

**CONTRACT NO. C20179158  
BETWEEN  
CITY OF PALO ALTO  
AND  
MIDPENINSULA COMMUNITY MEDIA CENTER, INC.  
FOR CABLECASTING, PRODUCTION, AND  
STREAMING SERVICES**

This Cablecasting, Production, and Streaming Services Agreement (the “Agreement”), dated as of July 1, 2020, is entered into by and between the CITY OF PALO ALTO, a California chartered municipal corporation (the "City"), and the MIDPENINSULA COMMUNITY MEDIA CENTER, INC., a corporation organized under the California Nonprofit Public Benefit Corporation Law ("Midpen Media") (individually, a “Party” and, collectively, the “Parties”), in reference to the following facts and circumstances:

**RECITALS:**

1. The City is a party to the Amended and Restated Joint Exercise of Powers Agreement, dated June 23, 2009, and as hereinafter may be amended ("JPA Agreement"), by and between the Cities of Palo Alto, East Palo Alto and Menlo Park, the Town of Atherton and the Counties of San Mateo and Santa Clara (collectively, “Joint Powers” or “JPA”), and is authorized to act on behalf of the JPA members.
2. The City desires to provide support for the use of cable television public, educational, and government (“PEG”) access channels provided pursuant to federal and City law.
3. Pursuant to the Digital Infrastructure and Video Competition Act of 2006, *codified at* Cal. Util. Code §§ 5800 *et seq.* (“DIVCA”), the California Public Utilities Commission (“CPUC”) has granted separate video franchises to AT&T and Comcast to serve areas that include the jurisdictions of the JPA members. (AT&T, Comcast and any other entity franchised by the CPUC as a video service provider to provide video service within the jurisdictional area of any JPA member is referred to, individually, as “Cable Company” and, collectively, as “Cable Companies”.)
4. DIVCA permits, and the City’s Cable Television Ordinance No. 4636, adopted May 8, 2000, provides that (A) the City may designate a nonprofit access management entity (“Access Corporation”) to operate and administer PEG access facilities, equipment and channels (“PEG Facilities” or "PEG Facilities and Channels,” as appropriate), (B) certain channel capacity shall be provided by Cable Companies for PEG access, (C) certain ongoing payments shall be made by Cable Companies for PEG Facilities, and (D) certain services shall be provided by Cable Companies for PEG Facilities.
5. By an Agreement between the City and Midpen Media, dated July 1, 2017, Midpen Media agreed to provide certain services to the City relating to support of City governmental access programming.

6. The City, by City Council Resolution No. 8100, adopted October 22, 2001, has designated Midpen Media as the Access Corporation to operate and manage the PEG Facilities and Channels. Midpen Media has served in such capacity since 2001, through a series of agreements.

7. By an Agreement between the City and Midpen Media, dated February 25, 2020, and expiring on February 25, 2025, Midpen Media agreed to provide certain services to the City and the JPA relating to support of PEG and City governmental access programming.

8. Midpen Media has agreed to continue to serve as the Access Corporation designated by the City and to serve the JPA community by providing PEG access facilities, programming and services.

9. The City wishes Midpen Media to continue to provide, and Midpen Media wishes to provide, to the City certain services relating to and supporting the development, production, cablecasting and video streaming of City governmental access programming.

NOW, THEREFORE, in consideration of the recitals and the following mutual covenants, terms and conditions, the Parties agree:

**SECTION 1. TERM OF AGREEMENT; TERMINATION**

1.1 The term of this Agreement is three (3) years, commencing on July 1, 2020, unless it is terminated earlier, as provided in this Agreement.

1.2 This Agreement may be extended, by mutual agreement of the Parties, in writing, for up to two (2) additional one-year periods.

1.3 On or before January 1, 2023, the Media Center shall give the City written notice of its intention to seek an extension. If the Agreement is extended, on or before January 1, 2024, the Media Center shall give the City written notice of its intention to seek an additional extension.

