

## **ON-CALL LANDSCAPE ARCHITECTURAL PLANNING, DESIGN, AND RELATED CONSULTING SERVICES AGREEMENT**

**THIS AGREEMENT** is made between the **CITY AND COUNTY OF DENVER** (the "**City**"), a municipal corporation of the State of Colorado, and **FLOW DESIGN COLLABORATIVE, INC.**, a Colorado corporation, with an address of 303 W. 45<sup>th</sup> Ave., Denver, Colorado 80216 (the "**Design Consultant**"), collectively "**the Parties**".

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties hereto mutually agree as follows:

### **SECTION 1 – ENGAGEMENT**

1.01 **Engagement.** The City engages the Design Consultant with respect to the furnishing of professional design services under **Exhibit A**, attached hereto and incorporated herein, on an on-call basis and as set forth in this Agreement. The Design Consultant accepts such engagement upon, subject to and in accordance with the terms, conditions and provisions of this Agreement.

1.02 **Line of Authority for Contract Administration.** The City's Executive Director of the Department of Parks and Recreation ("**DPR**") ("**Executive Director**") is the City's representative responsible for authorizing and approving the work performed under this Agreement. The Executive Director shall designate a DPR Project Manager ("**Project Manager**") as the Executive Director's authorized representative for the purpose of issuing a written Notice to Proceed and for purposes of administering, coordinating and final approval of the work performed by the Design Consultant under this Agreement. The Project Manager shall be responsible for the day-to-day administration, coordination and approval of work performed by the Design Consultant, except for approvals which are specifically identified in this Agreement as requiring the Executive Director's approval. The Executive Director expressly reserves the right to designate another authorized representative to perform on the Executive Director's behalf by written notice to the Design Consultant.

1.03 **Independent Contractor.** The Design Consultant is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Design Consultant nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code ("**D.R.M.C.**"), or for any purpose whatsoever.

1.04 **Scope of Design Consultant's Authority.** The Design Consultant shall have no authority to act on behalf of the City other than as expressly provided in this Agreement. The Design Consultant is not authorized to act as a general agent for or to undertake, direct or modify any contracts on behalf of the City. The Design Consultant lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

1.05 **Task Order.** As the Executive Director determines the need and availability of funding for each Work Project, the City will issue a Task Order to the Design Consultant detailing the nature and extent of services to be provided and the timeframes for the Work Project, with a projected amount to be paid to the Design Consultant (the "Work Project Amount") based on the Work items contained in the scope of services in **Exhibit A**. **Exhibit B** attached to this Agreement and incorporated herein by reference contains the Rate Schedules, which the Design Consultant acknowledges and affirms that the City may rely upon in the preparation of Task Orders as provided herein. Following receipt of the issued Task Order, the Design Consultant shall, within two (2) business days and in good faith, confirm the scope of services detailed therein and the associated Work Project Amount, all of which must be in accordance with the terms and

conditions of this Agreement, and respond back to DPR as to the Design Consultant's ability to initiate and complete the Work Project in the timeframes specified in the Task Order. The Design Consultant assumes all responsibility and risks, including any additional work or additional costs, for failure to confirm the completeness and accuracy of the Task Order and the Work Project Amount, including any inquiries with the Project Manager as to any directions or specifications in the Task Order which are not clear. If the Design Consultant fails to contact DPR within two (2) business days following receipt of the issued Task Order and state unequivocally that the Design Consultant is ready and willing to perform the Work Project in the manner and timeframes indicated on the Task Order, the City reserves the right to immediately withdraw the issued Task Order. Upon the Design Consultant executing the Task Order, the City shall finalize and execute the Task Order for the Work Project and return a copy of the executed Task Order to the Design Consultant. The City will not execute the Task Order unless any material changes proposed by the Design Consultant to the terms of the issued Task Order and/or additions to the Work Project Amount are deemed acceptable by the Executive Director and incorporated into the Task Order and until funding adequate to cover the entire Work Project Amount is available.

