# PROFESSIONAL SERVICES AGREEMENT

City Manager's Office  
701 Laurel St., Menlo Park, CA 94025  
tel 650-330-6620

<table>
<thead>
<tr>
<th>Agreement #:</th>
<th>002399</th>
</tr>
</thead>
</table>

## AGREEMENT FOR SERVICES BETWEEN
THE CITY OF MENLO PARK AND MATRIX CONSULTING GROUP

THIS AGREEMENT made and entered into at Menlo Park, California, this **16** day of **August**, 2018, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and MATRIX CONSULTING GROUP, hereinafter referred to as "FIRST PARTY."

WITNESSETH:

WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: Public Works and Community Development Departmental Reviews

WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:

## 1. SCOPE OF WORK

In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.

## 2. SCHEDULE FOR WORK

FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.

FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.

## 3. PROSECUTION OF WORK

FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).
4. COMPENSATION AND PAYMENT

A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed $103,950 as described in Exhibit "A," Scope of Services. This compensation shall be based on the rates described in Exhibit "A." All payments, including fixed hourly rates, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.

B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.

C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.

D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.

B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.

C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.

E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.

B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.
7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY’s services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY’s work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Michael S. Frank, Sr. Project Manager
City Manager’s Department
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6613
msfrank@menlopark.org

Notices required to be given to FIRST PARTY shall be addressed as follows:

Richard Brady, President
Matrix Consulting Group
201 San Antonio Circle, Suite 148
Mountain View, CA 94040
650-858-0507
rbrady@matrixcg.net

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.
11. INSURANCE

A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.

B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.

1. Workers' compensation and employer's liability insurance:
   The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).

2. Liability insurance:
   The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars ($1,000,000) per occurrence and one million dollars ($1,000,000) in aggregate, or one million dollars ($1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars ($1,000,000) for each accident combined single limit or not less than one million dollars ($1,000,000) for any one (1) person, and one million dollars ($1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, ($300,000) property damage.

3. Professional liability insurance:
   FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars ($1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their offices, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled. CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.

E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.
12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval (. Upon receipt of such notice, FIRST PARTY shall:

1. Immediately discontinue all services affected (unless the notice directs otherwise); and
2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.

B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.

D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.

E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.

F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.
17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.

B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of August 1, 2018 through June 30, 2019 unless extended, amended, or terminated in writing by CITY.
25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

[Signature]

[Name: Richard Brady]

[Date: 8-9-18]

[Title: President]

[Printed name]

[Tax ID#: 05-0545979]

APPROVED AS TO FORM:

[Signature]

[Name: William L. McClure, City Attorney]

[Date: 8/15/18]

FOR CITY OF MENLO PARK:

[Signature]

[Name: Alex D. McIntyre, City Manager]

[Date: 8/19/18]

ATTEST:

[Signature]

[Name: Judi A. Herren, City Clerk]

[Date: 8/16/18]
## A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY's Public Works and Community Development Departments. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail.

FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A-1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

## A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

## A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

## A4. CHANGES IN WORK — EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Senior Project Manager.
FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount;
Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.
2 Approach / Methodology: Public Works

This section of the proposal illustrates our understanding of the project and provides a summary project work plan for how we would meet the scope of services requested by the City of Menlo Park in evaluating the Public Works Department.

1. Our Understanding of the Project

The City of Menlo Park is seeking a comprehensive review of its Public Works Department to improve operational effectiveness and efficiency. The City is seeking a focus on both immediate and long-term recommendations that will ensure that the services provided and staffing level and mix are consistent with the needs of the community.

The City of Menlo Park, located between the cities of San Francisco and San Jose, has a population of approximately 33,000 in a land area of 19 square miles. The City’s economy is robust, which is contributing to revenue projections that exceed expenditures in each of the next ten years, resulting in a projected $33.3 million contribution to fund balance over this time period.

The Public Works Department operating budget of $11.93 million comprises almost 18% of the City’s total budget. Although the Public Works Department’s proposed operating budget is second only to the Police Department, it will experience a significant workload as a result of the City’s commitment to capital projects. The table below shows the Department’s revenue sources for the current and three previous fiscal years and illustrates the significant increase in capital project activity.

<table>
<thead>
<tr>
<th>Funding Source</th>
<th>FY 15-16 Actual</th>
<th>FY 16-17 Actual</th>
<th>FY 17-18 Actual (est.)</th>
<th>FY 18-19 Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>$7,475,323</td>
<td>$8,688,242</td>
<td>$10,364,535</td>
<td>$11,927,976</td>
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<tr>
<td>Special Revenue Funds</td>
<td>$3,424,376</td>
<td>$6,008,268</td>
<td>$3,409,146</td>
<td>$7,625,876</td>
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<tr>
<td>Capital Improvement Funds</td>
<td>$10,387,252</td>
<td>$10,174,713</td>
<td>$9,454,860</td>
<td>$32,737,015</td>
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<tr>
<td>Water Fund</td>
<td>$8,085,529</td>
<td>$7,456,556</td>
<td>$10,171,455</td>
<td>$23,398,313</td>
</tr>
<tr>
<td>Internal Service Funds</td>
<td>$186,555</td>
<td>$288,625</td>
<td>$977,600</td>
<td>$881,000</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$29,559,035</strong></td>
<td><strong>$32,616,404</strong></td>
<td><strong>$34,377,617</strong></td>
<td><strong>$76,550,180</strong></td>
</tr>
</tbody>
</table>

Highlights from a review of the table above include the following:

- Allocations to Public Works from the General Fund increased by $2,889,212 from FY 15-16 to FY 17-18, or 39%. This funding source is projected to increase by $1,563,441 in the upcoming fiscal year.

- Capital Improvement funding is projected to increase by $23,282,135 in FY 18-19 compared to the actual expenditures in FY 17-18. The actual expenditures in FY 17-18, however, represent a significantly lower figure than the $36,808,721 that was budgeted, suggesting delays in some projects.
The Water Funds are projected to increase significantly in the coming fiscal year as well. The funding of $23,398,313 represents an increase of $13,226,858 over that of FY 17-18, or 130%.