1.4 On or before March 31, 2023 (and March 31, 2024, if the Agreement is extended in 2023), the City shall respond to the Media Center's request for an extension, stating either the City's decision to extend or not to extend. The City shall not be required to provide any reason for approving or denying the Media Center's request.

1.5 Either Party may terminate this Agreement for convenience, on not less than one hundred eighty (180) days' prior written notice.

**SECTION 2. SCOPE OF SERVICES AND COMPENSATION**

2.1 General. Midpen Media's work for the City shall be scheduled at the City's convenience based on the deadlines mutually agreed to between Midpen Media and the City. Absence of Midpen Media's staff will not justify Midpen Media's failure to comply with

deadlines. Midpen Media will provide technical expertise and trained staff for City projects. Midpen Media will operate and maintain equipment for City projects.

2.2 Administration. Midpen Media shall maintain a backup library of electronic recordings or DVDs of City meetings recorded under this Agreement for a period of one year after the expiration of the term.

2.3 Marketing and Publicity. Midpen Media will provide marketing and publicity of City programs, including, but not limited to, television and digital signage announcements. The City will augment this publicity as needed.

2.4 Services and Compensation.

2.4.1 Cablecasting services: Midpen Media shall cablecast all City Council, Commission, Board and Committee meetings, as set forth in Exhibit A, attached hereto and made a part hereof. These meetings will be aired on Government Access Channel 26; in the event Midpen Media Center cablecasts two City meetings at the same time, the second meeting will be aired on Government Access Channel 29 or in accordance with the JPA's government channel policies and procedures when there is a scheduling conflict with another JPA member. Midpen Media shall bill the City on a monthly basis, at the hourly rates set forth in Exhibit B, attached hereto made a part hereof, for actual cablecasting hours.

2.4.2 Other production services, special events, and support services for City emergency operations: Midpen Media shall cablecast the Mayor's State of the City address and the annual City Council retreat. Midpen Media will provide support services for City emergency operations as needed. Other video production needs may be identified during the year. Midpen Media shall bill the City on a monthly basis for hours associated with these services, in accordance with the hourly rates set forth in Exhibit B.

2.4.2.1 Other productions and special events.

- (A) The City will attempt to provide a minimum of five (5) business days prior written notice of its desire to have other productions, special events or activities recorded. Subject to any pre-existing contractual obligations and personnel and equipment availability, Midpen Media shall attempt to provide the services requested by the City.

2.4.3 Streaming services: Midpen Media shall stream live any meeting cablecast on Government Access Channels. These Internet streams shall be accessible to users of established computer operating systems, devices, and internet browsers.

- (A) Midpen Media shall index and archive City meetings and post links to meeting archives on the Midpen Media website. Midpen Media shall make reasonable efforts to post meeting recordings on the Midpen Media website within two (2) business days following each meeting, and shall remain continuously available thereafter. Midpen Media shall use YouTube for indexing and archiving services, subject to YouTube's then-current availability and access policies. Any alternate format shall be mutually agreed to by the Parties.

(B) Midpen Media shall notify the City within two (2) hours of discovering that its website is disabled or off line, or any of the archived City recordings is unavailable to the public. Midpen Media shall make reasonable and diligent and efforts, working with YouTube as necessary, to restore access as soon as reasonably practicable, and will provide the City with timely updates regarding progress.

(C) On termination or expiration of this Agreement as provided in Section 1, Midpen Media shall deliver to the City a complete copy of all archived recordings on media provided by the City, in a machine-readable format mutually agreed-upon by the parties, within 30 days. This paragraph shall survive the termination or expiration of this Agreement.

Midpen Media shall bill the City on a monthly basis for hours associated with these services, in accordance with the hourly rates set forth in Exhibit B.

2.4.4 Institutional Network (I-Net) services: Midpen Media shall provide operational support services for the I-Net as needed. Midpen Media shall bill the City on a monthly basis for hours associated with these services, in accordance with the hourly rates set forth in Exhibit B.