1.06 Task Order Change. If, after execution of a Task Order and commencement on the Work Project, additions, deletions or modifications to the Work described in the Task Order, along with any associated changes in the Work Project Amount, are required by the City or are requested by the Design Consultant and approved in advance by the Executive Director, a Task Order Change may be issued in accordance to the same standards and procedures prescribed for Task Orders. The Design Consultant shall promptly and thoroughly review and respond to the proposed changes, in accordance with the same standards and procedures prescribed for Task Orders, and notify the Project Manager that the Design Consultant is ready and willing to perform the Work Project in the manner and timeframes as modified by the Task Order Change. The City will not execute the Task Order Change unless any material changes proposed by the Design Consultant to the terms of the issued Task Order and/or additions to the Work Project Amount are deemed acceptable by the Executive Director and incorporated into the Task Order Change and until funding adequate to cover the entire Work Project Amount, if modified, is available.

## **SECTION 2 – DESIGN CONSULTANT'S SERVICES**

2.01 General. The Design Consultant shall provide professional design services for any assigned project, on an as-needed basis, in accordance with the terms and conditions of this Agreement.

2.02 Professional Responsibility; Project Requirements.

- (a) All of the work performed by the Design Consultant under this Agreement shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform work of a nature similar to the Work described in this Agreement.
- (b) The Design Consultant agrees to strictly conform to and be bound by written standards, criteria, budgetary considerations and memoranda of policy furnished to it by the City and further agrees to design each project in compliance with applicable laws, statues, codes, ordinances, rules and regulations, and industry standards.
- (c) All professional services, plans and specifications and other work, or deliverables provided under this Agreement for the Work Project shall be adequate and sufficient for the proper construction of the Work Project and its intended purpose, in accordance with the standard of care described in section 2.02 (a).

- (d) All drawings, specifications and other products shall be prepared so the Work Project, when constructed in accordance with such drawings and specifications, is in compliance with all applicable laws, statutes, codes, ordinances, rules and regulations and executive orders of the City, the state and the federal government.
- (e) Any design changes required by changes in such applicable laws, statutes, codes, ordinances or rules and regulations of the City, the state or the federal government, which are enacted after the City's acceptance of Construction Documents, defined herein, will be outside the scope of the Design Consultant's basic services and basic fee, and will be compensated for approval as a supplemental service, subject to the supplemental services budget for that project.
- (f) The Design Consultant shall prepare the plans, specifications and other projects for each Task Order in a format that complies with all City requirements as well as all state and federal requirements for that project. No funds will be paid to the Design Consultant for the preparation of Contract Documents in a form other than that considered usual and customary by DPR. It shall be the responsibility of the Design Consultant to contact the reviewing agencies and determine the acceptable format for the final documents. No documents will be considered final until approved by the City, even if any responsible federal and state agencies have approved such documents.
- (g) Without limiting the foregoing, unless it is specifically directed otherwise in writing by the Executive Director, the Design Consultant shall comply with DPR Standards for the final deliverable Record Documents. Final Payment will be held until the receipt of the Record Documents.
- (h) The City reserves the right to proceed with the construction of each project using either the City's standard general contractor bidding approach, on-call contractors or using construction management techniques. The Design Consultant agrees to organize its Contract Documents for either construction technique and to coordinate the construction documents into selected bid packages, as appropriate. The City will notify the Design Consultant prior to the completion of the Schematic Design Phase which method will be used and the amount of work or the limits of construction to be included in the proposed bid package(s).
- (i) The reports, studies, drawings and specifications and other products prepared by the Design Consultant under this Agreement, when submitted by the Design Consultant to the Executive Director and the user agency for any identified phase of a project, must represent a thorough study and competent solution for the project as per usual and customary professional standards and shall reflect all architectural and engineering skills applicable to that phase of the project.
- (j) The responsibilities and obligations of the Design Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, consultant or subconsultant, or an employee of the City.
- (k) The Design Consultant shall provide all professional services required by the City in defending all claims against the City which relate in any way to alleged default hereunder, errors or omissions of the Design Consultant or its subconsultants, without additional compensation.

