

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Public Works *afm*

BOARD AGENDA # \*C-3

Urgent  Routine

AGENDA DATE December 18, 2007

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Establish a Project Budget and Award a Consulting Contract for Design Services to Associated Engineering Group, Inc., and Award a Consulting Contract for Right-of-Way Services to Overland Pacific & Cutler, Inc., for the McHenry Avenue Widening Project, Phase I from Ladd Road to Hogue Road Located in the Del Rio Area

STAFF RECOMMENDATIONS:

1. Establish a project budget for the McHenry Avenue Widening Project, Phase I from Ladd Road to Hogue Road located in the Del Rio area.
2. Award a consulting contract for design services to Associated Engineering Group, Inc., not to exceed \$67,165, and award a consulting contract for right-of-way services to Overland Pacific & Cutler, Inc., not to exceed \$60,000, for the McHenry Avenue Widening Project, Phase 1 from Ladd Road to Hogue Road.

Continued on Page 2

FISCAL IMPACT:

The total anticipated cost for project is \$838,000. The McHenry Avenue Widening Project, Phase I from Ladd Road to Hogue Road will be funded 100% by Regional Transportation Impact Fees (RTIF). At this time, \$179,003 is needed for engineering design services (\$67,165), right-of-way appraisal and acquisition services (\$60,000), environmental services (\$20,538 - Service Purchase Order for Sycamore Environmental Consultants), soil testing, State fees, permits, advertising and copying (\$31,300).

BOARD ACTION AS FOLLOWS:

No. 2007-1007

On motion of Supervisor Mayfield, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: Mayfield, Grover, Monteith, DeMartini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Establish a Project Budget and Award a Consulting Contract for Design Services to Associated Engineering Group, Inc., and Award a Consulting Contract for Right-of-Way Services to Overland Pacific & Cutler, Inc., for the McHenry Avenue Widening Project, Phase I from Ladd Road to Hogue Road Located in the Del Rio Area

3. Authorize the Director of Public Works to execute a contract with Associated Engineering Group, Inc., not to exceed \$67,165 and with Overland Pacific & Cutler, Inc., not to exceed \$60,000, and to sign necessary documents.
4. Direct the Auditor-Controller to make the necessary budget adjustments per the financial transaction sheet.

#### DISCUSSION:

This project involves the widening of McHenry Avenue approximately 500 feet north of Hogue Road to approximately 1300 feet north of Ladd Road. The project will consist of the construction of five lanes: two traveling lanes in either direction and one continuous left turn/median lane. Right-of-way acquisition will consist of acquiring right-of-way to implement as indicated and as per the County's General Plan. The length of the project is approximately 5,000 feet.

On July 31, 2007, Stanislaus County Public Works Department staff requested proposals from six engineering firms to design the improvements for this project. Three proposals were received. Public Works Department staff reviewed the proposals and determined that Associated Engineering Group, Inc., is the best-qualified firm for this project with a bid not to exceed \$67,165.

On September 20, 2007, Stanislaus County Public Works Department staff requested a proposal from Overland Pacific & Cutler, Inc., for right-of-way acquisition services. The proposal, not to exceed \$60,000, was accepted based on Overland Pacific & Cutler, Inc., experience, expertise and the cost of the proposal.

The construction phase of the McHenry Avenue Widening Project, Phase I from Ladd Road to Hogue Road is anticipated to start construction in the fall of 2008 and be completed by the spring of 2009.

#### POLICY ISSUES:

The Board should consider if the recommended actions are consistent with its priorities of providing a safe community, a healthy community and a well-planned infrastructure system.

#### STAFFING IMPACT:

There is no staffing impact associated with this item.

SF:la

L:\ROADS\9216 - McHenry Ave Widening (Ladd Rd to Hogue Rd) Phase 1\Design\Board Items\Establish Budget & Award Design Contract.doc

## AUDITOR-CONTROLLER BUDGET JOURNAL



Balance Type	Budget	
Category	Budget - Upload	
Source		
Currency	USD	
Budget Name	LEGAL BUDGET	
Batch Name		BO#
Journal Name		
Journal description	Transfer Budget to McHenry Avenue Widening Project	
Period	JUL-07 to JUN-08	
Organization	Stanislaus Budget Org	

Line	Coding Structure						Debit		Credit		Description
	Fund 4	Org 7	Account 5	G/L Proj 7	Loc 6	Misc 6	incr appropriations decr est revenue	decr appropriations incr est revenue			
1	1102	40310	72600	9216	0	0.0	60,000.00				
2	1102	40310	63280	9216	0	0.0	119,003.00				
3	1102	40310	63280	0	0	0.0		179,003.00			
4	1102	40310	46615	0	0	0.0	179,003.00				
5	1102	40310	46615	9216	0	0.0		179,003.00			
6						.0					
7						.0					
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9						.0					
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22						.0					
23						.0					
24						.0					
25						.0					
<b>Totals</b>							<b>358,006.00</b>	<b>358,006.00</b>			

Transfer Budget to McHenry Avenue Widening Project

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<b>Requesting Department</b>		<b>Auditors Office Only</b>	
Sharon Andrews	<b>CEO</b>		
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>
Signature	Signature	Prepared By	Admin Approval (\$75K+)
12/5/07	12/12/07	12/5/07	12/5/07
Date	Date	Date	Date

Contact Person & Phone Number

# AUDITOR-CONTROLLER STANDARD JOURNAL VOUCHER


**BATCH SCREEN**

Batch   
 Period   
 Description

**JOURNAL SCREEN**

Journal   
 Category   
 Balance Type  A = Actual or E = Encumbrance  
 Description   
 Control Total

Line	Coding Structure							Debit	Credit	Description
	Fund 4	Org 7	Account 5	G/L Proj 7	Loc 6	Misc 6				
1	6400	64100	85850	0	0	0	0	179,003.00		
2	1102	40310	44615	9216	0	0	0		179,003.00	
3							0			
4							.0			
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7							.0			
8							.0			
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26							.0			
27							.0			
<b>Totals</b>								<b>179,003.00</b>	<b>179,003.00</b>	

Explanation: Transfer funds from RTIF to Project Account McHenry Ave Widening

Departments/Outside Auditors' Office		Auditors Office Only	
SHARON ANDREWS Prepared by 12/5/07 Date	 Supervisor's Approval 12/5/07 Date	 Prepared By 12/5/07 Date	Admin Approval (\$75K+) 12/5/07 Date

**STANISLAUS COUNTY PUBLIC WORKS  
ENGINEERING DIVISION  
1716 MORGAN ROAD  
MODESTO, CA 95358**

**TRANSMITTAL**

Date: January 22, 2008  
To: Suzi Seibert, Assistant Clerk of the Board  
Re: Attachment for December 18, 2007, Item \*C-3  
From: Linda Allsop, Morgan Road  
209-525-4157

1990 JAN 23 10 40 AM  
COUNTY CLERK

Hi Suzi:

Enclosed for your file is the second agreement (Associated Engineering Group) for Item \*C-3, December 18, 2007

Have a good day!

**STANISLAUS COUNTY  
PROFESSIONAL DESIGN SERVICES AGREEMENT**

This Agreement is made and entered into by and between the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as "County" and Associated Engineering Group, Inc., hereinafter referred to as "Consultant".

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**1.0 PROFESSIONAL SERVICES TO BE PROVIDED BY CONSULTANT**

1.1. Scope of Services: Consultant shall provide the professional services described in the County's Request for Proposal ("RFP") attached hereto as Exhibit "A" and incorporated herein by reference and Consultant's Response to County's RFP (the "Response"). A copy of said Response is attached hereto as Exhibit "B" and incorporated herein by this reference.

1.2. Professional Practices: All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise County of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Representations: Consultant represents that it has reviewed the RFP and that in its professional judgment the services to be performed under this Agreement can be performed within the maximum fee set forth herein below and within the time specified in the Project Schedule attached hereto. Consultant represents that it is qualified to perform the professional services required by this Agreement and possesses the necessary licenses and permits required to perform said services.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless County from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against County for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the

Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.6. Non-Exclusive Agreement. Consultant acknowledges that County may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of County. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

## **2.0 COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C", attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed \$67,165 Dollars.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Response unless the County or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to County's Project Manager for approval on a progress basis, but no more often than once each calendar month. Said invoice shall be based on the total of all Consultants' services that have been completed to County's sole satisfaction. County shall pay Consultant's invoice within forty-five (45) days from the date County receives said invoice. Each invoice shall describe in detail, the services performed and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to County or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the termination of this Agreement.