As noted above, the City has initiated several new capital projects for which the Public Works Department will be responsible, including the Ravenswood Avenue / Caltrans rail crossing, street resurfacing projects, the Downtown parking utility undergrounding, Parking Plaza 7 and 8 renovations, as well as others. The Department has been authorized a new Construction Inspector position at a cost of $140,000 to facilitate these, and other, projects to completion.

This year’s proposed operating budget assumes a vacancy rate of 4.2%, which by recent standards is relatively low. As recently as March of this year, 29 of the City’s 278 authorized positions were vacant, equating to slightly more than a 10% vacancy rate. The problem was even more acute in the City’s upper management ranks, where 24% of the 22 positions were vacant.

With some exceptions, the workloads of the Public Works Department have generally increased. Selected workload indicators are included in the table below.

<table>
<thead>
<tr>
<th>Workload Indicator</th>
<th>FY 14-15</th>
<th>FY 15-16</th>
<th>FY 16-17</th>
<th>FY17-18 (est)</th>
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<tbody>
<tr>
<td>CIP Section</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Projects Completed</td>
<td>9</td>
<td>12</td>
<td>15</td>
<td>14</td>
</tr>
<tr>
<td>Projects in Construction</td>
<td>4</td>
<td>7</td>
<td>8</td>
<td>4</td>
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<tr>
<td>Utilities Section</td>
<td></td>
<td></td>
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<tr>
<td>Backflow Assemblies Tested</td>
<td>787</td>
<td>800</td>
<td>800</td>
<td>810</td>
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<tr>
<td>Storm Drains Cleaned</td>
<td>230</td>
<td>360</td>
<td>300</td>
<td>320</td>
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<tr>
<td>Maintenance Division</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Acres of Park Turf Mowed</td>
<td>1,275</td>
<td>1,275</td>
<td>1,275</td>
<td>1,080</td>
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<tr>
<td>Buildings Maintained</td>
<td>26</td>
<td>26</td>
<td>26</td>
<td>28</td>
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<tr>
<td>City Vehicles and Motorized Equipment</td>
<td>207</td>
<td>204</td>
<td>194</td>
<td>215</td>
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<tr>
<td>Miles of Streets Swept</td>
<td>6,586</td>
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<td>6,586</td>
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<tr>
<td>Street Signs Repaired</td>
<td>197</td>
<td>200</td>
<td>150</td>
<td>212</td>
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<tr>
<td>Engineering Division</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grading Plan Checks for Single Family Homes</td>
<td>144</td>
<td>120</td>
<td>155</td>
<td>160</td>
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<tr>
<td>Inspections Completed</td>
<td>3,600</td>
<td>3,600</td>
<td>3,600</td>
<td>4,000</td>
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<tr>
<td>Off-site/ROW Plan Checks Completed</td>
<td>414</td>
<td>375</td>
<td>450</td>
<td>460</td>
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<td>Transportation Division</td>
<td></td>
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<tr>
<td>Shuttle Ridership</td>
<td>82,663</td>
<td>71,597</td>
<td>57,737</td>
<td>60,000</td>
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<tr>
<td>Signal Call-outs (repairs)</td>
<td>65</td>
<td>45</td>
<td>66</td>
<td>85</td>
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<tr>
<td>Traffic Control Plan Reviews</td>
<td>240</td>
<td>450</td>
<td>400</td>
<td>490</td>
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</tbody>
</table>

The workload in the Public Works Department will be handled in FY 18-19 by a contingent of 70.0 FTEs, which is an increase of 3.0 over the previous fiscal year. The following table provides the current and historic staffing levels for the Department.
Funded Public Works Positions

<table>
<thead>
<tr>
<th>Workload Indicator</th>
<th>FY 15-16</th>
<th>FY 16-17</th>
<th>FY 17-18</th>
<th>FY 18-19 (Proposed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Time Equivalents</td>
<td>65.0</td>
<td>65.0</td>
<td>67.0</td>
<td>70.0</td>
</tr>
</tbody>
</table>

While a comprehensive evaluation is intended, there are several specific areas of focus discussed in the City’s Request for Proposals to evaluate in the Public Works Department including:

- Identification of opportunities for Public Works to incorporate best practices.
- Evaluation of efficiencies related to the development review process that spans the Public Works Department.
- Analysis of the current organizational structure of the Public Works Department for effectiveness.
- Evaluation of staffing needs (City and contract employees) to meet the existing and projected workloads.

In the following section, the Matrix Consulting Group provides our proposed task plan to accomplish these objectives. Our goal is not only to provide the City with the “right answers,” but to provide added value through implementable solutions that prepare the Public Works Department to meet and exceed the public’s expectations.

2. Proposed Project Work Plan

The following are proposed tasks for conducting a comprehensive assessment of the Public Works Department in Menlo Park.

Task 1 | **Develop an Understanding of Current Issues and Develop a Detailed Profile of Existing Operations.**

To evaluate the organization and operations of public works and utilities services in Menlo Park, we need to develop an understanding of the key issues impacting and shaping service requirements today. To develop this perspective, we will conduct interviews with the City Manager, Public Works Director, key stakeholders such as other City department personnel as well as potentially interested community and business groups. These interviews will focus on exploring issues and attitudes in the following areas:

- Adequacy of service levels, and perceived gaps in existing levels of service;
- Organizational changes which have been made in the past several years and
perceptions of the impacts of these changes;

- Staffing changes in the past several years due to the economic environment or other causes;

- Goals and objectives with regard to the delivery of services in each of the public works functions;

- Adequacy of management systems and technology, and the extent to which managers utilize this information to make meaningful managerial, operational, scheduling and staff allocation decisions;

- Outsourcing philosophy of the Department; the services that are currently outsourced and additional candidates. This would also include an assessment of the insourcing philosophy (i.e., what are the services that the Department provides that can be expanded upon in terms of the levels of service).