2.03 Program and Budget.

- (a) The Design Consultant agrees to review the City's program and budget for each assigned Task Order and further agrees, unless it has timely notified the City that the project cannot be accomplished within such budget, to accomplish the project within the intent of the program and established budget. Should the Design Consultant determine that an assigned Task Order cannot be accomplished within the established budget, the Design Consultant shall immediately notify the City, in writing, so that the project scope or project budget can be reviewed and modified if necessary.
- (b) The term "Project Construction Cost" shall mean the estimated cost to the City of actually constructing an assigned project, but such cost shall not include any Design Consultant's or special consultant's fees or reimbursements or the cost of equipment installed by the City under separate contract, unless the Design Consultant is required by the City to prepare drawings and specifications for such equipment. The initial Project Construction Cost for the project to which the Design Consultant is assigned shall be provided to the Design Consultant at the time the Design Consultant prepares its proposal for that project. Such cost shall be subject to increase or decrease at the sole option of the Executive Director.
- (c) If the City requires the Design Consultant to prepare a formal cost estimate for a particular Task Order, the Design Consultant agrees to design the project within the project's estimated Project Construction Cost. Should all responsive bids or proposals received for the project work provided for in the design exceed such cost, the Design Consultant agrees to redesign the Work Project at no additional cost to City and, in a manner acceptable to the City.

2.04 Coordination and Cooperation.

- (a) The Design Consultant agrees to perform under this Agreement in such a manner and at such times that the City or any Contractor who has work to perform, or contracts to execute, can do so without unreasonable delay.
- (b) Coordination with the City and other involved agencies shall be a continuing work item through all phases of each assigned Task Order. Such coordination shall consist of regular progress and review meetings with the City, work sessions with DPR, or as otherwise directed by the City. Such coordination may also include field and office reviews of plans and documents as required during the development of the design for any specific project. The Design Consultant shall document all such conferences and distribute notes to the City upon request.

2.05 Personnel Assignments.

- (a) The key professional personnel identified in **Exhibit B** will be assigned by the Design Consultant or its subconsultants to perform the services required under this Agreement, as appropriate.
- (b) The Design Consultant's services shall be diligently performed by the regular professional and technical staff of the Design Consultant. In the event the Design Consultant does not have as part of its regular staff certain professional consultants,

then such consulting services shall be performed, with City approval, by practicing professional consultants outside of the employ of the Design Consultant.

- (c) The Design Consultant agrees, at all times during the term of this Agreement, to maintain on its payroll or to have access to outside subconsultants, professional design personnel and technicians in sufficient strength to meet the requirements of the City. Such personnel and technicians shall be of the classifications referenced in **Exhibit B**. The hourly rates specified therein include all costs except those specifically referenced as reimbursables in the appropriate hourly rate schedule.
- (d) Prior to designating an outside professional to perform subconsultant work, the Design Consultant shall submit the name of such subconsultant, hourly rates, and résumés of training and experience in work of like character and magnitude of the project being contemplated, and a conflict of interest statement (if applicable) pursuant to paragraph 2.5(h), to the Project Manager and receive prior approval in writing.
- (e) It is the intent of the Parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that the Design Consultant's and the subconsultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.
- (f) If the Design Consultant or a subconsultant decides to replace any of its key professional personnel, the Design Consultant shall notify the Project Manager in writing of the desired change. No such changes shall be made until replacement personnel are recommended by the Design Consultant and approved in writing by the Project Manager, which approval shall not be unreasonably withheld.
- (g) If, during the term of this Agreement, the Executive Director determines that the performance of approved key professional personnel or a subconsultant is not acceptable, they shall notify the Design Consultant and give the Design Consultant the time which the Executive Director considers reasonable to correct such performance. Thereafter, they may require the Design Consultant to reassign or replace such key professional personnel. If the Executive Director notifies the Design Consultant that certain of its key professional personnel or a subconsultant should be replaced, Design Consultant will use its best efforts to replace such key professional personnel or a subconsultant within ten (10) days from the date of the Executive Director's notice.
- (h) Neither the Design Consultant nor any subconsultant shall have other interests which conflict with the interests of the City, including being connected with the sale or promotion of equipment or material which may be used on a Task Order to which they may be assigned, and the Design Consultant shall make written inquiry of all of its subconsultants concerning the existence of a potential for such conflict. In unusual circumstances, and with full disclosure to the City of such conflict of interest, the City, in its sole discretion, may grant a written waiver for the particular consultant or subconsultant.