2.4.5 City's Utilities Department special events: Midpen Media shall record Utilities Department special events (including, but not limited to, meetings, workshops, and Facility Manager meetings) or as requested by the Manager of Utilities Program Services or his/her designee, provided five working days' notice is given. Midpen Media shall bill the City on a monthly basis for hours associated with these services, in accordance with the hourly rates set forth in Exhibit B.

2.4.6 Compensation: The total amount of Midpen Media's billings shall not exceed One Hundred Sixty Thousand Dollars (\$160,000) per year. Of this amount, Midpen Media's billings for Utilities Department events as described in Section 2.4.5 above shall not exceed Twenty Thousand Dollars (\$20,000) per year.

2.4.7 Prompt Payment. The City will pay Midpen Media within thirty (30) days of receipt of a proper invoice from Midpen Media.

### **SECTION 3. INDEMNITY; LIMITATION OF LIABILITY**

3.1 Midpen Media shall indemnify and defend the City, and its elected and appointed officers and employees (an "Indemnified Party" or collectively "Indemnified Parties"), against any third-party claim (a) arising or resulting from or out of the failure to comply with any applicable laws, rules, regulations or other requirements of local, state or federal authorities, or (b) of libel, slander, invasions of privacy, or infringement of common law or statutory copyright, which claim, directly or indirectly, results from Midpen Media's use, or Midpen Media's supervision of use by others, of channels, funds, equipment, facilities or staff granted under this Agreement, City law or the Cable Companies' CPUC video service franchises. Midpen Media shall pay any costs or damages finally awarded by a court of competent jurisdiction or agreed upon in settlement. Midpen Media's obligation under this Section are contingent on Midpen

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Media receiving prompt notice of any claim from the applicable Indemnified Party, sole control of the defense and settlement of any dispute (provided that an Indemnified Party may participate in such defense with counsel of its own choice at its own cost), and reasonable cooperation, at Midpen Media's sole expense, from the Indemnified Parties.

3.2 IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MIDPEN MEDIA'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED \$1,000,000. THIS SECTION DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE.

#### **SECTION 4. COPYRIGHTS**

4.1 The City shall own the copyright of any programs created or produced as a result of this Agreement, and Midpen Media shall make no claim of copyright or ownership of any such programming.

#### **SECTION 5. DISTRIBUTION RIGHTS**

5.1 Unless otherwise directed by the City, Midpen Media shall ensure that all programs produced under this Agreement shall be distributed on the governmental access channel(s) and the web, as described in this Agreement. This paragraph shall not be interpreted to restrict other distribution (beyond distribution on the channel(s) authorized by this Agreement), so long as such other distribution is with the prior written consent of the City and consistent with any pertinent guidelines established by the City, applicable PEG access operating policies and procedures, and applicable law.

#### **SECTION 6. INSURANCE**

6.1 Midpen Media, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "C", attached hereto and made a part hereof, and as follows in Section 6.1(A). Midpen Media and its contractors, if any, shall obtain a policy endorsement naming CITY as additional insured under any general liability or automobile policy or policies.

(A) Cablecasters' Errors and Omissions Insurance in an amount not less than \$1,000,000, each occurrence and aggregate covering the content of productions which are cablecast on the access channel(s) in, at a minimum, the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress; invasion of privacy; plagiarism; and the misuse of musical or literary materials.

6.2 All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-VII or higher which are authorized to transact insurance business in the State of California. Any and all contractors of Midpen Media retained to perform

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services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming the CITY as additional insured under such policies as required above.

6.3 Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this agreement. The certificates will be subject to the approval of the City's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. Midpen Media shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of Midpen Media's receipt of such notice. Midpen Media shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

6.4 The procuring of such required policy or policies of insurance will not be construed to limit Midpen Media's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, Midpen Media will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

#### **SECTION 7. NONDISCRIMINATION**

7.1 Midpen Media shall not discriminate against any person, employee or applicant for employment or subcontractor on the basis of race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person.

