCI, specializes in fee and assessment engineering, special and general benefit analysis, crafting legally compliant, robust Engineer's Reports, assessment administration, cost estimating and budgeting, database design and implementation, regulatory compliance, and revenue measure formations. He has 15 years of experience in this field of expertise. Moreover, Mr. Bliss is a recognized expert assessment engineer and Proposition 218 compliance specialist who has served as an expert witness and technical authority. He also has worked with most of the leading Proposition 218 specialized attorneys in the State, which has further expanded his professional and technical expertise.

During his tenure at SCI, Mr. Bliss has served as the responsible Assessment Engineer on over 300 Fee Studies and Engineer's Reports for new or increased fees and assessments, comprising more post-Proposition 218 new assessment engineering than any other assessment engineer in the State.

Mr. Bliss graduated from Brown University with a Bachelor of Science Degree in Engineering and holds a master's Degree in Civil Engineering from The University of California, Berkeley, where he was a Regent's Scholar. He is a licensed professional Civil Engineer in the State of California and is a LEED accredited professional.

JASON DREW, CPESC, CPSWQ, PRINCIPAL**NCE**

Mr. Drew is the Practice lead for NCE's Watershed Science & Planning service line and possesses expertise in NPDES permit compliance, stormwater management, stormwater financing and water quality, erosion control, and restoration design. For the past 16 years Mr. Drew has been assisting cities, counties, special districts and departments of transportation with stormwater consulting services for the construction, industrial and municipal elements of the NPDES program. As a result, he is very knowledgeable about stormwater regulations, understands practical implementation of stormwater programs and has developed strong working relationships with regulatory staff at the federal, state and local level. Specifically, with stormwater financing, Mr. Drew has been assisting clients with strategic planning, financial programing, program branding, ballot initiatives and community outreach.

JERRY BRADSHAW, P.E., SENIOR ENGINEER, LICENSE NO. C45884**SCI**

Mr. Bradshaw brings over 20 years of civil engineering experience, much of it working as a City Engineer and Public Works Director for two Bay Area cities, including 12 years for San Bruno in San Mateo County. During that time, he has been very active in engineering, construction and operations and maintenance of public facilities such as storm drainage and flood control and has also been involved in numerous ballot measures. While at SCI, Mr. Bradshaw has worked on several projects involving ballot measures and new assessment formations. This includes the recent efforts in the cities of Orange and Placentia where he was the project manager for the formation of new landscape maintenance districts in Proposition 218 ballot proceedings. He is also assisting the City of Sacramento with a storm drainage measure and the San Mateo County Countywide Water Pollution Prevention Program (C/CAG) on a possible county-wide funding measure.

MELANIE LEE, OUTREACH & BALLOTING ADMINISTRATION CONSULTANT**SCI**

Ms. Lee contributes over ten years of experience in new local revenue measure balloting projects and opinion research to the SCI team. She has extensive experience with all phases of a new revenue project, from the initial feasibility analysis, to opinion research and through balloting and educational outreach. Ms. Lee graduated with from St. Mary's College, with a Bachelor of Arts degree in Business Management.

MARCY KAMERATH, CPSWQ, QSD/P, PROJECT SCIENTIST**NCE**

Ms. Kamerath is an experienced watershed scientist who has been actively working on water resource policy and programs at the federal, state and local level for more than 8 years. Her professional experience has focused on stormwater and regulatory compliance, particularly in the Bay Area, and previously at the federal level when working in the Water Division of U.S. EPA. As a key member at the U.S. EPA Water Division, Marcy worked on a variety of water resource programs and projects with state, county and municipal governments and stakeholders. As a lead reviewer and project manager in U.S. EPA's TMDL and CWA 303(d) program she became intimately familiar with NPDES stormwater regulations and developing solutions to comply with CWA regulations. Marcy has a wide variety of experience helping clients and regulated entities solve and obtain funding to address their most difficult stormwater challenges. Her unique ability to combine her government and consulting experience ensures clients receive solutions that not only meet regulations, but also address specific local needs. Marcy has been the lead since 2015 in providing the City of Alameda stormwater program support. Working closely with City staff Marcy has been spearheading efforts to comply with the Municipal Regional Permit.