## **3.0 TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days after County delivers its Notice to Proceed. Said services shall be performed in strict compliance with the Project Schedule approved by County as set forth in Exhibit "D", attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the

parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays nor lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

#### **4.0 TERM OF CONTRACT AND TERMINATION**

4.1. Term. This Agreement shall commence upon approval by the County's Board of Supervisors and continue for a period of twelve (12) months, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The County reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the County.

4.3. Compensation. In the event of termination, County shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of County's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth in Exhibit "C". In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the County or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the County within ten (10) days of delivery of termination notice to Consultant, at no cost to County. Any use of uncompleted documents without specific written authorization from Consultant shall be at County's sole risk and without liability or legal expense to Consultant.

#### **5.0 INSURANCE REQUIREMENTS**

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain and maintain during the life of this Agreement all of the following insurance coverage's:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability,



independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

(b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

(c) Workers' compensation insurance as required by the State of California.

(d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.1.1. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

(a) Additional insureds: "The County of Stanislaus and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with County."

(b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to County of Stanislaus."

(c) Other insurance: "Any other insurance maintained by the County of Stanislaus shall be excess and not contributing with the insurance provided by this policy."

5.2. Deductibles: Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Consultant agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Consultant's defense and indemnification obligations as set forth in this Agreement.

5.3. Certificates of Insurance: The Consultant shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Consultant, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Consultant; (c) premises owned, occupied or used by the Consultant; and (d) automobiles owned, leased, hired or borrowed by the Consultant. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County

its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Consultant.

5.4. Non-limiting: Nothing in this Section or the insurance described herein shall be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the liability of Consultant and Consultant's officers, employees, agents, representatives or subcontractors for payments of damages to persons or property.

5.5. Primary Insurance: The Consultant's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials and employees. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.6. Endorsements: Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Consultant shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

5.7. California Admitted Insurer: Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-:VII; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance.

5.8. Subcontractors: Consultant shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

5.9. Certificates of Insurance: At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

## 6.0 INDEMNIFICATION

6.1. Indemnification: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors.

6.2. Duty to Defend: The duty of Consultant to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

6.3. Duty to Cooperate: Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

6.4. Patent Rights: Consultant shall defend, indemnify and hold harmless the County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by the County of any articles or services supplied under this agreement.

## **7.0 GENERAL PROVISIONS**

7.1. Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

7.2. Representatives. The Director of the Stanislaus County Department of Public Works, or his designee, shall be the representative of County for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the County, called for by this Agreement, except as otherwise expressly provided in this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

7.3. Project Managers. County shall designate a Project Manager to work directly with Consultant in the performance of this Agreement. Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with County during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings

called by County.

7.4. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

**If to County:**

Stanislaus County Public Works  
Attn: Laurie Barton, Deputy Director  
1716 Morgan Road  
Modesto, CA 95358

**If to Consultant:**

Associated Engineering Group, Inc.  
Attn: Ryan Carrel  
4206 Technology Drive  
Modesto, CA 95356

7.5. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

7.6. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Stanislaus County, California.

7.7. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without County's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of County's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

7.8. Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of County. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

7.9. Ownership of Documents: All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of County. Consultant agrees that any such documents or

information shall not be made available to any individual or organization without the prior consent of County. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of County and without liability or legal exposure to Consultant. County shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from County's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to County any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by County or its authorized representative, at no additional cost to the County.

7.10. Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, and provided to County may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualifies as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs County of such trade secret. The County will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The County shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

7.11. Responsibility for Errors: Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the County's representative, regarding any services rendered under this Agreement at no additional cost to County. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to County, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of County and to participate in any meeting required with regard to the correction.

7.12. Order of Precedence: In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the RFP or the Response, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Response and the RFP and the Response shall govern over the RFP.

7.13. Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

7.14. No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of County and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this

Agreement.

7.15. Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

7.16. Amendments: Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

7.17. Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

7.18. Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

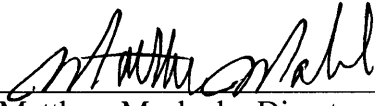
7.19. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

7.20. Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:

**COUNTY OF STANISLAUS**

By:   
Matthew Machado, Director  
Department of Public Works

**ASSOCIATED ENGINEERING GROUP, INC.**

By:   
Ryan Carrel, P.E.

Corporate Title: VICE PRESIDENT

APPROVED AS TO FORM:

Michael H. Krausnick  
County Counsel

By:   
Thomas E. Boze  
Deputy County Counsel

**EXHIBIT A**

**COUNTY'S REQUEST FOR PROPOSAL**





**DEPARTMENT OF PUBLIC WORKS**

**Matthew Machado**  
Director

**Engineering & Operations Divisions**  
1716 Morgan Road, Modesto CA 95358  
Office: 209.525.4130 Fax: 209.525.4140

July 31, 2007

**RYAN D. CARREL, PE**  
**ASSOCIATED ENGINEERING, INC.**  
4206 TECHNOLOGY DRIVE  
MODESTO CA 95356

**SUBJECT: REQUEST FOR PROPOSAL FOR A ROAD WIDENING PROJECT--**  
**McHENRY AVENUE WIDENING PROJECT, PHASE I**  
**( LADD ROAD TO HOGUE ROAD )**

Dear Mr. Elias:

The Stanislaus County Department of Public Works, herein after referred to as StanCo PW, is soliciting a proposal to provide professional design services for the above referenced project. The design services requested include Right-of-Way Surveys ( R-O-W surveys, R-O-W maps, and legal descriptions only ); design surveying; construction plans; design calculations; and technical specifications.

**PROJECT DESCRIPTION:**

This project is funded with Regional Transportation Impact Fees funds and involves the construction of three ( 3 ) lanes: two ( 2 ) traveled lanes and one ( 1 ) continuous left turn / median lane. The R-O-W acquisition phase will acquire right-of way that will allow for the future expansion of traveled lanes to four ( 4 ) ( ie—110 feet R-O-W width ) . The length of the project is approximately 5,900 feet. The project is scheduled to begin construction in the Fall, 2008.

**SCOPE OF WORK:**

The engineering services to be provided for this project shall include but are not limited to the following:

**1. Right-Of-Way ( R-O-W ) Surveys:**

Additional r-o-w will be required for the project. The r-o-w required will be that which will provide for a 110' wide r-o-w width, generally, 55' from center line. The consultant shall provide a survey of all existing and proposed r-o-w, legal descriptions of parcels to be acquired, and all other documentation necessary for the StanCo PW to legally acquire the properties. All surveys and legal descriptions shall be certified by a California licensed engineer or surveyor operating within the scope of their license. The maps and legal descriptions shall be subject to approval by the StanCo PW. Electronic files and drawing files ( AutoCAD 2004 Format ) shall be furnished to the StanCo PW after approval of all maps and legal descriptions. Individual parcel R-O-W Acquisition Maps shall be in an 8 ½" x 11' format and certified by the responsible surveyor or engineer.

## **2. Engineered Plans and Specifications:**

The plans and specifications shall be designed in compliance with the Caltrans Standard Plans, dated May, 2006, the Caltrans Standard Specifications, dated May, 2006; all current addenda to the May, 2006 Caltrans Standard Plans and Standard Specifications; as well as to the Stanislaus County Standard Plans and Specifications, 2007 Edition. If said plans change during the course of design up to and including "Bid Opening", the plans and specifications shall be adjusted accordingly.

The StanCo PW shall provide all the necessary horizontal and vertical survey control points for the project upon request.

The plans set shall consist of, as a minimum, a cover / title sheet ( format of which to be provided by StanCo PW ); existing topography; design cross-section( s ); plan and profile plan( s ); storm water drainage plan( s ); utility relocation plan( s ); construction signage plan( s ); pavement delineation / striping plan( s ) and any and all other construction details necessary to construct the project.

All utility facilities shall be properly located on the plans as to identification, size, locations, and height above / depth below finished grade. If utilities have to be moved, they shall be so designated on the plans. The consultant shall coordinate with and submit the plans to the affected utility companies and shall coordinate their removal and or relocation prior to start of construction.

Storm Drainage Calculations, Earthwork Calculations, as well as Asphaltic Concrete ( A.C. ) and Aggregate Base( A.B. ) Volume Calculations shall be submitted for review by StanCo PW prior to finalization.