7.2 Midpen Media shall not discriminate in the delivery of services on the basis race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person.

#### **SECTION 8. INDEPENDENT CONTRACTOR**

8.1 It is understood and agreed that Midpen Media is an independent contractor and that no relationship of principal and agent or employer and employee exists between the Parties. If in the performance of this Agreement any third persons are employed by Midpen Media, such persons shall be entirely and exclusively under the control, direction and supervision of Midpen Media. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by Midpen Media, and the City shall have no right or authority over such persons or terms of employment.

#### **SECTION 9. ASSIGNMENT**

9.1 Neither this Agreement, nor any interest herein, nor control of Midpen Media shall be assigned, encumbered or transferred by Midpen Media or its current board or members to any

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other person, either directly or indirectly, except as may be expressly authorized in writing by the City prior to any such assignment, encumbrance or transfer.

**SECTION 10.**            **RECORDS**

10.1 Midpen Media shall maintain all necessary books and records, in accordance with generally accepted accounting principles.

10.2 Upon receipt of a reasonable request of the City, Midpen Media shall, at any time during its normal business hours, make available to the City or its agents or representatives all of its records with respect to all matters covered by this Agreement.

**SECTION 11.**            **NON-APPROPRIATIONS**

11.1 The provisions of this Agreement are subject to the fiscal provisions of the City Charter and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any City fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within the City's fiscal year in the event that funds are only appropriated for a portion of the fiscal years and funds for this Agreement are no longer available.

**SECTION 12.**            **DEFAULT; REMEDIES FOR DEFAULT**

12.1 Midpen Media shall be in default of this Agreement if it fails to perform any of its material obligations under this Agreement. If the Media Center fails to cure a default within forty-five (45) days after the City gives Mipen Media notice of default, the City shall give written notice to the Media Center that it has materially breached this Agreement, and the notice of termination shall become effective on the date specified in the notice by the City.

12.2 Section 12.1 notwithstanding, Midpen Media shall be in immediate default of this Agreement if any of its officers, employees, or agents misappropriates public funds provided to Midpen Media under this Agreement by the City or any Cable Company pursuant to a franchise agreement, or if it fails to obtain and maintain its tax exemption status under Section 501(c)(3) of the Internal Revenue Code of 1986.

**SECTION 13.**            **NOTICES**

13.1 All notices and other communications to be given by either Party may be given, in writing, by depositing the same in the United States mail, postage prepaid and addressed to the appropriate Party, as follows:

To City:                    Office of the City Clerk  
                                  City of Palo Alto  
                                  Post Office Box 10250  
                                  Palo Alto, CA 94303

To Midpen Media: Midpeninsula Community Media Center, Inc.  
900 San Antonio Road  
Palo Alto, CA 94303

13.2 Any Party may change its address for notice by written notice to the other Party at any time.

**SECTION 14. MISCELLANEOUS PROVISIONS**

14.1 Time is of the essence in this Agreement in the performance of all covenants, terms and conditions of this Agreement.

14.2 Each Party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

14.3 The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

14.4 This Agreement shall be governed and interpreted in accordance with the laws of the State of California, without regard to its conflicts of law rules or principles.

14.5 In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

14.6 The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

14.7 All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

14.8 This Agreement is the entire agreement of the Parties and supersedes all prior negotiations and agreements whether written or oral. This Agreement may be amended only by written agreement and no purported oral amendment to this Agreement shall be valid.

14.9 The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

14.10 This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement.



IN WITNESS WHEREOF, the Parties by their duly appointed representatives have executed this Agreement as of the date written above.

ATTEST:

CITY OF PALO ALTO:

DocuSigned by:  
*Beth Minor*  
27523117DA804D7...  
City Clerk

DocuSigned by:  
*Adrian Fine*  
E8DA2E71AE0849C...  
Mayor

APPROVED AS TO FORM:

DocuSigned by:  
*Sandra Lee*  
EFFF3FB4F9DA4AB...  
City Attorney or Designee

MIDPENINSULA COMMUNITY MEDIA CENTER, INC.