SUB-CONSULTANTS AND SUPPLIERS

The SCI Team plans to print and mail the notices and assessment ballots using our highly experienced suppliers, Admail West. This firm has accurately handled the printing and mailing of over 5,000,000 assessment ballots for SCI. Moreover, Admail West also handles official election mail for several County Elections departments. The project manager for Admail West would be Amber Cox-Espejo.

METHODOLOGY/APPROACH

The City is seeking an expert consultant team to analyze its current funding and regulatory compliance requirements, develop a financial plan, and assist with implementation of a stormwater rate to address its long-term funding needs. The hurdles set by Proposition 218 are considerable, and every effort must be made to make this project a success. We also recommend that the City move step-by-step through the tasks, making decisions to move forward each time based on the work in the prior task.

Our proposed approach to the project is segmented below into the 4 primary tasks:

1. Financial Planning and Funding Options
2. Community Polling
3. Stormwater Fee Study
4. Balloting and Community Outreach

1. FINANCIAL PLANNING AND FUNDING OPTIONS

➤ **Financial Plan**

The SCI Team will review the following background information to identify regulatory/contractual requirements as well as revenues and expenditures, including all the documents listed on pages 1 and 2 of the RFP.

In order to supplement this information, key members of the SCI Team will conduct an interview with City staff to discuss the range of the regulatory requirements, the current revenues and fees assessed, and costs for implementation and operations and maintenance. Prior to the meeting, the Team will submit an information request to the City. This will provide City staff with the necessary time to obtain and transmit documents that support the subsequent work effort. The SCI Team will work closely with City staff to ensure that we are able to obtain timely and complete feedback.

Past experience has shown that these types of interviews provide valuable insight into the costs of the programs and what the City believes it will take to fully implement them within its jurisdiction. Using the materials and information obtained during the interview, the SCI Team will assess the current and projected revenues and costs to implement the stormwater program, LID/green infrastructure, storm drain infrastructure, creek restoration, etc. The Team will work with the City to identify, to the extent feasible, the major capital and operation and maintenance costs for the program. While the Team will aim to consider the critical costs, it may be necessary to make estimates rather than conduct detailed accounting for smaller expenditures.

➤ **Direct Cost Evaluation Re-Alignment Opportunities**

The SCI team will then review the City's direct costs associated with stormwater management and make recommendations regarding optimal assignment to existing accounts. As part of this review, the SCI Team will evaluate and make recommendations regarding existing non-palloted funding sources which may more effectively fund stormwater services, including water, sewer and refuse collection services.

For background, revenue from the City's water, sewer and refuse collection utilities comes primarily from property-related fees that have been implemented consistent with the requirements of Proposition 218. As part of this evaluation, there are two main Proposition 218 requirements that have been confirmed:

- The revenue collected for water, sewer, and refuse collection (utility) services must be used to provide these services, and not to financially support the general fund or other services, except where those general fund or other services provide a utility function. In this case, the funds paid from the City's water, sewer, and refuse collection utilities to the Stormwater Program have been confirmed to align with Stormwater services that serve respective utility functions.
- Proposition 218 requires that "revenues derived from the fee or charge shall not exceed the funds required to provide the property related service." This requirement is satisfied by the fact that the revenue derived from the City's water, sewer, and refuse collection services has been confirmed to support only those services, and the funds paid to the City's Stormwater Program reimburses the Stormwater Program only for associated costs. To be clear, the revenue collected can be less than the costs of the services, but not more. An analysis may support the conclusion that the revenue collected and provided as reimbursement to the City's Stormwater Program has historically been less than the costs of those services, and that the rate could be increased and still be well-justified.

The revenue collection mechanism for business operation and new development/redevelopment fees is different than for water, sewer, and refuse collection services. This mechanism comes from the City's legal authority to impose regulatory fees through its police powers, consistent with Proposition 26, associated with direct costs. In other words, the City may collect fees for direct expenses such as plan-checking and inspections.

The SCI Team plans to estimate the funds due to the Stormwater Program from the water, sewer, and refuse collection utilities, and building/development services based upon calculation methodologies presented in this memorandum.

The SCI Team will prepare a Financial Plan including pro and cons funding options and realignment opportunities and will carefully review the findings with the City.