The plans shall be prepared in the AutoCAD 2004 format. Any fonts used beyond those supplied with the basic AutoCAD software shall be furnished to the StanCo PW. electronic drawing files shall be furnished to the StanCo PW after the plans have been approved. An additional set of plans shall be supplied in "pdf" Format.

The final plans shall be in a 24" x 36" size format.

The technical specifications are required and shall conform to the May, 2006 edition of the Caltrans Standard Specifications and all current addenda thereto in addition to the StanCo PW 's "Baseline Specifications", said "Baseline Specifications to be provided by StanCo PW.

Provide StanCo PW with an electronic version of the 'x', "y", and "z" coordinates generated for the project. The coordinate point file shall be in a format acceptable to StanCo PW. The point file shall be accompanied by an index map delineating the location of the points of said file.

At the completion of the project, the "Record Drawings" shall be provided on 3 mil mylar as well as a copy of the "Record Drawings" in "pdf" format. Record drawing shall be compiled as a result of "meet and confer" discussions with the Resident Engineer / Construction Inspector assigned by StanCo PW to the project.

**4. Engineer's Estimates:**

The consultant shall submit an Engineer's Estimate for the project as well as all calculations required for Earthwork, Storm Drainage, and A.C. / A.B. Volume calculations for review prior to their finalization.

**5. Meetings:**

The consultant shall be required to attend all public meetings as they relate to the project. The consultant shall be required to provide technical information and any answer questions relating to the project.

An initial project planning / scoping meeting with the StanCo PW staff will be required prior to the consultant commencing design work on the project. Subsequent progress meetings with StanCo PW staff may be required at the request of either party.

**6. Project Management Schedule:**

A project schedule listing the tasks to be performed shall be submitted with the proposal. Monthly updates of the project schedule shall be prepared and submitted to the StanCo PW Project Manager for review with the monthly invoice. The StanCo PW will not process the monthly invoice for payment until the monthly updated schedule is reviewed and accepted.

The plans, specifications, and engineering ( "PS&E" ) shall be submitted to the StanCo PW as follows:

**35 % Plan Submittal:**

This submittal shall contain sufficient details to demonstrate that the design parameters are understood; delineate the basic design of the project; and determine the additional r-o-w takes. No further work shall be performed until the engineer receives an acceptance of the submittal by the StanCo PW Project Manager.

**60 % P S & E Submittal:**

This submittal shall reflect any changes and / or corrections required from the 35 % review stage. The plans submitted shall include a cover / title sheet, existing topography, design cross-sections; plans and profile sheets, storm water drainage facilities, traffic control and construction signage, utility relocations, and pavement delineation / striping and signage plans. In addition, a draft construction specifications document, preliminary detail

estimate, right-of-way maps with legal descriptions will also be submitted for review. No further work shall be performed until the engineer receives an acceptance of the submittal by the StanCo PW Project Manager.

**90 % P S & E Submittal:**

This submittal shall reflect any changes and / or corrections required from the 60 % review stage. The P S & E shall be complete and subject to only minor changes or additions based on new information or items not noted on the 60 % review. All utility approvals must be obtained prior to this submittal. The StanCo Department of Environmental Resources approval must also have been obtained if the StanCo PW determined their approval was required. All design issues shall have been resolved. No further work shall be performed until the engineer receives an acceptance of the submittal by the StanCo PW Project Manager.

**100 % P S & E Submittal:**

This will be the final submittal for the P S & E for the StanCo PW approval and signature. The plans shall be on 3 mil mylar as well as in "pdf" Format. All required signatures and "stamps" shall be obtained prior to submittal.

**7. Master Agreement Required:**

The successful firm will be required to enter into a "Master Agreement for Professional Services with StanCo PW if they have not already done so. In addition, they will be required to enter into a "Project Specific Agreement" for the work to be performed. A sample "Master Agreement" is enclosed for your review. It shall be stated in the proposal that the firm has reviewed the agreement format and is in a position to meet the terms and conditions of same.

**PROPOSAL REQUIEMENTS:**

In addition to addressing the above items, we request that the following items be addressed and included in your proposal:

- Proposed staffing for this project.
- Staff qualifications and current / project workload.
- Proposed project schedule including all major milestones.
- List of service to be provided including delivery of approach.

Three ( 3 ) copies of your proposed scope of work are due in this office by September 03, 2007. Please include in the Proposal, in a separate, sealed envelope, your fee proposal. The fee proposal must separate the project into functional tasks and provide the associated fees that define the work to be accomplished. Sub-consultant fees must be clearly indicated.

RFP Design Letter  
July 31, 2007  
Page 5

Your Proposal will be evaluated, at a minimum, based upon the following:

An understanding of the work to be performed; your firm's experience with similar kinds of work; the qualifications and availability of staff for the project; your use of innovative and advanced techniques for this project or those used in previous projects; and your firm's demonstrated professional and financial responsibility.

***Your Proposal must, at a minimum, address all of the previously described items above.***

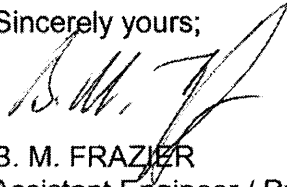
All Proposals must be submitted to the following address:

STANISLAUS COUNTY DEPARTMENT OF PUBLIC WORKS  
ENGINEERING AND CONSTRUCTION MANAGEMENT DIVISIONS  
1716 MORGAN ROAD  
MODESTO, CALIFORNIA 95358-5894

ATTN: B. M. FRAZIER  
Assistant Engineer / Project Manager

If you have any further questions regarding this matter, please feel free to call me ( 209 ) 525-4171 ( Office ); ( 209 ) 652-8413 9 Cell ); or e-Mail @ [fraziers@co.stanislaus.ca.gov](mailto:fraziers@co.stanislaus.ca.gov).

Sincerely yours;



B. M. FRAZIER  
Assistant Engineer / Project Manager

Enclosures / Attachments

BMF/bmf

**EXHIBIT B**

**CONSULTANT'S RESPONSE TO COUNTY'S REQUEST FOR PROPOSAL**

**CONSULTANTS FEE SCHEDULE**

**PROJECT SCHEDULE**



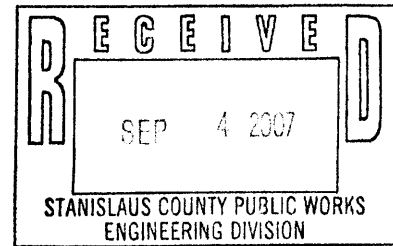
# ASSOCIATED

Surveying · Design · Planning

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September 4, 2007  
P954

Mr. B.M. Frazier  
Assistant Engineer / Project Manager  
Stanislaus County Department of Public Works  
Engineering & Construction Management Divisions  
1716 Morgan Road  
Modesto, CA 95358-5894



**Subject:** Proposal for Widening of McHenry Avenue from Ladd Road to Hogue Road, Stanislaus County, California

Dear Mr. Frazier:

Thank you for requesting a proposal from our firm to provide Professional Services to Stanislaus County. Associated Engineering Group, Inc. is pleased to submit the enclosed three copies of our proposal for Professional Services to be provided in conjunction with the above referenced project in Stanislaus County, California. As you know, Associated Engineering Group has provided professional services for other recent County projects for your department and are pleased to be able to propose on this project as well.

The professional staff of Associated Engineering Group, Inc. will perform and manage all of the tasks required to successfully complete the project to the total satisfaction of the Public Works Department. The individuals to be assigned to this project will be Dave Skidmore, L.S., Ryan Carrel, P.E. and Kevin Waddell. Dave will be responsible for overseeing all aspects of surveying and mapping while Ryan and Kevin will both prepare and oversee all PS&E documents and provide daily project attention and support. Associated Engineering Group, Inc.'s current (and projected) workload is such that this County project will receive all necessary consulting resources. We see this project as an opportunity to continue building our relationship with the Public Works Department.

Our project team will be supplemented by a full-service professional staff. Field operations will be conducted by qualified surveying personnel working under the direction of Dave Skidmore, L.S. Our office personnel include trained CADD technicians who will be preparing construction documents under the immediate direction of Ryan Carrel, P.E. Please refer to the attached "Company Profile" for further Associated Engineering Group, Inc. personnel information.

Associated Engineering Group, Inc. would retain the services of Neil O. Anderson and Associates for geotechnical services needed to complete our portions of this work.