DocuSigned by:  
*Less Lincoln*  
854BA0B5F65A474...  
By: \_\_\_\_\_  
Less Lincoln

APPROVED:

DocuSigned by:  
*Ed Shikada*  
F2DCA19CCC8D4F9...  
City Manager

Name: \_\_\_\_\_

Title: Board President

DocuSigned by:  
*Kiely S. Nasé*  
0513042E38B4409...  
Chief Information Officer

Taxpayer Identification No.

\_\_\_\_\_

DocuSigned by:  
*Sandra Blanch*  
726EA620C009425...  
Risk Manager

## EXHIBIT A

Midpen Media shall cablecast the following meetings:

- All Palo Alto City Council meetings held in the City Council Chambers or Community Meeting Room
- All Palo Alto Planning and Transportation Commission meetings held in the City Council Chambers or Community Meeting Room
- All Palo Alto Utilities Advisory Commission meetings held in the City Council Chambers or Community Meeting Room
- All Palo Alto City Council Finance Committee meetings held in the City Council Chambers or Community Meeting Room
- All Palo Alto City Council Policy and Services Committee meetings held in the City Council Chambers or Community Meeting Room
- All Palo Alto Architectural Review Board meetings held in the City Council Chambers or Community Meeting Room
- All Palo Alto Historic Resources Board meetings held in the City Council Chambers or Community Meeting Room
- All Human Relations Commission meetings held in the City Council Chambers or Council Conference Room
- All Library Advisory Commission meetings held in the City Council Chambers or Community Meeting Room
- All Parks and Recreation Commission meetings held in the City Council Chambers or Community Meeting Room
- All Public Art Commission meetings held in the City Council Chambers or Community Meeting Room
- All City Council Rail Committee meetings held in the City Council Chambers or the Community Meeting Room
- All meetings of any other ad hoc or regular City Council committee that may be established by the City Council, in the City Council Chambers or the Community Meeting Room
- Citizen Advisory Committee meetings
- Any special meetings as requested by the Palo Alto City Council or Palo Alto City Manager or his designee, provided five working days' notice is given

City may notify Midpen Media that the cablecast of any of the above meetings are not required for a certain date(s) or period of time. Further, if any of the legislative or advisory bodies listed no longer require cablecasting, City will notify Midpen Media. City may request that Midpen Media cablecast the meetings of other bodies formed during the term of this Agreement; the cablecasting of these additional meetings may be added by a writing signed by City's Cable Coordinator and Midpen Media's Chief Executive Officer.

**EXHIBIT “B”  
SCHEDULE OF RATES**

Midpen Media shall charge City according to the following schedule of rates for performing the following services related to governmental access programming:

Meeting Coverage (three-hour minimum):	
City Hall Video Coverage:	\$112.00 per hour
Single Camera Coverage with City equipment at location:	\$112.00 per hour
Single Camera Coverage with Media Center equipment:	\$127.00 per hour
Remote video coverage with the studio in a box. Crew of 3 requires 4.0 hrs/set up, plus breakdown and transportation time (minimum of 2 hrs of meeting coverage)	\$287.00 per hour
Parking Permit Reimbursement for meetings starting Before 3pm	Visitor Permit Fee
Cancellation fee (for City’s cancellation of scheduled Midpen Media coverage without 24 hours' prior notice the Midpen Media):	\$287.00 flat fee
Additional Services:	
Web indexing and archiving:	\$203.00 per meeting
Server storage for archived meetings:	\$164.00 per month
Video clip preparation:	\$105.00 per hour
I-Net Services:	\$145.00 per hour
Program Development:	
Site visit and planning:	\$145.00 per hour
Videography with equipment:	\$120.00 per hour
Editing:	\$105.00 per hour
Hosting and preparation:	\$145.00 per hour
Studio crew per person:	\$65.00 per hour
Technical Consult/Troubleshooting	\$145.00 per hour
Duplication of videotapes/DVD’s of meetings:	
Meetings under two hours	\$25.00 per dup
Meetings over two hours	\$35.00 per dup

The foregoing rates shall remain unchanged through December 31, 2020. Thereafter, the Midpen Media may increase these rates, no more often than once per calendar year, provided that, absent the prior consent of the City, any such increase in rates shall not exceed the amount of the increase in the Consumer Price Index – All Urban Consumers for the San Francisco-Oakland-San Jose MSA during the preceding calendar year.