Next, we will develop a detailed description of the services provided through the Public Works Department. Our focus will be on how services are delivered, staffed, and managed, as well as the costs associated with the delivery of those services. The development of this detailed description will be based on interviews as well as on the collection of operating information and data, including the following:

- The current organization of the services provided by the Public Works Department:
  - The structure and functions of each division and unit;
  - The staffing levels of each division;
  - The basic job responsibilities staff; and
  - The budgets for the current and three prior fiscal years.

- Documentation of all key operations, including:
  - Service scope and content;
  - How staff are scheduled and deployed;
  - Workload data;
  - Locations of facilities such as maintenance shops, storage facilities, etc.;
  - Basic service levels; and
  - The extent of contracted services by type, size, and cost.

- Documentation of the current technology in use in the divisions, including:
  - Geographical information system
  - Information Technology Master Plan
  - Use of hand-held devices for reporting work
  - Radios and cell phones
  - Computerized maintenance management systems
  - Other
• Documentation of management systems available to support departmental operations, including:
  – Financial reporting, billing and budgeting systems;
  – Organizational business processes and procedures;
  – Performance monitoring systems; and

• Documentation of the road infrastructure maintained and repaired by road maintenance. For example, we would obtain the City’s CIP and its latest Pavement Condition Assessment report.

• Documentation of the fleet of vehicles and equipment maintained and the number and size of facilities maintained.

• Documentation of the maintainable acreage and available amenities at each park.

• Documentation of the infrastructure in terms of linear miles, materials compositions, rehabilitation and replacement that has occurred in the past 3-5 years, as well as other metrics.

• Documentation of the Department’s role in development review and inspection activities.

Once these initial data collection activities have been completed, the project team will prepare a summary descriptive profile that presents our understanding of the current organization, staffing, operations and costs of the services provided by the Public Works Department. This profile will be circulated among staff for comment, to ensure the accuracy of our understanding. The profile will then be presented to the City Project Team. Once completed and reviewed, the profile information will provide the basis for analysis conducted and completed in subsequent study tasks.

... TASK RESULT ...

The deliverable for this task will be a descriptive profile.

Task 2 | Compare the Department’s Operations and Practices to “Best Management Practices.”

The purpose of this task is to evaluate the maintenance services provided by the Public Works Department in the context of best management practices. When conducting the best management practices assessment, each operational area would be assessed against unique management practices. We have, for example, presented some representative best management practices for building maintenance services below.
Selected Building Maintenance Best Management Practices

A condition assessment of all facilities is conducted and updated on a regular basis.

A component replacement schedule has been implemented for all major facility components.

Facility management uses standardized cost data based on an industry-accepted cost estimating system to determine repair and replacement costs for components.

Facility management uses an evaluation tool, such as life-cycle costing or internal rate of return, to compare building systems and equipment against demonstrated standards.

Facility management has a long-range plan for building maintenance extending 3 – 5 years, containing an inventory of all buildings' components and systems, their condition, and expected useful life.

Facility management has established an adequate facility funding level for ongoing maintenance, such as the recommended guideline of between 2% and 4% of current replacement value.

Facility management has established a preventive maintenance program that includes one-year schedules that prescribe weekly preventive maintenance activities for specified equipment and components according to manufacturers' recommended frequency or other set intervals.

The ratio of deferred maintenance to buildings' current replacement value is within an acceptable range around the median for similar jurisdictions.

Facility management has developed a comprehensive inventory of the assets.

Facility management has installed a reliability-centered maintenance program including such predictive testing as thermal imaging, lubricant / wear particle analysis, vibration analysis, etc.

The best practices utilized for comparison in this task would be based upon our accumulated knowledge and experience with efficient and effective organizations across the country, as well as through accepted industry benchmarks from such organizations as APWA, IFMA, AWWA, ASCE and others.

The best practice assessment will include the identification of areas where Menlo Park currently meets or exceeds the best practice. More importantly, the analysis will identify areas were current gaps and shortcomings exist and present opportunities for improvement for existing operations. The best practice assessment will begin to clearly identify major operational issues and will include preliminary analysis of applicable data. The issues identified in the best practice assessment will form the base for many of the recommendations presented in the final report.

**TASK RESULT**

The deliverable of this task would be an evaluation of the Department in comparison to best management practices.
Task 3  Evaluate Staffing, Work Flow, and Service Levels.

In this work task, the project team will analyze the maintenance staffing, work practices, and service levels within the Public Works Department, including the following:

• Evaluate the levels of maintenance service delivered by each of the functions within the Public Works Department. This analysis would focus on profiling the levels of service and assessing their adequacy and respective cost implications.

• Evaluate the adequacy of major work practices utilized by each function. This analysis would focus on the identification of opportunities to streamline internal processes and assignments as well as work practices to increase productivity and/or enhance their effectiveness. This would include interdepartmental processes – such as development review plan review and inspection services.

• Evaluate work planning and scheduling. This analysis would focus on systems and processes used to plan and schedule maintenance activities in the divisions. This subtask would include an analysis of how maintenance management systems are utilized by managers to assign resources to functions and tasks, and to plan for their use during specific times of the year. Further, within this sub-task, we will evaluate the degree to which current shift scheduling is meeting the needs of customers and determine the need for any changes in these shifts, including whether shift times should be altered or if another shift should be added.

• Evaluate productivity and staffing levels against work output guidelines. Over the years, we have developed guidelines for staffing in a variety of service areas based on analysis of industry standards and actual work measurement of maintenance activities. In evaluating the adequacy of staffing levels in the Public Works functions, the project team will utilize data available from the Department’s computerized maintenance management systems (CMMS).