- (i) Actions taken by the City under this Article shall not relieve the Design Consultant of its responsibility for contractual or professional deficiencies, errors or omissions.
- (j) The Design Consultant shall submit to the Project Manager a list of any additional key professional personnel who will perform work under this Agreement within thirty (30) days after this Agreement has been executed, together with complete résumés, hourly rates, and other information describing their ability to perform the tasks which may be assigned. Such additional personnel must be recommended by the Design Consultant and approved by the Project Manager before they are assigned to a specific Task Order.
- (k) The Project Manager shall respond to the Design Consultant's written notice regarding replacement of key professional personnel within fifteen (15) days after the Project Manager receives the list of changes. If the Project Manager does not respond within that time, the changes shall be deemed to be approved.

2.06 Basic Services – General.

- (a) The Design Consultant shall, under the general direction of and at the written request of the Executive Director, furnish experienced architectural personnel to support DPR's existing personnel. Subject to an express, agreed upon limitation of such duties set forth in any approved Task Order proposal for the particular project assigned to the Design Consultant under this Agreement, the Design Consultant agrees to perform all of the services and duties set forth in this Agreement in regard to each project to which it is assigned and its proposal is approved.
- (b) When directed by the Executive Director to perform under this Agreement on a particular Task Order, the Design Consultant shall prepare a project-specific proposal in accordance with the provided scope or description of Work for that project. A separate project-specific proposal shall be prepared for each Task Order for which the Design Consultant's services are required and shall set forth, at a minimum, all of the following:
  - (1) The not to exceed maximum fee for the Design Consultant's basic services (mark-ups on basic services will not be accepted).
  - (2) The supplemental services budget, limited to ten percent (10%) of the basic services fee for the Project.
  - (3) Any reimbursable expenses allowed under this Agreement, if applicable (mark-ups on reimbursable expenses will not be accepted).
  - (4) A detailed description of the task and proposed scope of work (the "Work").
  - (5) An agreed upon schedule for the Design Consultant's performance of all phases of their work.
  - (6) An Itemized Hourly fee breakdown per the key professional personnel and Rate Schedule in **Exhibit B**.

- (c) Upon approval by the Executive Director of a Task Order proposal, the approval and appropriation of funding for such Task Order, and the issuance of a written Notice to Proceed, the Design Consultant shall proceed to perform required Work.
- (d) The assigned Work shall be performed in conformance with the approved Task Order-specific proposal upon approval of the proposal.
- (e) The Design Consultant's basic services for each Task Order to which it is assigned may consist of any one or combination of the phases described below and shall include, but are not limited to the architectural, design, civil, structural, mechanical and electrical services appropriate to each phase of each project and the services described in **Exhibit A**.
- (f) The Design Consultant shall obtain written authorization from the Project Manager before proceeding with each phase of each assigned Task Order.
- (g) Nothing in this Agreement shall be construed as placing any obligation on the City to proceed with any phase beyond the latest phase authorized in writing by the City for each assigned Task Order. Further, nothing in this Agreement shall be construed as guaranteeing the Design Consultant any minimum amount of Work or number of projects assigned under this Agreement.
- (h) If a Task Order which is assigned to the Design Consultant under this Agreement is funded in whole or part by federal funds, each of the applicable terms set forth in any funding arrangement for such funds shall be, and by this reference is incorporated into the project-specific proposal for such project, and included in the Design Consultant's basic services responsibilities for such project.
- (i) The responsibilities and obligations of the Design Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, consultant, subconsultant, or employee of the City.