2. COMMUNITY POLLING

The survey and opinion research phase would provide the City with a highly accurate projection of the level of ballot support for a new stormwater fee or tax and, just as importantly, a clear insight to the community's priorities to enable the City to finalize a set of services and improvements that will best meet the community's needs. This insight will support the refinement of branding and communication with the community.

The SCI Team has developed a sophisticated research methodology for identifying the priorities of registered voters and property owners, their support for a local funding measure and how best to package the measure for success. One of the primary strengths of the recommended approach is its proven ability to most accurately identify support from different types of property owners, such as single family residential, business, industrial, apartment, vacation property and investment property owners. Moreover, the recommended approach and methodology have proven to provide accurate and reliable research findings in a wide range of

social and economic environments such as rural areas and urban communities, ranges of income, and a variety of ethnic backgrounds.

Due to the demonstrated higher level of accuracy and improved ability to reach all types of property owners and voters, the SCI Team recommends a mailed survey approach specifically tailored to account for the unique aspects of the potential property-related fee, or special tax, services and other specifics. (The methodology developed by the SCI Team has proven to be materially more accurate than standard phone surveys in predicting actual ballot results for property-related fees, and for special taxes.)

Based on the scenarios and the potential services and improvements developed in the previous section, the SCI Team will develop a preliminary stormwater fee/tax structure. This will allow us to assign each parcel an actual fee or tax amount to be tested in the survey phase. This is important because Proposition 218 requires the City to inform property owners about what fees they will be voting on. Unlike stormwater, sewer and solid waste fees that have relatively simple fee structures, stormwater fees can often be based on parcel size for the various land use classes that result in unique fees for many properties. Therefore, an effective survey should show the same information in order to be predictive of the ultimate balloting. By developing a preliminary fee/tax structure and printing the individual fee/tax on each survey form, the SCI Team will ensure that the opinion research accurately measures support from all types of property owners and is based on the specific fee or tax they may be asked to support for their property, instead of an average rate that may have no relation to their proposed fee.

After the period allowed for the mailing and postage-paid return of the surveys, the SCI Team will conduct a complex analysis and modeling of the survey results for the City as they relate to the expected property owner ballot participant profile and balloting scenario. After completing this detailed modeling and analysis, the SCI Team will prepare a comprehensive Polling Report that summarizes the opinion research findings and makes recommendations regarding residents' and owners' stormwater improvement and service priorities, as well as the feasibility of moving forward with a ballot measure to fund such priorities. The report will also include additional value-added elements such as the recommended ballot measure alternatives and services to be funded, an outline of the recommended action plan for proceeding with local funding measures, profiles of likely supporters and opponents, service priorities, support by geographic area, and key messaging elements and strategies. The SCI Team recommends mailing 10,000 survey questionnaires to achieve a +/-3% margin of error.

The SCI Team has worked with FM3 in the past and is happy to work with them on this project. First, however, the SCI Team would like to ensure the City understand the pros and cons of a phone survey versus and mail survey.

3. STORMWATER FEE STUDY

➤ Fee Study

If, after review of the community polling, the City elects to proceed with a property-related fee ballot proceeding, which is most likely, the SCI Team will lead the development of a Fee Study. The SCI Team will prepare a comprehensive Proposition 218 compliant property-related fee engineering and nexus/justification report for the proposed storm drain services and improvements to be funded. The report will include a detailed description of the services and improvements to be funded by the proposed fees, plans for the services and programs, future capital and facility improvement needs, the rationale used for the fee apportionment, the

method of fee apportionment (likely to include impervious area), and calculation of the specific proposed fee amount for each parcel in the City.

The report may also include provisions to incentivize on-site runoff abatement that could apply to traditionally impervious large sites such as commercial, industrial and institutional parcels to help the City implement hydrograph modification practices. Additionally, the report will include legal considerations and issues for the fee methodology and alternative revenue enhancement options. (Alternatively, if a special tax will be the main funding option, the SCI Team will revise this Task to include the work needed to plan and prepare for a parcel tax election.)

The process will build on the data gathered in previous tasks including parcel data, community priorities, and budgets, cost estimates, and multi-year proforma for all services and improvements.

A large part of this task will be the compilation of the parcel attributes. In particular, we will need to perform an audit of lot coverage of impervious surfaces for the various land classes. This is a time-consuming task that will require looking at all our data sources, viewing aerial photos and possibly some site visits. The data generated in this effort will be the backbone of the analysis that follows, where the nexus of parcel attributes to the fee structure is developed. This analysis uses many layers of statistical work as well as a reasoned and stout rationale for the resulting nexus.