• Evaluate the skill mix of current staff. In a separate sub-task, our project team will evaluate the adequacy of staffing levels to conduct historical needs related to maintenance, engineering, project management, and other core service areas. In this sub-task, we will evaluate whether the staff possess the required skills to perform assigned tasks. Additionally, we will evaluate the need for staff in functional areas that may not be currently addressed to a sufficient degree. Our project team will address these, as well as others, as the needs are identified through interviews and observations.

• Evaluate outsourcing and insourcing opportunities. The services provided by the Department would be evaluated for outsourcing and insourcing, recognizing that this choice has multi-faceted dimensions including cost, responsiveness, level
of service guarantees, contract oversight, availability of competitors, etc.

- **Evaluate the adequacy of asset management by the Department.** The Department is responsible for the maintenance of a significant and expensive road and facility infrastructure system. How has the City targeted an overall Pavement Condition Index? What is the appropriate level for Menlo Park? Our project team will review the renewal and replacement of infrastructure during this sub-task.

- **Evaluate customer service including internal customers, external customers, the service request response system, etc.** For example, in analyzing the service request response system, we would evaluate the system for responding to and tracking customer service calls and requests and evaluate the use of technology to facilitate customer service.

- **Evaluate performance management methods in the Department.** The project team will assess the degree to which performance in the Department is managed and reported. This may include the capture and reporting of such metrics as response times to reports of pavement failures, percentage of pavement segments with PCI over 72, percentage of sidewalk network inspected for trip hazards, etc.

- **Evaluate implementation of the Capital Improvement Program.** To determine if projects are being executed according to proposed plans and in areas in which this is not accomplished, what major factors are the cause (e.g., staffing, contracting procedures, insufficient project oversight, etc.).

At the conclusion of this task, we will have evaluated Public Works in the areas of work and operational practices, service levels, work flows and work activities to identify improvement opportunities. The project team will be able to evaluate the efficiency of performance of current tasks and determine which of these should continue to be performed by internal staff, and those that should either be outsourced or discontinued.

**TASK RESULT**

The deliverable of this task would be improvement opportunities and proposed adjustments in staffing, work practices, service levels, outsourcing/insourcing services, customer service, and operations of the Department.

**Task 4  Evaluate the Uses of Technology in the Department.**

Although the use of technology has been a part of public works operations for many years, the mantra of “doing more with less” has made the use of technology more important than ever. In short, implementation of technology cannot be viewed simply as a means by which to collect and report data, but rather as a management tool and resources to simplify staff work activities. In Task 1 of our work plan, the Matrix Consulting Group will
have documented the technological tools currently available to divisional staffs in the descriptive profile. In this important task, our project team will analyze the degree to which current technology has been implemented, as well as identify any needed technologies that would cost-effectively improve the operations of Public Works. Specifically, our project team would assess:

- The need for automation of maintenance management and customer service.
- The degree to which GIS is implemented, and is assisting not only in managing assets, but in deploying scarce personnel, materials and equipment to the areas of greatest need. To the extent that enhanced training could expand and improve the implementation of GIS in the two divisions, our consultants will identify it in this step.
- The potential to implement hand-held devices, such as cell phones and tablets, in the reporting of work as well as in the reporting of maintenance and repair.
- The degree to which the integration of current systems is resulting in efficient information-sharing and elimination of duplicative input.

The use and implementation of technology are important factors in the success of modern public works operations, and our project team members will analyze both the current and potential uses of technology in the Department.

**TASK RESULT**

The deliverable of this task would be an assessment of the current and potential uses of technology in the Public Works Department.

**Task 5**  
**Evaluate How the Department Is Organized.**

In this task, the project team will evaluate the plan of organization for the Public Works Department by using a number of principles in the evaluation of organizational structure, including:

- Does the current approach to organizing public works services in the City foster accountability?
- Are spans of control for functions in the component divisions too broad or too limited?
- Are the plans of management organization for maintenance services in the Department providing adequate communication and coordination where needed?
Does the current structure enhance shared knowledge and understanding?

- Do maintenance functions in the City share resident complaint response mechanisms and reporting systems recognizing that these are often linked across infrastructures.

- Do the plans of organization enhance career development opportunities, training, and recruitment and retention?

- Has the Department anticipated the impact of retirements on the continuity of management and supervision?

- Do the plans of organization enable staff to provide better service to the public in terms of cycle times, user friendliness, performance management, quality control, and consistency?

The end result of this analysis will be a proposed organizational structure for the provision of services and specific staffing levels to meet service demands. This structure will be one that unifies all Public Works functions.

At this point in the process, our project team will develop an informal report and will present this to the City Project Team for review. We will meet with the Team to discuss preliminary findings and recommendations in preparation for the development of the draft final report in the next task.

**TASK RESULT**

The product of this task would be an organizational structure that promotes accountability, communication and efficient work flow in Public Works functions. We will also develop an informal report on preliminary findings and recommendations in preparation for the development of the draft final report.

**Task 6** Prepare a Draft and Final Report and Provide Plans for Implementing Improvement Opportunities in the Organization and Operations of the Public Works Department in Menlo Park.

Once the work tasks noted above have been completed, our analysis, findings, and conclusions will be documented and reviewed with the Project Steering Committee and staff in the City's Public Works Department. The draft and final reports will contain the following elements:

- A final version of the descriptive information regarding Public Works operations in the City.
• A final version of the 'best management practices' assessment.
• Detailed analysis of each identified improvement opportunity relating to philosophies and commitments, staffing required given these commitments, managerial and operational practices for service delivery.

• Recommended staffing allocations, by number and position, for each division.

• The optimum organizational model for the Department that maximizes communications, workloads and efficiency, and that minimizes duplication.

• Recommendations regarding the implementation of a formal succession plan.

• Recommendations related to standardizing the insourcing and outsourcing decision

• An implementation plan for each improvement opportunity to ensure that there are accountability mechanisms in place to ensure that responsibility is allocated, timing is planned, and results are demonstrated.