2.07 Basic Services - Phase Specific. All of the services described in this Section 2.07, unless specifically noted as omitted in the project-specific proposal or Task Order for a specific project, are included in the Design Consultant Basic Fee for each project to which the Design Consultant is assigned.

- (a) Programming and Investigation Phase:
  - (1) The Design Consultant shall attend such conferences as may be required for a complete understanding of each Work Project, and the Design Consultant shall prepare and distribute all notices and minutes of such conferences to the City upon request. The Design Consultant shall manage the Project and the work of staff subconsultants in an efficient manner so that work produced meets the requirements of the contract and Task Order.
  - (2) If construction, design or document standards have been adopted by the City, the State, or the Federal government for the Project, the Design Consultant shall comply with all such standards when applicable.
  - (3) The Design Consultant shall perform all additional research or investigation it deems necessary to have a complete understanding of the Work Project. If

prior plans exist for the project the Design Consultant shall familiarize themselves with them and follow applicable guidance.

- (4) The Design Consultant shall review the needs and requirements of the City and affected agencies to determine the specific requirements of the specific Work Project based on the information provided by the City.
- (5) The Design Consultant shall then review the project requirements with the City to confirm its understanding of the Work Project program, budget and any applicable limitations.
- (6) The Design Consultant shall review and coordinate with all surveys, plans, special studies and engineering data necessary to properly investigate and report on the Work Project.
- (7) The Design Consultant shall then review with the City alternate methods or approaches to the design and construction of the Work Project and recommend those methods or approaches best suited to program needs and budget of City.
- (8) The Design Consultant shall also include as part of this phase all services included in the applicable portions of the applicable approved Work Project-specific proposal.

(b) Schematic Design Phase:

- (1) The Design Consultant shall not begin work on the Schematic Design Phase of any Work Project unless and until written notice to proceed with such phase is received from the Project Manager.
- (2) During the Schematic Design Phase for each Task Order, the Design Consultant shall, in response to the City's requirements, the budget restrictions of the Work Project and the format of design and construction selected by the City, prepare for the City's approval of Schematic Design Documents including, but not limited to, drawings and other documents that demonstrate and illustrate the conceptual design, scope and scale of the Work Project and the relationship of Work Project components. Such documents shall be in sufficient detail so as to allow the City to make knowledgeable and informed decisions as to the selection of alternatives and resolution of other scope and budget questions.
- (3) The Design Consultant shall also provide a preliminary Opinion of Probable Construction Cost of the Work Project for the City, taking into account the City's Work Project budget prior to payment for this phase of the work.
- (4) The Design Consultant shall also include as part of this phase all services included in the applicable portions of the applicable approved Work Project-specific proposal.

(c) Design Development Phase:

- (1) Prior to beginning the Design Development Phase of each Task Order, the Design Consultant shall obtain written approval of its final Schematic Design Documents and the Statement of Probable Cost.
- (2) The Design Consultant shall prepare Design Development Documents based upon the approved Schematic Design Documents and any adjustments in the program and budget authorized by the Executive Director.
- (3) The Design Development Documents shall include but not be limited to sufficient data, information and material to define the scope of the Work Project and to demonstrate the general design of the Work Project, including the size and character of the Work Project as to architectural, design, structural, mechanical and electrical systems, materials, and any other project elements appropriate under each Work Project scope and design.
- (4) As required, the Design Consultant shall prepare Design Development Drawings which shall include but not be limited to:
  - (i) Drawings which show existing trees, planimetric and topographic features and improvements affecting or relating to the proposed Work Project. The Design Consultant shall indicate tree protection zones, revisions to be made to existing topographic features and improvements such as grading and construction of drainage facilities. Where drainage facilities are to be provided, the Design Consultant shall indicate direction of flow and point of discharge by appropriate symbol or notes. Where permits are required Design Consultant shall prepare preliminary plans for review.
  - (ii) Drawings setting forth the basic information necessary to establish space requirements, layout and functional arrangement.
  - (iii) Drawings which show enlargements and preliminary of areas of detail, such as special use areas that demonstrate form, texture, color, structure and special use needs, including sections, elevations, details and other drawings and notes that fully depict the design of proposed elements.
  - (iv) Drawings demonstrating the location, dimension, sections, areas and capacities applicable to parking areas, access roads, driveways, walks, and similar features, including calculations for capacities and reference to standards applied.
  - (v) Drawings demonstrating the location and size of existing and proposed underground and above-ground utilities as needed for the construction of the Work Project, as well as elevations of gravity lines and location of proposed building connections with notations showing which of which of the necessary utility extensions or connections will be provided by others.
  - (vi) Drawings showing required irrigation calculations, hydrozones, mainline layouts and special conditions .