We will present these fiscal plans, our data review and analysis, and the proposed fee methodology to the City in a review session. Issues uncovered by the review will be highlighted and remedies suggested. After the City staff and legal counsel have reviewed the data and information, we will prepare a final Fee Report that satisfies the requirements of Articles XIII C and XIII D of the California Constitution (Proposition 218), the Government Code and other relevant code sections. The Report will be prepared and signed by Jerry Bradshaw, PE, a registered Civil Engineer with extensive experience in this field. The Report will include a detailed description of the proposed fee structure for the improvements and services, future capital and facility improvement needs, a detailed cost estimate, the rationale used for the fee apportionment, calculation of the specific proposed fee amount for each parcel in the City, any necessary maps or diagrams, and other elements.

The Fee Report will be the document that the City Council will approve as the first step in the implementation process.

This task will also include an informal Action Plan, which will provide our best recommendations about how to proceed with the implementation of the funding measure. This Plan will distill the information from the Financial Plan and Recommendations Report, and the Fee Report into a concise, point-by-point set of recommendations on how to manage the implementation phase. It will contain key program elements that can be used for community outreach and education and timing recommendations.

4. BALLOTING AND COMMUNITY OUTREACH

➤ Balloting

Once the Fee Report and Action Plan are complete, the next steps will depend on the type of funding mechanism that is selected. Since a property-related fee is most typical, this proposal is based on the process and procedures required for that type of mechanism.

Implementation of a property-related fee includes several steps:

1. City Council approval of the Fee Report, establishing public hearing (protest hearing) date and time, and authorizing the mailing of notices.
2. Printing and mailing of notices.
3. Conducting a protest hearing no less than 45 days after mailing of notices.
4. City Council authorization of mailing of ballots (if no protest exists).
5. Printing and mailing of ballots.
6. Tabulation of ballots after close of ballot period (at least 45 days after protest hearing).
7. City Council certification of results of the balloting, authorizing the fee structure if support is over 50%.

The first three steps are similar to those required for water, sewer and/or solid waste rate setting. The final four steps are unique to stormwater fees in accordance with Proposition 218 and subsequent legal rulings.

The SCI Team will draft all notices, resolutions and staff reports as well as the ballot packet required for each step in the process. City staff, including the City Clerk and legal counsel, will review and finalize all these documents. We will also assist the City and its legal counsel with responding to property owner testimony at the public hearing.

The design of the official notices, ballot and supporting informational items and mailers is one of the most important elements of a successful ballot outcome. The SCI Team will utilize its unmatched expertise and track record to design these items that clearly and concisely explain the reason for the stormwater fee and that meet all legal requirements.

After the notices and ballots are finalized, The SCI Team will oversee the printing, addressing and mailing of the packets. This work will be performed by our sub-contractor, Admail West, a printing and mailing firm with industry leading experience with registered voter elections and mail ballot proceedings. After the notices and ballots are printed and addressed, they will be mailed, pursuant to the California Constitution and the Government Code, to all property owners in the City with a proposed assessment.

Throughout the balloting, the SCI Team will also field and respond to property owner inquiries, will research and confirm new owners that are not reflected on the official county property ownership records and will issue replacement ballots.

Tabulation, in accordance with Proposition 218, must be either done by a disinterested third party or done in a place accessible to the public. The SCI Team is proposing to do the manual work of the tabulation efforts using its proven bar scan technology under the direction of the City Clerk (who is defined by law as a disinterested third party). Further, we would recommend conducting the tabulation process in a room accessible to the public to avoid any appearance of impropriety. We estimate that the tabulation will take about two days to complete.

Part of the financial planning will include discussions about the rate of build-out for the improvements. If the City elects to accelerate the improvements, then a debt mechanism, such as bonds, may be utilized. While debt financing brings additional costs, these are usually on par

with the escalating costs of construction that will be avoided. This proposal does not include detailed debt financing planning or team members who are experts in the field.