Associated Engineering Group, Inc. has reviewed the provided "Project Agreement" and "Master Agreement" and is in a position to meet the terms and conditions, if selected. A broad, yet tentative, project schedule is included in Section 4 of the Scope Summary. Refinement of this schedule would be expected after the initial project planning/scoping meeting, if our firm is selected. The scope of services does include monthly project management scheduling for continual progress monitoring, per the R.F.P. requirements.

We at Associated Engineering take great pride in our professional abilities and strive towards providing quality engineering and surveying services within budgetary and scheduling constraints. We appreciate your consideration of our firm. Please do not hesitate to contact us at (209) 545-3390 should you have any questions or comments.

Respectfully submitted,

ASSOCIATED ENGINEERING GROUP, INC.



Dave L. Skidmore, L.S.  
Land Surveyor



Ryan Carrel, P.E.  
Civil Engineer



**PROPOSAL  
PROFESSIONAL CONSULTING SERVICES - SCOPE SUMMARY  
WIDENING OF MCHENRY AVENUE  
FROM LADD ROAD TO HOGUE ROAD  
STANISLAUS COUNTY, CALIFORNIA  
SEPTEMBER 4, 2007**

1. **LOCATION:**  
McHenry Avenue from Ladd Road to Hogue Road, Stanislaus County, California.
2. **OWNER/CLIENT:**  
Mr. B.M. Frazier  
Assistant Engineer / Project Manager  
Stanislaus County Department of Public Works  
Engineering and Construction Management Divisions  
1716 Morgan Road  
Modesto, CA 95358  
Phone: (209) 525-4171  
Fax: (209) 525-4183
3. **SCOPE OF SERVICES:**  
This project, being the civil engineering and geotechnical engineering consulting services necessary for and in conjunction with the widening of 5900 L.F. of McHenry Avenue from Ladd Road to Hogue Road, shall include the following:
  - A. **RIGHT-OF-WAY AND TOPOGRAPHIC SURVEYING**
    1. Data collection of all topographic features.
    2. Mapping of existing underground facilities.
    3. Plotting of existing right-of-way configurations.
  - B. **RIGHT-OF-WAY ACQUISITION AND MAPPING**
    1. Preparation of Right-of-Way acquisition mapping (plats and legal descriptions), as required for intersection project.
  - C. **GEOTECHNICAL CONSULTING**
    1. Neil O. Anderson & Associates to provide Geotechnical Consulting Services for storm drainage and pavement design (boring and percolation testing) as follows:
      - a. Five core/test holes for existing pavement analysis and overlay design.
      - b. Three bulk samples for R-Value testing.
      - c. Five roadside percolation tests for storm drainage design.
      - d. Geotechnical report containing design recommendations.
  - D. **GEOTECHNICAL CONSULTING COORDINATION**
    1. Associated Engineering to provide contract administration and invoicing of geotechnical sub-consultant.
  - E. **ENGINEERING DESIGN**
    1. Engineering design of proposed street and intersection improvements in accordance with Stanislaus County Design Standards and Caltrans Design Guidelines.
    2. Utility company coordination.
    3. Preparation of storm drainage design calculations to be in accordance with the Stanislaus County Storm Drainage Design Manual / County Standards.
  - F. **PLANS AND SPECIFICATIONS**
    1. Preparation of Civil Construction plans. Plan set will consist of cover sheet, existing topography, plan and profiles, cross sections (at an interval determined by Public Works), striping and signage, traffic control and all applicable construction details and notes.
    2. Preparation of a Notice of Intent (if necessary).
    3. Preparation of Storm Water Pollution Prevention Plan in accordance with Caltrans Standards.

4. Preparation of a Technical Specifications booklet (in conformance with the May 2006 Edition of the Caltrans Standard Specifications) to include Civil Construction Specifications, Conditions and Special Provisions in addition to the Traffic Specifications.
5. PS & E submittals per 35%, 60%, 90%, and 100% submittal requirements.

**G. ESTIMATING**

1. Preparation of a Summary of Quantities.
2. Preparation of an Engineer's Estimate (including construction and traffic items).
3. Preparation of a Proposal and Bid Schedule (upon plan approval).

**H. ADDITIONAL SERVICES (PER R.F.P.)**

1. Project support to be provided by consultant team will include attendance and participation at monthly project meetings (or as needed), public meetings, bidding support and coordination / construction management.
2. Preparation of written project schedule updates on a monthly basis (concurrent with invoicing).
3. Preparation of Record Drawings (on 3 mil mylar).
4. Distribution of Electronic Drawing Files (AutoCAD 2004 format) to County Staff.
5. Distribution of Electronic copies of all project files to County Staff.
6. Distribution of Coordinate Point File for County use.
7. Preparation of project schedule.

**4. ANTICIPATED PROJECT SCHEDULE**

The following durations represent the approximate amount of time to complete each task. If selected, a more comprehensive "schedule" will be prepared following the initial project planning/scoping meeting.

- Task Item A "Right-of-Way and Topographic Surveying" - 4 weeks
- Task Item B "Right-of-Way Acquisition and Mapping" - 2 weeks, as needed
- Task Item C "Geotechnical Consulting" - 5 weeks
- Task Item E "Engineering Design" - 7 weeks
- Task Item F "Plans and Specifications" - 6 weeks
- Task Item G "Estimating" - 1 week
- Task Item H "Additional Services" - as needed

**E. PROJECT EXCLUSIONS**

Agency Fees  
Agency Permits  
Construction Staking  
Caltrans Coordination  
Right-of-Way Staking  
Right-of-Way Appraisal  
Right-of-Way Acquisition  
Dry Utility Design and Plans  
Landscape Design and Plans  
Retaining Wall Design and Plans



## **2007 COMPANY PROFILE**

4206 Technology Drive  
Modesto, CA 95356  
Ph: (209) 545-3390  
Fx: (209) 545-3875  
[info@assoceng.com](mailto:info@assoceng.com)

## **Introduction**

Associated Engineering Group, Inc. is a full service Civil Engineering and Land Surveying Consulting Firm. Associated Engineering's top priority is to provide complete and honest service to the valued client while maintaining high professional standards and accountability to the general public. As professionals, we realize that an understanding of superior client relations and timely delivery of services is inherent and we work very hard to make this our first priority.

*Associated Engineering is committed to being a service oriented firm implementing new technologies while upholding old-fashioned values.*

## **Mission Statement**

Associated Engineering Group, Inc. shall promote the success of our clients in providing quality engineering, surveying and planning services of unmatched value by:

- *Applying the highest standards of excellence in the execution of our projects.*
- *Striving to develop enthusiastically satisfied clients.*
- *Providing a great work environment and treating fellow employees with respect and dignity.*
- *Contributing positively to our communities and our environment.*
- *Continuing to improve our expertise in engineering and other technical skills.*

## **Keys to Success**

Associated Engineering Group, Inc. was founded on the principle of providing sound professional services and immediate response to client needs and reviewing authority requirements. We take pride in providing quality engineering analysis and design within budgetary and scheduling constraints.

### *Attention to Detail*

Associated Engineering Group, Inc. prides itself on attention to detail. Associated Engineering recognizes the importance of a thorough job and is closely involved in every aspect of every project from feasibility studies through the preparation of construction drawings.

### *Value Engineering*

Associated Engineering Group, Inc. considers every option and is always aware of the cost-effectiveness of its designs. Over the years, our personnel have saved their clients millions of dollars in construction costs by emphasizing cost-effective solutions from the beginning to the end of each and every project.

### *Involvement*

The staff of Associated Engineering Group, Inc. is regularly involved with professional business associations and serves on committees within the public sector to be cognizant of land use and engineering issues on the local, state and national levels.

### *Quality Control*

Associated Engineering Group, Inc. provides direct involvement of principals in a stringent multi-phased Quality Control Program on each project to provide consistency and to ensure the best quality possible.

### *Reputation*

Although Associated Engineering Group, Inc. is relatively new in the marketplace, we have staffed the firm with professionals that have many years of experience in their respective fields. Our personnel have maintained an excellent reputation with their clientele, local, state and federal government review agencies, and even their competitors. Our staff is known for innovative design solutions and prompt regulatory approvals.

## **Company Summary**

Associated Engineering Group, Inc. is a professional consulting engineering firm specializing in Civil Engineering, Land Surveying, and Planning. We are very proud of the many combined years of professional experience brought to the firm by the principal partners and the professional staff of Engineers, Surveyors and Planners. This experience and expertise allows us to provide our clients with a wide range of planning, engineering design and project management skills. This diversity of talent also enables Associated Engineering to provide our clients with the highest level of comprehensive service possible.