- (5) The Design Consultant shall prepare preliminary specifications which shall include but not be limited to DPR's current standard specifications as edited by the Design consultant, and an updated Work Project schedule.
- (6) The Design Consultant shall prepare an Opinion of Probable Construction Cost which shall be calculated by the Design Consultant to a uniform and detailed level, based on the drawings and the preliminary specifications for this phase of the Work Project, reflecting the probable project construction costs and taking into account the building trades and construction components utilized in the project design.
- (7) The Design Consultant shall also provide, as part of this phase, all services included in the applicable portions of the applicable approved Work Project-specific proposal.
- (8) The Design Consultant shall also provide outline specifications that include the use of LEED or SITES standards and contractor requirements for recycling and construction waste management, as applicable.

(d) Construction Documents Phase:

- (1) Prior to beginning the Construction Documents Phase, the Design Consultant shall obtain acceptance in writing of the Design Development Documents and the accompanying Statement of Probable Construction Cost. Upon acceptance by the City, in writing, of the Statement of Probable Construction Cost, such statement shall become the City's Final Budget for Project Construction. Acceptance of the Design Development Documents shall not be construed as approval of the adequacy of the Design Development Documents and shall not relieve the Design Consultant of any liability for any defaults, deficiencies, errors or omissions contained therein.
- (2) The Design Consultant shall prepare the Construction Documents from the approved Design Development Documents and by incorporation of any further changes authorized by the City and agreed to by the Design Consultant. The Construction Documents shall set forth in detail the requirements for the completion of the entire project. At a minimum, these documents must include complete information necessary to bid the project, and shall contain complete bidding documents meeting all City and, as applicable, State and Federal requirements.
- (3) The Construction Documents shall include, but not be limited to, complete drawings and specifications, compliant with the City's Construction General Conditions, setting forth the requirements for the completion of the Work Project in adequate, reasonable, reliable and final detail.
- (4) The Design Consultant shall file all documents necessary and required for the approval of the Work Project design by governmental authorities having jurisdiction over the project. The City will lend any required assistance, such as signing application(s) and paying any permit or other fees.

- (5) Acceptance of the Construction Documents shall not relieve the Design Consultant of any responsibility for design deficiencies, omissions or errors.
- (6) All final plans and specifications shall bear the signature(s) and seal(s) of Design Consultant and/or the responsible subconsultant, in conformity with the requirements of Articles 4 and 25 of title 12, C.R.S. It is intended by the Parties that the Construction Documents, including all plans and specifications, will be signed and sealed, in whole or in part as appropriate, by the licensed professional engineer and/or architect in charge of the preparation of such plans and specifications or parts thereof. The Design Consultant shall be ultimately responsible for all design work provided under this Agreement.
- (7) The Design Consultant shall make available for review, by the City, all design data forming the basis for drawings and specifications.
- (8) The Design Consultant shall provide a list of long lead items to the Project Manager.
- (9) The Design Consultant shall provide the City with a Final Opinion of Construction Cost based upon the submitted Design Documents for the City's consideration.
- (10) The Design Consultant shall also include as part of this phase all services included in the applicable portions of the applicable approved Work Project-specific proposal.
- (11) If the cost estimate indicates a budget shortfall, the Design Consultant shall assist the City by identifying items that could be bid as add alternates and identifying those items on the construction documents and in the Final Opinion of Project Cost; or the Design Consultant shall agree to redesign the Work Project at no additional cost to City and, in a manner acceptable to the City to overcome the budget shortfall.