➤ **Community Outreach**

The SCI Team shall assist with public informational and educational outreach strategies and property owner informational services. Our firm's informational outreach efforts, which will continue up to and throughout the ballot proceeding, include tasks necessary to ensure that the property owners are adequately informed about the assessment ballot proceeding and the proposed services/improvements in their area prior to the mailing of ballots. Throughout this process, the SCI Team will work closely with volunteers, City staff and other stakeholders.

The SCI Team understands that basic message components will need to be simple, clear and transparent, and need to be well supported with detailed and substantive information.

However, stormwater infrastructure, maintenance and operations are not well known, and not well understood by the general public - and as a result, the general public is commonly hesitant to invest in local stormwater infrastructure. Accordingly, answers to the following questions must be effectively provided to the rate payers:

- What is the purpose of stormwater infrastructure, operations and maintenance?
- Why is the additional funding revenue needed?
- Has the City done all it can to reduce costs before raising rates?
- What protections are there that this additional funding will be spent wisely?

More recently, communities have demanded greater detail and explanation for these questions, particularly the third and fourth questions. We recommend, from our experience providing community outreach throughout the state, that the outreach material and approach combine straightforward, plain-language explanations with detailed, substantive information. Again, credibility is the most important factor in this outreach.

➤ **Develop Communication Infrastructure**

Next, the SCI Team will carefully evaluate and develop the potential communication infrastructure. Working with City staff (i.e., Public Information Officer, etc.), we will evaluate and ultimately coordinate existing communication infrastructure, including stakeholder contacts, print media, website, social media, print publications, neighborhood groups and newsletters, etc., and will prioritize and integrate the various methods as appropriate. We will also look at e-mail contacts with HOA and neighborhood leaders, as well as web-based platforms like nextdoor.com. We will develop a schedule for the dates of community stakeholder meetings, due dates for local group newsletters, etc. Our extensive experience has shown that the most effective communication mechanisms for this type of infrastructure are small, local, and neighborhood-based, with a personal communication or face-to-face element. This approach is not expensive, but is a fair amount of work, and is very effective when well-executed.

➤ **Develop Communication Messaging**

The development of the messaging and supporting information is an iterative process with City staff, the SCI Team, and members of the public. Throughout the process, the SCI Team will analyze and refine messaging associated with stormwater infrastructure.

In this task, the SCI Team will develop draft communications of various types. These may include Frequently Asked Questions (FAQ) documents, camera-ready mailers and brochures, PowerPoint presentations, and emails, scripts and other adaptable messages.

➤ **Rollout and Implementation**

Once the outreach plan is well-vetted, reviewed and refined, the SCI Team will coordinate the rollout and implementation of the plan. The implementation includes all aspects of the outreach including coordination of the Proposition 218 Public hearing.

PROPOSED SCHEDULE

The SCI team has reviewed the deadlines included in the RFP document, and is comfortable that all milestones can be met. See the Tentative Timeline on the following page. A more detailed timeline would be developed after the project kick off.

City of Alameda
Clean Stormwater Fee Study and Prop 218 Process
Tentative Timeline

<u>Date</u>	<u>Task</u>
<u>2018</u>	
November 1	Kick -off meeting & staff interview
November	Gather information and data needed to recommend financial plan and survey approach
December	Finalize funding options and develop preliminary survey instrument
<u>2019</u>	
Mid-March	Surveys mailed
Late April	Analysis of Survey Results, discussion of results with staff
Early May	Survey findings finalized with staff input
May 21	Survey results to Council, Council authorizes Fee Report
May - June	Draft Stormwater Fee Report & resolutions
Early July	Review and finalize Fee Report & resolutions
July 16	Fee Report & Resolutions to Council, authorize ballot proceeding
Early August	Mail Notices (out 45 days before hearing)
October 1	Public hearing on fees, Council adopts rate ordinance and authorizes ballots
October 18	Mail ballots (out for 30 - 45 days)
Early December	close of ballot period, tabulation
December 17	Council certifies ballot results & orders fees

FEE AND PAYMENT SCHEDULE

SCI Team will invoice monthly based upon work performed. See proposed Fees in the attached spreadsheet.

Other Provisions

The scope of services includes up to seven in-person meetings with the City. Any additional meetings, if required, shall be billed at the rate of \$550 per person per meeting.

For assessments for public agencies which cannot be collected through the County Auditor/Tax Collector, SCI shall prepare and manage the mailing of manual bills to public agencies and shall assist with the subsequent collection of their assessments. There is no charge for this service.