Our staff's involvement with large and complicated private development and municipal water and sewer system analysis and design, flood plain studies, large surveying projects, storm drainage, roadway improvements and other facilities has provided the firm with a high level of expertise. This degree of exposure has also provided us with the opportunity to develop an excellent record of success in dealing with a wide variety of challenging projects from the aspect of design, as well as regulatory permitting.

## **Company Location / Driving Directions**

Associated Engineering Group, Inc. is located at 4206 Technology Drive in the Landmark Business Center in North Modesto. The location lends itself to immediate freeway access and is located in the heart of a growing region of Modesto / Salida. From Highway 99, take the Salida / Riverbank exit and head East on Kiernan Avenue (State Highway 219) to Nutcracker Lane (1/2 mile). Turn right on Nutcracker Lane and then left on Technology Drive.

## **Services**

Associated Engineering Group, Inc. has the ability to provide expertise in all phases of project development from land surveying and engineering design to project entitlements and administrative services. Our involvement with all types of improvement projects has provided us with the extensive experience required to effectively design, implement, and manage projects successfully. The five principals have a combined total of over 100 years of qualified experience.

### **Professional Land Surveying Services:**

Topographic Surveys  
Boundary Surveys  
ALTA Surveys  
Mapping  
Aerial Control  
Construction Staking  
Parcel Maps  
Tentative Subdivision Maps  
Final Subdivision Maps  
Monumentation  
Legal Descriptions / Easements

### **Professional Civil Design Services:**

Residential Subdivision Developments  
Multi-Family Developments  
Commercial Developments  
Industrial Developments  
School Developments  
Hospital Developments

### **Professional Planning and Consulting Engineering Services:**

Local / State / Federal Regulatory Agency Permitting  
Land Planning and Zoning  
Development Agreements  
Plan Development Application Processing  
Feasibility Studies  
Infrastructure Master Planning  
Water / Sewer / Storm Drain Infrastructure Design  
Street Improvement Projects  
Land Use Layouts  
Preliminary Site Plans  
Project Management  
Cost Estimation  
Hydrology Studies  
Plan Checking / Peer Review  
Construction Administration  
Structural and Architectural Design  
Graphic Designs

## **Fulfillment**

We will turn to qualified professionals to supplement technical expertise and to fulfill contractual obligations with our clients. We will hire, for example, geotechnical engineers, structural engineers, transportation engineers, legal land use specialists, etc. as needed to complete a project successfully.

## **Technology**

Associated Engineering Group, Inc. has invested heavily in the most current computer technology available. We have matched the computer's analytical design capacity and speed with skilled and experienced personnel to provide the most accurate, efficient and timely product for our clients at the most economical price. Our firm's resources include the most advanced Computer Aided Design (CAD) systems available today. Associated Engineering maintains an extensive library of design and analysis software as well as full color plotting capabilities.

## **Management Summary**

Associated Engineering Group, Inc. was founded on a unique management approach which delegates total authority for each client or project to specific, qualified individuals. This provides a more direct link between the client and our firm and eliminates the administrative overhead associated with a "top-down" management style. This management philosophy provides cost effective professional services.

## **Personnel**

Associated Engineering's fundamental strength lies in the character, cumulative experience and diversity of the principals and professional staff. With a strong upbringing in the Central Valley, we feel a commitment to Stanislaus County and the surrounding areas. Key personnel summaries, which follow, demonstrate the diverse expertise and local involvement of Associated Engineering Group, Inc.

**Ryan D. Carrel, P.E.** Professional Engineer in Civil Engineering, State of California, No. C 61619  
BSCE / BSLSE 1998, Purdue University, West Lafayette, IN

Mr. Carrel has over 12 years of Civil Engineering and Land Surveying experience. He is a Registered Professional Engineer in Civil Engineering and is certified as a Land Surveyor-in-Training. Mr. Carrel's expertise includes street and highway design, geometric layout, grading and drainage design, infrastructure design, Coordinate Geometry applications, land surveying systems and legal aspects, hydraulics and hydrology, oral / written communications and client relations.

### **Affiliations:**

American Society of Civil Engineers, Member  
American Congress on Surveying and Mapping, Member  
National Society of Professional Engineers, Member  
Consulting Engineers and Land Surveyors of California, Past Officer  
Modesto Engineers Club, Past President

**Jim P. Freitas**

Mr. Freitas brings more than 17 years experience in development project design, management and processing for both public and private sectors. He is well versed in complex permit processing, land use zoning, feasibility studies, agency coordination at the local, state and federal levels. His past projects include Diablo Grande master community, Spanos Park, Weston Ranch, Bridle Ridge and various land developments, shopping centers, master planned developments, and municipal projects. He has prepared numerous specific plans and accomplished the comprehensive project feasibility, architectural design, improvement plans, permitting, cost estimate, project management, and construction administration for numerous new and existing building facilities and planned developments.

**Affiliations:**

American Planning Association, Member  
Modesto Engineers Club, Member

**Skills:**

Complete understanding of computer networking, computer programming, computer hardware installation and various computer software applications such as AutoCAD, Adobe Photoshop, Microsoft Word, Excel, Outlook, Access, Publisher, Project, WordPerfect and many more. In addition, he is fluent in Portuguese and Spanish.

**Dave L. Skidmore, L.S.** Professional Land Surveyor, State of California, No. 7126

Mr. Skidmore has over 35 years experience on a wide variety of public and private projects, ranging from construction surveying / management, aerial control surveying, project supervision, boundary, subdivision and topographic surveys. Mr. Skidmore has been approved by the Stanislaus County Judicial System as an expert witness in boundary dispute issues. Mr. Skidmore's responsibilities include project management, supervision of office and field personnel, client consultations, research and calculations, project scheduling, review and approval of all surveying activities. Mr. Skidmore is also responsible for the overseeing of Associated Engineering's daily operations.

**Affiliations:**

California Land Surveyors Association, Member  
American Congress on Surveying and Mapping, Member

**Kevin Waddell**

Mr. Waddell has over 31 years experience in land planning, zoning, mapping, design, construction administration and surveying. He has been involved in numerous residential subdivisions, commercial projects, ALTA surveys, building plans, demolition projects, field surveying, interpretation of field data, implementation of preliminary design criteria, design calculations, cost estimation, interaction with governmental agencies, and final design. Mr. Waddell also has extensive programming and design software experience.

**Nadine Coonce, Notary Public - Commission expires 12/6/2007**

Ms. Coonce has close to 22 years experience in professional administration. Her background roles consist of customer service, accounting, legal and real estate assistant, and administrative management. Ms. Coonce is responsible for all aspects of business administration including financial bookkeeping, contract administration and human resources.



**PROPOSAL  
PROFESSIONAL CONSULTING SERVICES - FEE SUMMARY  
WIDENING OF MCHENRY AVENUE  
FROM LADD ROAD TO HOGUE ROAD  
STANISLAUS COUNTY, CALIFORNIA  
SEPTEMBER 4, 2007**

<b>A.</b>	<b>RIGHT-OF-WAY AND TOPOGRAPHIC SURVEYING .....</b>	<b>\$11,160.00</b>
<b>B.</b>	<b>RIGHT-OF-WAY ACQUISITION AND MAPPING .....</b> (ESTIMATED TIME AND MATERIALS - ASSUMES 6 TAKES AT \$450 PER TAKE)	<b>\$2,700.00</b>
<b>C.</b>	<b>GEOTECHNICAL CONSULTING .....</b>	<b>\$7,900.00</b>
<b>D.</b>	<b>GEOTECHNICAL CONSULTING COORDINATION .....</b> (10% OF ITEM C)	<b>\$790.00</b>
<b>E.</b>	<b>ENGINEERING DESIGN .....</b>	<b>\$19,300.00</b>
<b>F.</b>	<b>PLANS AND SPECIFICATIONS .....</b>	<b>\$18,840.00</b>
<b>G.</b>	<b>ESTIMATING .....</b>	<b>\$1,275.00</b>
<b>H.</b>	<b>ADDITIONAL SERVICES .....</b>	<b>\$5,200.00</b>
<b>TOTAL ESTIMATE: (ITEMS A-H) .....</b>		<b>\$67,165.00</b>



**ASSOCIATED ENGINEERING GROUP, INC.**  
**HOURLY RATE SCHEDULE**  
**2007**

**ENGINEERING**

Civil Engineer	\$ 130.00
Project Manager	115.00
Senior Designer	110.00
Designer	90.00
CADD Technician 2	80.00
CADD Technician 1	70.00
Administrative Technical Assistant	55.00

**SURVEYING**

Land Surveyor	\$ 130.00
Assistant Surveyor	90.00
Party Chief	90.00
Survey Technician	70.00
Two-Person Field Crew	160.00
Two-Person Field Crew ( <b>Prevailing Wage</b> )	240.00
Administrative Technical Assistant	55.00

**PLANNING**

Land Planner	\$ 125.00
Assistant Planner	90.00
CADD Technician 2	80.00
CADD Technician 1	70.00
Graphic Designer	70.00
Administrative Technical Assistant	55.00

**PLAN REPRODUCTION**

Plans required for local agency approval and 2 sets for clients use are covered in project costs, additional plan reproduction prints will be charged as follows:

Bond 24"x36" Sheet	\$ 2.00/sht.
Vellum 24"x36" Sheet	\$ 15.00/sht.
Mylar 24"x36" Sheet	\$ 17.00/sht.
Mylar 30"x42" Sheet	\$ 25.00/sht.