The Matrix project team recognizes that some recommended improvements may have associated cost impacts, and these will be identified and prioritized. The City has many competing demands for financial resources, and the identified improvement opportunities will be considered within the context of these restraints.

Once staff and the Project Steering Committee have reviewed the draft final report and implementation plan and provided input, we would develop the final report and deliver to the City Project Team. We will be available to make a presentation of our findings and recommendations to the City Council upon request.

TASK RESULT

The product of this task would be the draft and final reports.
APPROACH / METHODOLOGY: COMMUNITY DEVELOPMENT
3 Approach / Methodology: Community Development

This section of the proposal illustrates our understanding of the project and provides a summary project work plan for how we would meet the scope of services requested by the City of Menlo Park in evaluating the Community Development Department.

1. Our Understanding of the Project

The City of Menlo Park is seeking a comprehensive review of its Community Development Department to improve operational effectiveness and efficiency. The City is seeking a focus on both immediate and long-term recommendations that are implementable.

The City is in the midst of several major redevelopment and infill projects that have strained city resources. In addition to staff reviewing, permitting, and inspecting private development project, the City has also seen an increase in workload related to specific projects (e.g., increased need for small area plans, infrastructure improvements, etc.).

Community Development Department workload has generally increased over the past few years, but it still varies from year to year. The following table presents the historic workload for the Community Development Department.

<table>
<thead>
<tr>
<th>Workload Indicator</th>
<th>FY 14-15</th>
<th>FY 15-16</th>
<th>FY 16-17</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative permits reviewed</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City Council reports</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>3.3</td>
</tr>
<tr>
<td>Commercial building permits issued</td>
<td>28</td>
<td>16</td>
<td>25</td>
<td>23.0</td>
</tr>
<tr>
<td>Community workshops/meetings supported or staffed</td>
<td>187</td>
<td>176</td>
<td>190</td>
<td>184.3</td>
</tr>
<tr>
<td>Development review team meetings conducted</td>
<td>33</td>
<td>25</td>
<td>20</td>
<td>26.0</td>
</tr>
<tr>
<td>Environmental documents prepared</td>
<td>28</td>
<td>29</td>
<td>15</td>
<td>24.0</td>
</tr>
<tr>
<td>Inspections conducted</td>
<td>13</td>
<td>9</td>
<td>9</td>
<td>10.3</td>
</tr>
<tr>
<td>Land use applications received</td>
<td>10,486</td>
<td>10,835</td>
<td>9,200</td>
<td>10,173.7</td>
</tr>
<tr>
<td>Planning Commission reports</td>
<td>86</td>
<td>103</td>
<td>100</td>
<td>96.3</td>
</tr>
<tr>
<td>Public notices prepared</td>
<td>95</td>
<td>92</td>
<td>98</td>
<td>95.0</td>
</tr>
<tr>
<td>Residential building permits issued</td>
<td>499</td>
<td>461</td>
<td>415</td>
<td>458.3</td>
</tr>
<tr>
<td>Sign applications reviewed</td>
<td>733</td>
<td>900</td>
<td>690</td>
<td>774.3</td>
</tr>
<tr>
<td>Zoning compliance letters prepared</td>
<td>24</td>
<td>34</td>
<td>20</td>
<td>26.0</td>
</tr>
<tr>
<td>Total</td>
<td>12,223</td>
<td>12,698</td>
<td>10,792</td>
<td>11,904.3</td>
</tr>
</tbody>
</table>

While the workload may have decreased in FY 16-17 it is important to note that many of the projects that are on the books now are considered large scale commercial and mixed use projects that significantly impact staff's workload. As an example, an 800,000 square foot mixed used campus that contains offices, commercial, and multi-family residential space requires more review time, permit types, and ultimately more inspections than an equivalent sized office complex. Clearly commercial development is more complex than say a single family home neighborhood.
Furthermore, the number of funded positions in Community Development has increased since FY 15-16 to handle the increase in workload. The following table outlines the historic and current requested positions in Community Development.

**Funded Community Development Positions**

<table>
<thead>
<tr>
<th>Workload Indicator</th>
<th>FY 15-16</th>
<th>FY 16-17</th>
<th>FY 17-18</th>
<th>FY 18-19 (Proposed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Time Equivalents</td>
<td>17</td>
<td>28</td>
<td>28</td>
<td>31</td>
</tr>
</tbody>
</table>

The number of funded full time equivalents increased 64% between FY 15-16 and FY 17-18 and additional funding has been requested to add an additional 3 positions (10%) in the upcoming budget year. This table does not include contract employees or the proposed increase in the use of contract employees for FY 18-19. The historic and proposed increase in personnel is a further indication that the City believes current development trends (and associated workload) will continue to increase.

Due to the evolving and complex nature of the type of development occurring in Menlo Park, it is important to understand the impact on operations and staffing needs. While a comprehensive evaluation is intended, there are several specific areas of focus discussed in the RFP for the selected vendor to evaluate including:

- Recommendations related to the integration of Economic Development / Housing functions into the Community Development Department.
- Identify opportunities for Community Development to incorporate best practices.
- Evaluate efficiencies related to the development review process.
- Improve performance and communication between all departments / divisions involved in the permitting and review process.
- Analyze the current organizational structure of the Community Development Department for effectiveness.
- Evaluate staffing needs (City and contract employees) to meet the existing workload.

Overall, this project will focus on a holistic approach to evaluating service delivery, operational issues, and staffing needs for the Community Development Department and develop recommendations and an implementable plan for today and in the future.

2. **Proposed Project Work Plan**

The following are proposed tasks for conducting a comprehensive assessment of the Community Development Department in Menlo Park.
Task 1  Develop an Understanding of Current Issues and Develop a Detailed Profile of Existing Operations.