In the event the City elects to request optional, additive scope of work, SCI will work with the City to negotiate compensation for these additional tasks and execute an Addendum to the agreement of these additional services.

Note: All costs associated with this the scope of services can be financed or refunded by the assessment proceeds.

**SCI TEAM
CITY OF ALAMEDA
CLEAN STORMWATER FEE STUDY**

Assigned staff:

John	Jerry	Melanie	Jason	Marcy	Support
Bliss	Bradshaw	Lee	Drew	Kamerath	Staff
SCI	SCI	SCI	NCE	NCE	SCI
			5%	5%	
President & Senior Engineer	Fee Engineer	Senior Consultant	Principal	Senior Scientist	
Fully Loaded Hourly Rate:	\$240	\$210	\$175	\$245	\$175
					\$65

Classification:

Fully Loaded Hourly Rate:

Task Number/Description		Hours						Total Hours	Total Costs
1 Financial Planning		6	16	8	20	20	4	74	\$15,280
2 Community Polling		8	40	60	24	8	4	144	\$28,724
3 Fee Study Engineering		30	72	40	24	24	10	200	\$40,554
4 Balloting and Community Outreach		24	10	40	40	12	20	146	\$28,655
TOTAL DIRECT HOURS		68	138	148	108	64	38	564	\$113,213
								Total Labor Cost	\$113,213
Direct Costs									
Mailed Survey	Printing, Addressing, Mailing, Return Postage 10,000 Surveys					#units	cost		
						10,000	\$1.20		\$12,000
Mailed Ballot	Printing, Addressing, Mailing, Return Postage 21,000 Notices					21,000	\$0.75		\$15,750
	Printing, Addressing, Mailing, Return Postage 21,000 Ballots					21,000	\$1.05		\$22,050
Data & Documents	Travel, property data, maps and other out-of-pocket expenses incurred					1	\$3,500		\$3,500
								Direct Costs	\$53,300
								TOTAL BUDGET ALLOCATION	\$166,513

OTHER INFORMATION

1. SCI Consulting Group shall serve as the prime consultant on this project, and NCE shall be a subcontractor to SCI.
2. SCI Team shall perform all services included in this Proposal as an independent contractor.

SCI carries professional Errors and Omissions insurance in the amount of \$2 million per occurrence and \$2 million aggregate. SCI also carries general liability insurance in the amount of \$2 million per occurrence and \$4 million aggregate. Proof of insurance will be provided if requested.
3. SCI Team does not and shall not discriminate against any employee in the work place or against any applicant for such employment or against any other person because of race, religion, sex, color, national origin, handicap, or age or any other arbitrary basis. SCI Team insures compliance with all civil rights laws and other related statutes. SCI Team complies with all State and Federal regulations concerning employment. SCI Team attests to its current internal policies which are aimed at eliminating unlawful discrimination.
4. SCI Team has no known past, ongoing or potential conflicts of interest for working with the City, performing the Scope of Work or any other work for this project.
5. There are currently no suspensions, disbarments, voluntary exclusions or ineligibility determinations by any government agencies towards the SCI Team.
6. SCI Team has not had any contracts terminated within the last 5 years.
7. In the event the City elects to request optional, additive scope of work, SCI Team will work with the City to negotiate compensation for these additional tasks and execute an Addendum to the agreement.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/24/2018

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

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

PRODUCER
Arthur J. Gallagher & Co.
Insurance Brokers of CA, Inc, LIC # 0726293
3697 Mt. Diablo Blvd, Suite 300
Lafayette CA 94549

CONTACT

NAME:

PHONE (A/C, No, Ext): 925-299-1112

FAX

(A/C, No): 925-299-0328

E-MAIL

ADDRESS: jamie_yaude@aig.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Sentinel Insurance Company Ltd

11000

INSURER B: Gemini Insurance Company

10833

INSURER C: Markel Insurance Company

38970

INSURER D:

INSURER E:

INSURER F:

INSURED SCICONS-01
SCI Consulting Group
Consequence Properties
4745 Mangels Boulevard
Fairfield CA 94534-4319