**EXHIBIT “C”  
INSURANCE REQUIREMENTS**

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST’S KEY RATING OF A:-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY’S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER’S COMPENSATION EMPLOYER’S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, CABLECASTER’S ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE, LIBEL AND SLANDER; COPYRIGHT OR TRADEMARK INFRINGEMENT; INFLICTION OF EMOTIONAL DISTRESS; INVASION OF PRIVACY; PLAGIARISM; AND THE MISUSE OF MUSICAL OR LITERARY MATERIALS	ALL DAMAGES		
				\$1,000,000
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

- I. INSURANCE COVERAGE MUST INCLUDE:
  - A. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR’S AGREEMENT TO INDEMNIFY CITY.
- II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING URL: <https://www.planetbids.com/portal/portal.cfm?CompanyID=25569>.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO “ADDITIONAL INSUREDS”

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**VENDORS ARE REQUIRED TO FILE THEIR EVIDENCE OF INSURANCE  
AND ANY OTHER RELATED NOTICES WITH THE CITY OF PALO ALTO  
AT THE FOLLOWING URL:**

**<HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569>**

**OR**

**[HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET\\_BIDS\\_HOW\\_TO.ASP](HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP)**



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMERCIAL GENERAL LIABILITY BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SUMMARY OF COVERAGES

1.	Additional Insured by Contract, Agreement or Permit	Included
2.	Additional Insured – Primary and Non-Contributory	Included
3.	Blanket Waiver of Subrogation	Included
4.	Bodily Injury Redefined	Included
5.	Broad Form Property Damage – Borrowed Equipment, Customers Goods & Use of Elevators	Included
6.	Knowledge of Occurrence	Included
7.	Liberalization Clause	Included
8.	Medical Payments – Extended Reporting Period	Included
9.	Newly Acquired or Formed Organizations - Covered until end of policy period	Included
10.	Non-owned Watercraft	51 ft.
11.	Supplementary Payments Increased Limits	
	- Bail Bonds	\$2,500
	- Loss of Earnings	\$1000
12.	Unintentional Failure to Disclose Hazards	Included
13.	Unintentional Failure to Notify	Included

This endorsement amends coverages provided under the Commercial General Liability Coverage Part through new coverages, higher limits and broader coverage grants.

1. **Additional Insured by Contract, Agreement or Permit**

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

**Additional Insured by Contract, Agreement or Permit**

- a. Any person or organization with whom you agreed in a written contract, written agreement or permit that such person or organization to add an additional insured on your policy is an additional insured 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, but only with respect to:

- (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;
- (2) Premises you own, rent, lease or occupy; or
- (3) Your maintenance, operation or use of equipment leased to you.
- b. The insurance afforded to such additional insured described above:
- (1) Only applies to the extent permitted by law; and
- (2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.



- (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.
- (4) Will not be broader than coverage provided to any other insured.
- (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.
- c. This provision does not apply:
- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".
- (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
- (3) To any lessor of equipment:
- (a) After the equipment lease expires; or
- (b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor
- (4) To any:
- (a) Owners or other interests from whom land has been leased which takes place after the lease for the land expires; or
- (b) Managers or lessors of premises if:
- (i) The occurrence takes place after you cease to be a tenant in that premises; or
- (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
- (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.
- 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" or the offense which caused the "personal and

advertising injury" involved the rendering of or failure to render any professional services by or for you.