Associated Engineering Group, Inc.'s rate schedule is effective as of January 1, 2007 through December 31, 2007.

**Client Authorized overtime will be invoiced at 1-1/2 times the above rates.**

**STANISLAUS COUNTY PUBLIC WORKS  
ENGINEERING DIVISION  
1716 MORGAN ROAD  
MODESTO, CA 95358**

BOARD OF SUPERVISORS

2008 JAN 11 A 10:58

**TRANSMITTAL**

Date: January 10, 2008  
To: Suzi Seibert, Assistant Clerk of the Board  
Re: Attachment for December 18, 2007, Item \*C-3  
From: Linda Allsop, Morgan Road  
209-525-4157

Hi Suzi:

Enclosed for your file is one of the agreements for Item \*C-3, December 18, 2007

Have a good day!

**OVERLAND PACIFIC & CUTLER, INC.  
PROJECT NO. 9216-2007-02**

**A. Terms and Conditions**

Except as hereinafter provided, the services provided by the Consultant under this Project shall be subject to the terms and conditions set forth in the *Master Agreement For Professional Services* made and entered into by and between the County of Stanislaus ("County") and [Overland Pacific & Cutler, Inc.] ("Consultant"), on October 2, 2007.

**B. Scope of Work**

The Consultant shall provide services under the Agreement and this Project for McHenry Avenue Widening Project, Phase 1 from Ladd Road to Hogue Road,, as set forth in the Consultant's proposal and scope of work dated October 12, 2007, attached hereto and, by this reference, made a part hereof.

**C. Compensation**

The Consultant shall be compensated for the services provided under this Agreement as follows:

1. Consultant will be compensated on a time and materials basis, based on the hours worked by the Consultant's employees or subcontractors at the hourly rates specified in the consultant's Proposal. The specified hourly rates shall include direct salary costs, employee benefits, and overhead. These rates are not adjustable for the performance period set forth in this project and scope of work. In addition to the aforementioned fees, Consultant will be reimbursed for the following items, plus any expenses agreed by the parties as set forth in the Consultant's Proposal attached hereto, that are reasonable, necessary and actually incurred by the Consultant in connection with the services:

- (a) Any filing fees, permit fees, or other fees paid or advanced by the Consultant.
- (b) Expenses, fees or charges for printing, reproduction or binding of documents at actual costs.

2. The County shall retain ten (10) percent of all periodic or progress payments made to the Consultant until completion and acceptance of all work tasks.

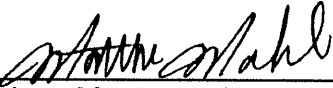
3. The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed \$60,000, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Consultant to


perform or to assist in the performance of its work under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Project No. 9216-2007-02 on December 18, 2007.

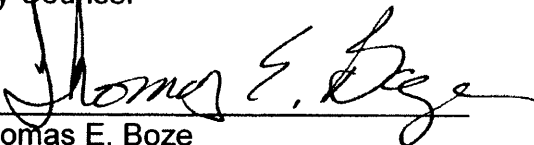
**COUNTY OF STANISLAUS**

**OVERLAND PACIFIC & CUTLER, INC.**

By:   
Matthew Machado, Director  
Department of Public Works

By:   
Ray Armstrong  
VICE President  
"Consultant"

APPROVED AS TO FORM:  
Michael H. Krausnick  
County Counsel

By:   
Thomas E. Boze  
Deputy County Counsel



October 12, 2007

B.M. Frazier, Assistant Engineer  
Stanislaus County  
Department of Public Works  
1716 Morgan Road  
Modesto, California 95358

8950 Cal Center Drive, Suite 102  
Sacramento, California 95826  
916.857.1520 ph  
916.857.1525 fax  
www.OPCservices.com

Regarding: Stanislaus County – McHenry Avenue Widening Project – Phase I

Dear Mr. Frazier:

Thank you for requesting a proposal from Overland, Pacific & Cutler, Inc. (OPC) for acquisition services for right of way for the above named project. Based on the information we received, it appears there will be ten parcels from each of which a portion must be obtained.

It is our understanding that Stanislaus County wants OPC to provide appraisals, acquisition negotiations and all necessary documents e.g. offer letters, contracts, etc. for obtaining road easements from approximately ten (10) parcels located between Ladd Road/Patterson Road and the Stanislaus River. The County is also asking OPC to obtain "right-of-access" for purposes of field surveying and design field studies. No review appraisals will be required because no federal funds will be utilized for this project. Stanislaus County will obtain a preliminary title report for each parcel. A copy of our Acquisition Scope Of Services And Procedures is attached. Also attached is our Additional Scope of Services with the services to be performed circled.

Our fee to provide these services is not to exceed \$6,000 per parcel. OPC will charge Stanislaus County according to our Acquisition Hourly Rate Schedule (attached).

Appraisals (\$1,650 each)\*  
Negotiations, document preparation, right-of-access, etc. (\$4,350 each)

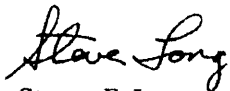
\*Appraisals to be produced by Cogdill & Giomi, Inc.

The appraiser has stated that, once the title reports, legal descriptions and plat maps are provided, the appraisals can be completed 45 days after authorization to start. Acquisition negotiations will begin immediately after the appraisals are approved by Stanislaus County.

Page 2

We are prepared to start the project, beginning with obtaining "right-of-access, at any time. If you need further information, please call me at your convenience at (916) 857-1520. Thank you again for the opportunity to serve Stanislaus County.  
Respectfully submitted,

OVERLAND, PACIFIC & CUTLER, INC.



Steven F. Long  
Project Manager

attachments

cc: Cogdill & Giomi w/o attachments

## **ACQUISITION SCOPE OF SERVICES AND PROCEDURES**

1. Prepare all offer letters, summary statements, and lists of compensable items of fixtures and equipment, in accordance with state or federal regulations and approval of legal counsel.
2. Personally negotiate with the property owners and business tenants (or their appointed representatives) for the purchase of the required property rights. The written offer to purchase will be presented to the appropriate owners or their representatives in person, when possible.
3. Upon the initiation of negotiations, receipted offer letters will be transmitted to the client as soon as possible. In instances where the property owner declines to accept the offer to purchase, a certification of presentation will be forwarded to the client.
4. Personal negotiations will continue with the property owners and tenants until every reasonable effort has been expended and it appears that the only remaining method of acquisition is through eminent domain proceedings.
5. Prepare all acquisition agreements, deeds, and other documents necessary to complete the acquisition.
6. At such time that negotiations appear to be unsuccessful and eminent domain proceedings have commenced, assistance necessary to aid the client's condemnation counsel will be provided. Negotiations will continue after the filing of a condemnation action if it is the desire of legal counsel.
7. In the course of negotiations with the property owners and tenants, Overland, Pacific & Cutler, Inc. consultants will provide all necessary information to and work with the relocation consultant, or staff member, in order to expeditiously and professionally complete the project.
8. A diary of all pertinent information and contacts concerning the project parcels will be maintained.
9. A written summary of the status of the acquisition of each parcel will be provided on a monthly basis. It is our normal procedure to discuss the acquisition with the staff on a more frequent basis, so our clients will be kept well informed as the acquisition process proceeds.
10. All executed documents on successfully negotiated parcels will be promptly transmitted to client for acceptance.