COVERAGES**CERTIFICATE NUMBER:** 1334175214**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	57SBARH8313	4/20/2018	4/20/2019	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			57SBARH8313	4/20/2018	4/20/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE DED RETENTION \$			57SBARH8313	4/20/2018	4/20/2019	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	MWC000353308	4/20/2018	4/20/2019	<input checked="" type="checkbox"/> PER STATUTE E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Service & Technical Professional Liability - Claims Made Retroactive Date: 12/17/1998			VCPL065353	12/17/2017	12/17/2018	Each Claim Aggregate Deductible \$2,000,000 \$25,000

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

Excess Liability coverage is in excess of General Liability and Auto Liability Only
The City of Alameda, its City Council, boards, commissions, officials, employees, and volunteers are included as additional insured per policy form SS0008 0405 attached. Primary & Non-Contributory Wording and Waiver of Subrogation for General Liability per attached form SS00080405. Workers Compensation Waiver of Subrogation per form MWC 1400 05 10 attached.
Written contract required.

10 Days Notice of Cancellation

CITY OF ALAMEDA
Risk Management

CERTIFICATE HOLDER

Date

11-1-18

Lucretia Akil, City Risk Manager

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

City of Alameda
Public Works Department
Alameda Point, Building 1
950 West Mall Square, Room 110
Alameda CA 94501-7558
USA

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WC

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

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against any person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

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

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.


Schedule

1. Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Premium:

The additional premium charge for this endorsement shall be 3 percent of the California Workers' Compensation pre-mium otherwise due subject to a minimum premium of \$750 per policy.

CITY OF ALAMEDA
Risk Management

Date 11-1-18
Lucretia Akil, City Risk Manager

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 04/20/2018

Policy No. MWC0003533-08

Endorsement No.

Insured: SCI CONSULTING GROUP (A CORP.)

Premium (See Attached)

Insurance Company:
MWC14000510

Markel Insurance Company

Countersigned by _____

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BUSINESS LIABILITY COVERAGE FORM

QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY

BUSINESS LIABILITY COVERAGE FORM

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CITY OF ALAMEDA
 Risk Management

 Date 11-1-18
 Lucretia Akil, City Risk Manager



BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (b) The "bodily injury" or "property damage" occurs during the policy period; and

- (c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:
- (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
- (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. 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 actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "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; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured 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 because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

BUSINESS LIABILITY COVERAGE FORM

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

BUSINESS LIABILITY COVERAGE FORM

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

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o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

- (c) Title of any literary or artistic work;
- (8) Arising out of an offense committed by an insured whose business is:
 - (a) Advertising, broadcasting, publishing or telecasting;

- (b) Designing or determining content of web sites for others; or

- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section G. – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:

- (a) An "advertisement" for others on your web site;
- (b) Placing a link to a web site of others on your web site;
- (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
- (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You - Exception For Damage By Fire, Lightning or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

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2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

- a. **Any Insured**
To any insured, except "volunteer workers".
- b. **Hired Person**
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. **Injury On Normally Occupied Premises**
To a person injured on that part of premises you own or rent that the person normally occupies.
- d. **Workers' Compensation And Similar Laws**
To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. **Athletics Activities**
To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.
- f. **Products-Completed Operations Hazard**
Included with the "products-completed operations hazard".
- g. **Business Liability Exclusions**
Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
- If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.
- (2) "Property damage" to property:
 - (a) Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed

before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

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contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as 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 and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance 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, except when 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; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) 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.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
 This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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

- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

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

- Insureds;
- Claims made or "suits" brought; or
- Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to 2.a. or 2.b above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

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

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

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

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

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

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

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

d. Obligations At The Insured's Own Cost

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

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

BUSINESS LIABILITY COVERAGE FORM

This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

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

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

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

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

CITY OF ALAMEDA
Risk Management

Date: 11-1-18
Lucretia Akil, City Risk Manager

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Risk Management
 Date 11-1-16
 Lucretia Akil, City Risk Manager

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - 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 and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance 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; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) 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.

- (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.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In the performance of your ongoing operations for the additional insured(s); or

(2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. – Liability and Medical Expenses Limits of Insurance.
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:

BUSINESS LIABILITY COVERAGE FORM

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic 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 or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
19. "Products-completed operations hazard";
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
20. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
23. "Volunteer worker" means a person who:
- a. Is not your "employee";

BUSINESS LIABILITY COVERAGE FORM

- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.