To evaluate the organization and operations of community development operations in Menlo Park, we need to develop an understanding of the key issues impacting and shaping service requirements today. To develop this perspective, we will conduct interviews with the City Manager, Community Development Director, Planning Commissioners, Community Development staff, key stakeholders such as other City department personnel involved in the review process, as well as potentially interested business and resident groups. These interviews will focus on exploring issues and attitudes in the following areas:

- Adequacy of service levels, and perceived gaps in existing levels of service;
- Organizational changes which have been made in the past several years and perceptions of the impacts of these changes;
- Goals and objectives with regard to the delivery of services in each operational functional area;
- Adequacy of management systems and technology, and the extent to which managers utilize this information to make meaningful managerial, operational, scheduling and staff allocation decisions;
- Outsourcing philosophy of the Department; the services that are currently outsourced and additional candidates.
- Understanding of the role Economic Development and Housing Divisions interact and potential consolidation with Community Development.
- Process mapping of permit applications from submission to approval and identifying all touch points with other City operations.
- Identification of relevant workload for staff and the Community Development Department.

Next, we will develop a detailed description of the services provided through the Community Development Department (and other departments/divisions involved in the review process). Our focus will be on how services are delivered, staffed, and managed, as well as the costs associated with the delivery of those services. The development of this detailed description will be based on interviews as well as on the collection of operating information and data, including the following:
• The current organization of the services provided by the Community Development Department, including:
  – The structure and functions of each division and unit;
  – The staffing levels of each division;
  – The basic job responsibilities staff; and
  – The budgets for the current and three prior fiscal years.

• Documentation of all key operations, including:
  – Service scope and content;
  – How staff are scheduled and deployed;
  – Workload data;
  – Process mapping of the relevant review, permitting, and inspection processes.
  – Basic service levels; and
  – The extent of contracted services by type, size, and cost.

• Documentation of the current technology in use in the divisions, including:
  – Current permitting and review software systems;
  – Geographical information system;
  – Information Technology Master Plan;
  – Use of hand-held devices for reporting work.

• Documentation of management systems available to support departmental operations, including:
  – Financial reporting, billing and budgeting systems;
  – Organizational business processes and procedures; and
  – Performance monitoring systems.

• Document current performance targets related to major services areas within the Community Development Department, such as turnaround times for permitting processes, response times for complaints, percentage of inspections completed within 24 hours of request, etc.

• Document the current coordination mechanism and procedures in place to coordinate service delivery among different departments and divisions.

Once these initial data collection activities have been completed, the project team will prepare a summary descriptive profile that presents our understanding of the current organization, staffing, operations and costs of the services provided by the Community Development Department and other City departments involved in the review, permitting, and inspection process. This profile will be circulated among staff for comment, to ensure the accuracy of our understanding. The profile will then be presented to the City Project Team. Once completed and reviewed, the profile information will provide the basis for analysis conducted and completed in subsequent study tasks.
TASK RESULT

The deliverable for this task will be a descriptive profile of existing operations.

Task 2 | Conduct a Stakeholder Survey and Focus Group Meetings to Assess Customer Satisfaction with the Community Development Department and Processes

To ensure that the project team has a good understanding of the customer’s perspective relative to the service levels provided by the Community Development Department, we will conduct both a stakeholder survey and focus groups with prior customers, to understand the key concerns impacting satisfaction levels. This will also be utilized to identify suggestions from customers for improvement opportunities.

The online survey would be distributed to all prior clients of the Community Development Department for the last several years (assuming email address are available) and made available on the City’s website to gain a broad level of input. The survey would cover various issues including:

- Elicit attitudes toward clarify and understanding of the City of Menlo Park’s development processes and requirements.
- Document attitudes toward the level and quality of services provided by the City.
- Document attitudes toward the overall commitment of the organization to exceptional customer service philosophies.
- Determine attitudes toward the adequacy of resources available to employees to accomplish their jobs and deliver services.
- Identify areas of inefficiency or difficulty in processing applications with the City.
- Document desired services, service levels or technologies desired by customers.

In addition to the online survey, the project team would conduct focus groups with prior customers to elicit more detailed and specific information. While focus groups take more time and effort than customer satisfaction surveys, the interactivity of a focus group typically provides clearer feedback and enables the project team to follow-up on issues identified in the survey. Individuals would be selected from prior recent clients of the Community Development Department who have utilized the development process and cover all major stakeholder groups: developers, design professionals, contractors, homeowners, etc.
TASK RESULT

Summary of customer feedback from online survey and focus group meetings identifying key trends and issues.

Task 3  Benchmark the Community Development Department’s Operations and Practices to “Best Management Practices.”

The purpose of this task is to evaluate the services provided by the Community Development Department in the context of best management practices in the profession. When conducting the best management practices assessment, each operational area would be assessed against unique management practices. We have, for example, presented some representative best management practices for community development operations in the table below.

Selected Planning and Building Best Management Practice Examples

The City maintains an up-to-date comprehensive plan and reviews zoning regulations for consistency with the current plan.

City policies/ website clearly identify what applications can be approved administratively versus approval by Planning Commission and City Council.

Permit technicians are used to review applications for completeness at time of submittal.

Permit technicians are ICC certified (or other applicable certification).

Application review timeliness are clearly established and met consistently.

Applications are distributed to different review agencies by a single point of contact within the Community Development Department; plans are reviewed concurrently by all agencies to reduce turnaround times.

Services are contracted out for services where required expertise in not available in-house.

Applicants can request building inspections up to 5pm on the day before.

Combination inspectors are used to reduce the need for duplicate inspections on a single project.

Economic Development is proactive in their approaches to retaining local businesses.

Community Development staff hold periodic meetings with the public.

The best practices utilized for comparison in this task would be based upon our accumulated knowledge and experience with efficient and effective organizations across the country, including agencies that have seen a similar upswing in new construction and redevelopment activities. Additionally, the best practice assessment will include best
practices and benchmarking from industry organizations such as American Planning Association, American Public Works Association, International Code Council, International Building Council and others.