## ADDITIONAL SCOPE OF SERVICES

Consulting services, in addition to those listed above, can also be provided. These additional services consist, in part, of the following:

1. Review and analyze perimeter (project) litigation guarantees in order to identify those specific title exceptions, (i.e., easements, oil rights etc.) that may have to be eliminated prior to the conveyance to the redeveloper or ultimate user. Also, provide the assistance necessary to eliminate these adverse items.
2. Review and analyze fixture and equipment appraisals in order to establish the list of compensable items.
3. Process the acquisition documents within the client's offices and transmit the executed and accepted documents to the appropriate parties (i.e., escrow, property owner, client's file, relocation consultant).
4. Act as liaison with title companies and escrow agents.
5. Provide internal escrow services for partial take acquisitions and the modified bulk sale transactions associated with the acquisition of commercial tenant's fixtures and equipment. This service includes, but is not limited to, security interest clearance through the Secretary of State, recordation of the sale information and publishing a notice to creditors.
6. Coordinate with Client and other consultants, prepare requested reports, attend meetings with Client, Public or provide other required acquisition related services, including preparation of public information brochures.
7. Subcontract for additional services that may be desired, including services such as appraisal, title, relocation, engineering, environmental analysis.
8. Site selection and analysis, alternative route analysis, acquisition cost analysis (including relocation, demolition, and consultant fees).
9. Coordinate other aspects of the project as requested by Client.



## 2008 HOURLY RATE SCHEDULE

All services would be provided based on the following hourly rate schedule:

### Central Valley

Principal	\$185.00 per hour
Regional Director	\$165.00 per hour
Sr. Project Manager	\$130.00 per hour
Project Manager	\$120.00 per hour
Senior Consultant	\$110.00 per hour
Consultant	\$100.00 per hour
Project Support	\$75.00 per hour

OPC considers photocopying, first class postage, telephone, facsimile and cellular communication charges as a normal part of doing business. These charges are included in the stated hourly rates. Out-of-pocket expenses – including pre-approved travel and lodging, outside exhibit preparation, requested overnight courier or registered and/or certified mail (return receipt requested) charges and, specialty reproduction – unless otherwise specified, are in addition to the contract amount and will be charged at cost plus ten percent (+10%) for administration, coordination and, handling. Subcontracted services – other than those listed above – will be invoiced at cost plus ten percent (+10%).


In the event OPC is required to perform any act in relation to litigation arising out of any project with the Agency, whether that be expert consulting or responding to a complaint or proceeding with discovery and trial, such services are not part of this contract, nor are they part of our normal fees and, if required, shall be invoiced at two times hourly rates.

In the event this contract extends twelve (12) months beyond the initial date of execution, the hourly rates and any remaining amount in the contract shall be adjusted upwardly by approximately five percent (5%) per annum, compounded annually, on the anniversary date of this contract.

Written communication services in other languages would be an additional cost and would be billed separately based on quoted hourly rates by independent translation services. Verbal communication in Spanish will be included at no additional charge, if necessary.

OPC may submit monthly invoices for the professional services rendered based on the hourly rate schedule provided above. Substantial changes in the required scope of work may result in the revision of the proposed fees.

STANISLAUS COUNTY  
OFFICE OF COUNTY COUNSEL**MEMORANDUM**

**TO:** File **DATE:** October 30, 2007  
**FROM:** THOMAS E. BOZE   
Deputy County Counsel  
**SUBJECT:** Approval of Bonds and Insurance  
**PROJECT:** Overland Pacific & Cutler - Professional Services Agreement

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The Office of County Counsel has reviewed the bonds and/or insurance certificate submitted on the project above to determine if the issuing companies meet statutory and contractual standards, and has made the following determination:

Standards for Approval of Bonds:  Approved  Disapproved

- California admitted surety; certificate of authority issued by CDI (CCP § 995.310.)
- Bond executed under penalty of perjury and original or certified copy of unrevoked appointment or power of attorney attached (CCP § 995.630)
- California Department of Insurance website verifies surety is admitted, or certificate from County Clerk verifies surety is admitted (CCP § 995.311.)

Comments: N/A

Standards for Approval of Insurance:  Approved  Disapproved

- Policy limits of insurance as required in agreement
- Deductibles declared and approved or waived by County
- Best's rating of no less than A-, and Financial Size Category of at least VII
- 30-day's notice of cancellation
- Endorsement naming County as additional insured
- Carrier admitted/licensed to issue insurance in California (LESLI surplus line carrier OK if no California carrier writes the insurance)

Comments:

## Company Profile

**HARTFORD FIRE INSURANCE COMPANY**  
**HARTFORD PLAZA, HO-1-09**  
**HARTFORD, CT 06115**  
**800-243-5860**

**Agent for Service of Process**  
**KAREN HARRIS, 2730 GATEWAY OAKS DRIVE SUITE 100 SACRAMENTO, CA 95833**  
 Unable to Locate the Agent for Service of Process?

---

### Reference Information

NAIC #:	19682
NAIC Group #:	0091
California Company ID #:	0085-1
Date authorized in California:	January 07, 1870
License Status:	UNLIMITED-NORMAL
Company Type:	Property & Casualty
State of Domicile:	CONNECTICUT

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### Lines of Insurance Authorized to Transact

The company is authorized to transact business within these lines of insurance. For an explanation of any of these terms, please refer to the glossary.

AIRCRAFT  
 AUTOMOBILE  
 BOILER AND MACHINERY  
 BURGLARY  
 COMMON CARRIER LIABILITY  
 CREDIT  
 DISABILITY  
 FIRE  
 LEGAL INSURANCE  
 LIABILITY  
 MARINE  
 MISCELLANEOUS  
 PLATE GLASS  
 SPRINKLER  
 SURETY

**TEAM AND VEHICLE  
WORKERS' COMPENSATION**

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**Company Complaint Information**

Company Enforcement Action Documents  
Company Performance & Comparison Data  
Composite Complaint Studies

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**Want More?**

Help Me Find a Company Representative in My Area

Financial Rating Organizations

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Last Revised - September 11, 2007 12:43 PM  
Copyright © California Department of Insurance

Best's Rating Center - Company Information for Hartford Fire Insurance Company

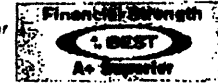
### Hartford Fire Insurance Company

(a member of Hartford Insurance Group)  
A.M. Best #: 02231 NAIC #: 19662 FEIN #: 060363750

Address: Hartford Plaza  
Hartford, CT 06115

Phone: 860-547-5000  
Fax: 860-547-6343  
Web: www.thehartford.com

Assigned to companies that have, in our opinion, a superior ability to meet their ongoing obligations to policyholders.



Print this page

#### Best's Ratings

**Financial Strength Ratings**    [View Definitions](#)  
Rating: **A+ (Superior)**  
Affiliation Code: **p (Pooled)**  
Financial Size Category: **XV (\$2 Billion or greater)**  
Outlook: **Stable**  
Action: **Affirmed**  
Effective Date: **June 25, 2007**

**Issuer Credit Ratings**    [View Definitions](#)  
Long-Term: **aa-**  
Outlook: **Stable**  
Action: **Affirmed**  
Date: **June 25, 2007**

\* *Denotes Under Review Best's Ratings*

<b>ACORD - CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 07/09/2007
PRODUCER (818)225-6200 FAX: (818)225-6210 Venbrook 22801 Ventura Boulevard Third Floor Woodland Hills CA 91364-5815		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Overland Pacific & Cutler, Inc. 100 West Broadway, Suite 500 Long Beach CA 90802		INSURERS AFFORDING COVERAGE INSURER A: Hartford Fire Ins. Co. INSURER B: Hiscox, Inc. INSURER C: INSURER D: INSURER E:
		NAIC #

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

INSUR/ADOL/ LTR/ISSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$10,000 B26PD DEDT <input checked="" type="checkbox"/> PER CLAIM GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	720UNTR7859	06/01/2007	06/01/2008	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED EQUIPMENT (EA accident) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> COMP DEDT: \$1,000 <input checked="" type="checkbox"/> COLL DEDT: \$1,000	720UNTR7859	06/01/2007	06/01/2008	COMBINED SINGLE LIMIT (EA accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	72ANUTR7849	06/01/2007	06/01/2008	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	72WETQ9133	06/01/2007	06/01/2008	<input checked="" type="checkbox"/> WC STATE-TORY LIMITS <input type="checkbox"/> OTH-PR E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	OTHER Errors & Omissions Professional Liab.	ME0100112507	06/01/2007	06/01/2008	E & O \$ 2,000,000 SXR \$ 50,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
 Certificate Holder is named as Additional Insured as their interest may appear in the operations of the Named Insured as per attached endorsement EG 00 01 06 05.  
 \*10 DAY NOTICE OF CANCELLATION FOR NON-PAYMENT OF PREMIUM AND 30 NOTICE FOR ALL OTHERS

**CERTIFICATE HOLDER**

County of Stanislaus  
 Department of Public Works  
 Engineering & Operations Division  
 Attn: Ms. Linda Aslop  
 1716 Morgan Road  
 Modesto, CA 95358

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.  
 AUTHORIZED REPRESENTATIVE  
 Chastity Barry/CH *Chastity Barry*



## COMMERCIAL GENERAL 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, and any other person or organization qualifying as a Named Insured under this policy. 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 II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### SECTION I – COVERAGES

#### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" 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" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – 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 or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

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

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

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – 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.