- d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION III – LIMITS OF INSURANCE**:

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

1. Required by the contract, agreement or permit described in Paragraph a.; or
2. Available under the applicable Limits of Insurance shown in the Declarations.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

## 2. **Additional Insured – Primary and Non-Contributory**

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 4. **Other insurance:**

### **Additional Insured – Primary and Non-Contributory**

If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under **SECTION II – WHO IS AN INSURED**, is primary and non-contributory, the following applies:

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

#### a. **Primary Insurance**

This insurance is primary to other insurance that is available to the Additional Insured which covers the

Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

- (1) For the sole negligence of the Additional Insured;
- (2) When the Additional Insured is an Additional Insured under another primary liability policy; or
- (3) when b. below applies.

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

**b. Excess Insurance**

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

- (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (b) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;
- (c) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner; or

(d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of **SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** 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.

(3) 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:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) 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 of 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

**3. Blanket Waiver of Subrogation**

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

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damage under this coverage form. The damage must arise out of your activities under a written contract with that person or organization. This waiver applies only to the extent that subrogation is waived under a written contract executed prior to the "occurrence" or offense giving rise to such payments.

**4. Bodily Injury Redefined**

**SECTION V – DEFINITIONS, Definition 3.** "bodily injury" is replaced by the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

**5. Broad Form Property Damage – Borrowed Equipment, Customers Goods, Use of Elevators**

a. **SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Paragraph 2. Exclusions** subparagraph j. is amended as follows:

Paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.

Paragraphs (3), (4) and (6) do not apply to "property damage" to "customers goods" while on your premises nor do they apply to the use of elevators at premises you own, rent, lease or occupy.

b. The following is added to **SECTION V – DEFINITIONS:**

24. "Customers goods" means property of your customer on your premises for the purpose of being:

- a. worked on; or
- b. used in your manufacturing process.
- c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent

#### 6. Knowledge of Occurrence

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 2. **Duties in the Event of Occurrence, Offense, Claim or Suit:**

- e. Notice of an "occurrence", offense, claim or "suit" will be considered knowledge of the insured if reported to an individual named insured, partner, executive officer or an "employee" designated by you to give us such a notice.

#### 7. Liberalization Clause

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

##### Liberalization Clause

If we adopt any revision that would broaden the coverage under this Coverage Form without additional premium, within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

#### 8. Medical Payments – Extended Reporting Period

- a. **SECTION I – COVERAGES, COVERAGE C – MEDICAL PAYMENTS**, Paragraph 1. **Insuring Agreement**, subparagraph a.(3)(b) is replaced by the following:
  - (b) The expenses are incurred and reported to us within three years of the date of the accident; and
- b. This coverage does not apply if **COVERAGE C – MEDICAL PAYMENTS** is excluded either by the provisions of the Coverage Part or by endorsement.

#### 9. Newly Acquired Or Formed Organizations

**SECTION II – WHO IS AN INSURED**, Paragraph 3.a. is replaced by the following:

- a. Coverage under this provision is afforded until the end of the policy period.

#### 10. Non-Owned Watercraft

**SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph 2. **Exclusions**, subparagraph g.(2) is replaced by the following:

##### g. Aircraft, Auto Or Watercraft

(2) A watercraft you do not own that is:

- (a) Less than 51 feet long; and
- (b) Not being used to carry persons or property for a charge;

This provision applies to any person who, with your consent, either uses or is responsible for the use of a watercraft.

#### 11. Supplementary Payments Increased Limits

**SECTION I – SUPPLEMENTARY PAYMENTS COVERAGES A AND B**, Paragraphs 1.b. and 1.d. are replaced by the following:

1.b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

1.d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1000 a day because of time off from work.

#### 12. Unintentional Failure to Disclose Hazards

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 6. **Representations:**

We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.

#### 13. Unintentional Failure to Notify

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 2. **Duties in the Event of Occurrence, Offense, Claim or Suit:**

Your rights afforded under this policy shall not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit", solely due to your reasonable and documented belief that the "bodily injury" or "property damage" is not covered under this policy.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