The best practice assessment will include the identification of areas where Menlo Park currently meets or exceeds the best practice. More importantly, the analysis will identify areas where current gaps and shortcomings exist and present opportunities for improvement for existing operations. The best practice assessment will begin to clearly identify major operational issues and will include preliminary analysis of applicable data. The issues identified in the best practice assessment will form the base for many of the recommendations presented in the final report.

**TASK RESULT**

The deliverable of this task would be an evaluation of the Community Development Department in comparison to best management practices and identification of existing gaps in service levels and process.

**Task 4**  
**Evaluate Staffing, Work Flow, and Service Levels of the Community Development Department.**

This task involves an evaluation of workload, staff utilization, work practices, and service levels within the Community Development Department. We will address this issue by employing several different approaches, such as those outlined below:

- **Evaluate the adequacy of major work practices utilized by each function.** This analysis will include the review of historic workload for each function area (Building, Planning, Economic Development, and Housing). Additional analysis will focus on the identification of opportunities to streamline internal processes and assignments as well as work practices to increase productivity and/or enhance their effectiveness. Also, we will identify the degree to which key projects or work tasks are not being accomplished due to lack of staff and assess the extent to which tasks could be absorbed through streamlining of work process, if at all.

- **Evaluate work planning and scheduling of contract and internal staff.** This analysis will focus on historic staffing levels for both contract and internal staff. Analysis will include a review of the tasks are currently outsourced and those that possibly can be completed by both contract and City staff. The services provided by Contracted personnel would be evaluated for outsourcing and insourcing, recognizing that this choice has multi-faceted dimensions including cost, responsiveness, level of service guarantees, contract oversight, availability of competitors, etc. Analysis will include identifying to the degree which divisions utilize contractors to perform specialized tasks such as building permit plan
checking, inspections, comprehensive planning, economic development activities, etc.

- **Evaluate customer service including internal and external customers.** The project team will analyze the level of service provided to both internal and external customer. This process will incorporate the information received in the stakeholder survey and focus group meetings to address potential issues. Additionally, the project team will address coordination between departments / divisions related to the development review process.

- **Evaluate the skill mix of current staff.** In a separate sub-task, our project team will evaluate the adequacy of staffing levels to conduct historical needs related to application review, permitting process, inspections, below market rate housing program, and economic development activities. In this sub-task, we will evaluate whether the staff possess the required skills to perform assigned tasks. Additionally, we will evaluate the need for staff in functional areas that may not be currently addressed to a sufficient degree. Our project team will address these, as well as others, as the needs are identified through interviews and observations. This analysis will include determining the right combination of contract and City staffing needs.

At the conclusion of this task, we will have evaluated Community Development Department in the areas of work and operational practices, service levels, work flows and work activities to identify improvement opportunities. The project team will evaluate the efficiency of performance of current tasks and determine which of these should continue to be performed by internal staff, and those that should either be outsourced or discontinued.

**TASK RESULT**

The deliverable of this task would be improvement opportunities and proposed adjustments in staffing, work practices, service levels, contract staffing services, customer service, and operations of the Department.

**Task 5 | Evaluate How the Department Is Organized.**

In this task, the project team will evaluate the plan of organization for the Community Development Department by using a number of principles in the evaluation of the organizational structure including:

- Does the current approach to organizing community development services in the City foster accountability?
• Are spans of control for functions in the component divisions too broad or too limited?

• Are the plans of management organization for development services in the Department providing adequate communication and coordination where needed? Does the current structure enhance shared knowledge and understanding?

• Do the plans of organization enhance career development opportunities, training, and recruitment and retention?

• Do contract services staff receive proper supervision and clear direction of duties?

• How would the relocation of Housing and Economic Development impact the organizational management of the Community Development Department?

• Has the Department anticipated the impact of retirements on the continuity of management and supervision?

• Do the plans of organization enable staff to provide better service to the public in terms of cycle times, user friendliness, performance management, quality control, and consistency?

The end result of this analysis will be a proposed organizational structure for the provision of services and specific staffing levels to meet service demands. This structure will be one that unifies all Community Development functions.

**TASK RESULT**

The product of this task would be an organizational structure that promotes accountability, communication and efficient work flow in Community Development functions.

**Task 6**  
Prepare a Draft and Final Report and Provide Plans for Implementing Improvement Opportunities in the Community Development Department in Menlo Park.

Once the work tasks noted above have been completed, our analysis, findings, and conclusions will be documented and reviewed with the Project Steering Committee and staff in the City’s Community Development Department. The draft and final reports will contain the following elements:

• A final version of the descriptive profile and best management practices assessment.
• Final analysis of the feedback received from the stakeholder survey and focus group meetings.

• Detailed analysis of each identified improvement opportunity relating to philosophies and commitments, staffing required given these commitments, managerial and operational practices for service delivery.

• Recommended staffing allocations, by number and position, for each division and an overall organizational structure for the Department that maximizes communications, workloads and efficiency, and that minimizes duplication.

• Recommendations related to the use of contract employees and internal staff along with other alternative staffing approaches.

• An implementation plan for each improvement opportunity to ensure that there are feasible, accountable, timing is planned, and results are demonstrated.

The Matrix project team recognizes that some recommended improvements may have associated cost impacts, and these will be identified and prioritized. Once staff and the Project Steering Committee have reviewed the draft final report and implementation plan and provided input, we would develop the final report and deliver to the City Project Team. We will be available to make a presentation of our findings and recommendations to the City Council upon request.

**TASK RESULT**

The product of this task would be the draft and final reports.
PROJECT FEES AND SCHEDULE
5 Project Fees and Schedule

The following sections outlines proposed project budgets and schedules for these engagements.