- 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 II – 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;
- (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. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

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

### b. Contractual Liability

"Bodily injury" or "property damage" 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:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) 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 purposes of liability assumed in an "insured contract", reasonable attorney 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:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Liquor Liability

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

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

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

### d. Workers' Compensation And Similar Laws

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

### e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (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" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or



- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
  - (i) Any insured; or
  - (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
  - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
  - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

#### 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 for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

#### i. War

"Bodily injury" or "property damage", 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. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors

working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

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

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

#### k. Damage To Your Product

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

#### l. 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.

#### m. 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.

**n. Recall Of Products, Work Or Impaired Property**

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

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

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

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. 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.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**q. Employment-Related Practices**

"Bodily injury" to:

- (1) A person arising out of any "employment-related practices"; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any "employment-related practices" are 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.

**r. Asbestos**

- (1) "Bodily injury" or "property damage" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
  - (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or

kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

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

Exclusions c. through h. and j. through n. do not apply to damage by fire, lightning or explosion to premises while 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 III - Limits Of Insurance.

**COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "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 "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any 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 III - Limits Of Insurance; and
  - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies 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.

**2. Exclusions**

This insurance does not apply to:

**a. Knowing Violation Of Rights Of Another**

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

**b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" 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.

**c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period.

**d. Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

**e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

**f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement".

**g. Quality Or Performance Of Goods - Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

**h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services.

**i. Infringement Of Intellectual Property Rights**

"Personal and advertising injury" 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:

- (1) Copyright;

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

- (3) Title of any literary or artistic work.

**j. Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 17.a., b. and c. of "personal and advertising injury" under the Definitions Section.

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.

**k. Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**l. Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" 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.

**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**n. Pollution-Related**

Any loss, cost or expense arising out of any:

- (1) 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
- (2) 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".

**o. War**

"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.

**p. Internet Advertisements And Content Of Others**

"Personal and advertising injury" arising out of:

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

**q. Right Of Privacy Created By Statute**

"Personal and advertising injury" 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.

**r. Violation Of Anti-Trust law**

"Personal and advertising injury" arising out of a violation of any anti-trust law.

**s. Securities**

"Personal and advertising injury" arising out of the fluctuation in price or value of any stocks, bonds or other securities.

**t. Discrimination Or Humiliation**

"Personal and advertising injury" arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

**u. Employment-Related Practices**

"Personal and advertising injury" to:

- (1) A person arising out of any "employment-related practices"; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any "employment-related practices" are 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.

**v. Asbestos**

- (1) "Personal and advertising injury" arising out of the "asbestos hazard".

- (2) Any damages, judgments, settlements, loss, costs or expenses that:

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

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

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

**COVERAGE C MEDICAL PAYMENTS****1. 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.

## 2. Exclusions

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 within the "products-completed operations hazard".
- g. **Coverage A Exclusions**  
Excluded under Coverage A.

## SUPPLEMENTARY PAYMENTS -- COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
  - a. All expenses we incur.
  - b. Up to \$1,000 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.
  - c. 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.
  - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

- e. All costs taxed against the insured in the "suit".
- f. 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.
- g. 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.

These payments will not reduce the limits of insurance.

2. 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:
  - a. 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";
  - b. This insurance applies to such liability assumed by the insured;
  - c. 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";
  - d. 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 interests of the indemnitee;
  - e. 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
  - f. The indemnitee:
    - (1) Agrees in writing to:
      - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
      - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
      - (c) Notify any other insurer whose coverage is available to the indemnitee; and
      - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
    - (2) Provides us with written authorization to:
      - (a) Obtain records and other information related to the "suit"; and
      - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee,

necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, 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:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

## SECTION II - 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), 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 Coverage Part.

**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 the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or 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;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. 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. 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 following person(s) or organization(s) are an additional insured when you have agreed, in a written 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.

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

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

**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 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 Sub-paragraphs (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 the equipment lease expires.

**c. Lessors of Land or Premises**

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.

With respect to the insurance afforded these additional insureds the following additional exclusions apply:

This insurance does not apply to:

1. Any "occurrence" which 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.

**d. Architects, Engineers or Surveyors**

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:

- (1) In connection with your premises; or
- (2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded 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:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

**e. Permits Issued By State Or Political Subdivisions**

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.

With respect to the insurance afforded these additional insureds, 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 within the "products-completed operations hazard".

**f. Any Other Party**

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:

- (1) In the performance of your ongoing operations;
- (2) In connection with your premises owned by or rented to you; or
- (3) In connection with "your work" and included within the "products-completed operations hazard", but only if
  - (a) The written contract or agreement requires you to provide such coverage to such additional insured; and
  - (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

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 failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds under this provision is described in Section III – Limits Of Insurance.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section IV – Commercial General Liability 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.

**SECTION III – 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. General Aggregate Limit**

The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- c. Damages under Coverage B.

**3. Products-Completed Operations Aggregate Limit**

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

**4. Personal and Advertising Injury Limit**

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

**5. Each Occurrence Limit**

Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".

**6. Damage To Premises Rented To You Limit**

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A 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.

**7. Medical Expense Limit**

Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

**8. How Limits Apply To Additional Insureds**

If you have agreed in a written contract or written agreement that another person or organization be

added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- a. The limits of insurance specified in the written contract or written agreement; or
- b. The Limits of Insurance shown in the Declarations.

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

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.

#### **SECTION IV -- COMMERCIAL GENERAL LIABILITY 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 written notice of the claim or "suit" as soon as practicable.

###### **c. Assistance And Cooperation Of The Insured**

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

###### **d. Obligations At The Insureds 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 Insureds 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 or written agreement 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.

This duty applies separately to you and any additional insured.

##### **3. Legal Action Against Us**

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

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

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or

that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### 4. Other Insurance

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

##### a. Primary Insurance

This insurance is primary except when b. below applies. If 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 I - Coverage A - Bodily Injury And Property Damage Liability;

##### (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 j. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

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

Any 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

Any 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 or written agreement 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 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.

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 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.

#### 5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### 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 that exist at the inception date of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

#### 7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part 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 claim is made or "suit" is brought.

#### 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.

##### 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.

#### 9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

#### SECTION V – 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; or

- b. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

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

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

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

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

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

5. "Bodily injury" means physical:
  - a. Injury;
  - b. Sickness; or
  - c. Disease

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

6. "Coverage territory" means:

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

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

7. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
8. "Employment-Related Practices" means:
  - a. Refusal to employ a person;
  - b. Termination of a 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 a person.
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;

If such property can be restored to use by:

  - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while

rented to you or temporarily occupied by you with permission of the owner is subject to the Damage to Premises Rented To You Limit described in Section III - 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. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- 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:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

14. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

- b. While it is in or on an aircraft, watercraft or "auto";  
or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;  
but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2) Cherry pickers and similar devices used to raise or lower workers;
  - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.  
However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
    - (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
      - (a) Snow removal;
      - (b) Road maintenance, but not construction or resurfacing; or
      - (c) Street cleaning;
    - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
    - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a 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" mean 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 completed at the earliest of the following times:
      - (a) When all of the work called for in your contract has been completed.
      - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
      - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

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;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

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 the "occurrence" that caused it.

As used in this definition, computerized or electronically stored data, programs or software are not tangible property. Electronic data means information, facts or programs:

- a. Stored as or on;
- b. Created or used on; or
- c. Transmitted to or from;

computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

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";
- 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.