1. Project Budgets.

Based on the task plan provided in the preceding section of this proposal, we propose to conduct these studies for fixed price not-to-exceed budget of: $64,500 for the Public Works study, and $56,500 for the Community Development Study. If both studies were awarded and conducted concurrently, we would be able to provide a discount of 10% of these proposed budgets and conduct both studies for a total not-to-exceed amount of $108,900. SEE REVISED CD COSTS, HOURS, AND TOTAL COST

### Public Works Study Budget

<table>
<thead>
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**Total Hours**

|                      | 40  | 172 | 172 | 384 |

**Hourly Rate**

|                      | $225| $175| $120|      |

**Total Professional Fees**

|                      | $9,000| $30,100| $20,640| $59,740 |

**Project Expenses**

|                      |        |        |        | $4,760 |

**Total Project Cost**

SEE REVISED PW COST AND TOTAL COST $64,500
Community Development Study Budget

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SEE REVISED CD COSTS, HOURS, AND TOTAL COST

Total Hours: 44, 144, 144, 332
Hourly Rate: $225, $175, $120
Total Professional Fees: $9,900, $25,500, $17,280, $52,380
Project Expenses: $4,120

Total Project Cost: $55,000

We bill monthly for actual time and expenses incurred in providing services.

2. Project Schedules

We have proposed a work plan that would complete each study over a sixteen (16) week schedule. Both studies, if awarded to the firm, would be conducted concurrently.

Public Works Study Timeframe

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Matrix Consulting Group
### Community Development Study Timeframe

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We are available to begin work on these studies within two weeks of receipt of a notice to proceed.
August 1, 2018

Michael S. Frank, Senior Project Manager
City Manager’s Office
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Dear Michael:

Based upon the further discussion yesterday with Community Development Director Mark Muenzer, we are providing the following revised project budget for the Community Development Department study. The change in this budget is to reallocate hours among the team to increase the participation level of the Project Manager in this portion of the study to an amount more equal to that of the Lead Analyst. As shown in the following table, we have increased the Project Manager’s level of effort by an additional 30 hours with a modest increase in the budget for this project.

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|                          | 106             | 114            | 88      | 308     |

|                          | $225            | $175           | $120    |         |

|                          | $23,850         | $19,950        | $10,560 | $54,360 |

| Project Expenses        | $4,140          |                 |         |         |

| Total Project Cost      | $58,500         |                 |         |         |

201 San Antonio Circle, Suite 148 • Mountain View, CA 94040 • 650.858.0507 • 650.917.2310 fax
SF Bay Area (Headquarters), Boston, Charlotte, Dallas, Irvine, Portland, St. Louis
August 2, 2018

Michael S. Frank, Senior Project Manager
City Manager's Office
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Dear Mr. Frank:

As requested in your email yesterday, I am writing to confirm several details of our proposal. As noted in our original proposal and the modified Community Development budget (that reallocated hours among the team members), we have proposed to conduct the Public Works Assessment for $57,000 and the Community Development Assessment for $58,500. As indicated in our original proposal, we proposed a 10% discount if both studies were awarded and conducted concurrently. As such, our total fixed not-to-exceed price for these two engagements would be $103,950.

The scope of services and tasks outlined in our proposal for the Public Works and Community Development studies are still accurate and detail the approach we would take to undertake these two studies.

Thank you for this opportunity to be of service to the City of Menlo Park. We look forward to working with the City on these two studies. If there is anything additional that you need, please let me know.

Richard P. Brady
Matrix Consulting Group

Richard P. Brady
President
EXHIBIT “B” - DISPUTE RESOLUTION

B1.0 All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:

B2.0 Mediation
B2.1 The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator’s fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.

B3.0 Arbitration
B3.1 Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.

B3.2 The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:

B3.3 Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.

B3.4 The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.

B3.5 All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.

B3.6 The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.

B3.7 Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.

B3.8 The prevailing party shall be awarded reasonable attorneys’ fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.

B3.9 Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.

B3.10 The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFRNS 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
855-491-0974
USI Insurance Services National, Inc.
8331 Norman Center Dr, Ste 500
Bloomington, MN, 55437

INSURED
Matrix Consulting Group, Ltd.
201 San Antonio Cir Suite 148
Mountain View, CA 94040-1254

CONTACT NAME: Samuel Vazquez
PHONE (Ac. No. Ext): 602-666-4833
E-MAIL: Samuel.Vazquez@usi.com
ADDRESS: Samuel.Vazquez@usi.com
INSURER(S) AFFORDING COVERAGE
INSURER A: Sentinel Insurance Co. Ltd.
11000
INSURER B: Sentinel Insurance Company Ltd.
11000
INSURER C: Twin City Fire Insurance Company
29459
INSURER D: Philadelphia Insurance Company
23850
INSURER E: 
INSURER F: 

COVERAGES
CERTIFICATE NUMBER: 13353324

THESE ARE THE COVERAGES LISTED BELOW THAT 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.

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<td>(Mandatory in NH)</td>
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

SS00008-0405 City of Menlo Park its subsidiary agencies, and their officers, agents, employees and servants are named as additional insured as it relates to general & auto liability & waiver of subrogation is granted as it relates to general and auto liability and workers comp in accordance with the terms and conditions of the policies. Umbrella follows form as it relates to additional insureds. The above coverage is primary and noncontributory where required by written contract.

CERTIFICATE HOLDER
City of Menlo Park
701 Laurel St
Menlo Park, CA 94025

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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## OTHER Coverage

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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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Form SS 00 08 04 05
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 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".

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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;

(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 scot 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";

(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 stuntning 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;

(11) Computer consulting, design or programming services, including website 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.

BUSINESS LIABILITY COVERAGE FORM

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”;
(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;

(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;

(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:

BUSINESS LIABILITY COVERAGE FORM

(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.
BUSINESS LIABILITY COVERAGE FORM

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 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. Lessor 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 become 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;

(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.

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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:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

a. 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.

b. 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:

a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or

b. 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:

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(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.
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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 arrangement 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.

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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.
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F. OPTIONAL ADDITIONAL INSURED COVERAGE

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 grantee 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
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 relabeled 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, in 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.
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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., as amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessee or Contractor, 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 and 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., as 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 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:
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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 personal injury or 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:

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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.

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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";
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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.