(e) Bidding Phase:

- (1) Prior to beginning the Bidding Phase of the Task Order, the Design Consultant shall obtain the City's acceptance, in writing, of the Construction Documents. Such acceptance shall not be construed as approval of the adequacy of the Construction Documents.
- (2) The time schedule for work under this phase shall be governed by the times shown in the printed Work Project bid package(s), as modified by any addenda.
- (3) During this phase, the Design Consultant's duties shall include, but not be limited to:
  - (i) Preparing and submitting the Work Project documents, bid documents for the written acceptance of the City prior to the advertising by the City and solicitation of bids. Such acceptance shall not be construed

as approval of the adequacy of the documents and shall not relieve the Design Consultant of the responsibility for design deficiencies, errors, or omissions;

- (ii) Preparation and submittal to the City of a tentative pre-bid Work Project schedule, in a form approved by the City, in sufficient detail to show the major completion milestones required by the City, and appropriate to the size, complexity and scope of the Work Project;
  - (iii) Providing the City with bid documents in accordance with the format required by the City;
  - (iv) Attending the prebid meeting and assisting the Project Manager with answering questions by bidders and approving "equals" to specified materials. Lists of those materials approved as equals shall be prepared as an addendum item, with explanatory notes if necessary;
  - (v) Assisting the Project Manager with the preparation of any necessary addenda and participating in the pre-bid conference with prospective bidders;
  - (vi) Reviewing all bids for the reasonableness of the bid price and the qualifications of the lowest responsive bidders; and
  - (vii) Performing all services included in the applicable portions of the applicable approved Work Project-specific proposal.
- (4) Value Engineering: The Design Consultant will lead the exercise to reduce costs by preparing a list of substitutions that can be accepted by the City to bring the Work Project back into budget if there is a budget shortfall.

(f) Construction Administration Phase:

- (1) The Construction Administration Phase shall commence with execution of the Construction Contract(s) and the issuance of the Notice to Proceed to the Project Contractor(s), or the first of them, by the City.
- (2) The time schedule for Design Consultant's Work under this phase shall be set and governed by the approved Work Project schedule. However, the Design Consultant's schedule for this phase may be changed due to Work Project change orders or due to time extensions to such schedule, and will in any event be extended until all project documents (original and record drawings, specifications, test reports, surveying notes, design calculations and other pertinent information) have been received by the City and the final payment for services is paid. No additional compensation will be paid to the Design Consultant because of extension of the Contractors period of performance or other performance schedule revisions.
- (3) The Design Consultant shall assist at a pre-construction conference with the Contractor and shall take and distribute to the City and the Contractor, upon

request, written minutes of the pre-construction conference and of all meetings conducted.

- (4) The Design Consultant shall take written minutes of all project meetings and shall distribute such minutes to the City for review upon request.
- (5) The Design Consultant shall attend Owner, Architects, Contractor ("O.A.C.") meetings when requested by the Project Manager. The Design Consultant may be called upon to assist with procedures, job progress, construction problems, scheduling or other matters relating to the timely and successful completion of the project in accordance with the contract requirements.
- (6) The Design Consultant shall keep the City informed through a monthly written report of the progress and quality of work.
- (7) If, in the Design Consultant's opinion, the Contractor has fallen behind schedule, the Design Consultant shall immediately notify the Project Manager. If the Contractor refuses or fails to prosecute the work, or any part thereof, with such diligence as will insure its completion within the time specified in the Contract Documents, or any extension thereof, or fails to complete said work within such time, or refuses to correct defective work, the Design Consultant shall immediately notify the Project Manager and recommend a course of action.
- (8) The Design Consultant will assist the Project Manager with interpreting the requirements of the Project Plans and Specifications. The Design Consultant will render written interpretations within ten (10) days of receipt of any written request or within an agreed upon time limit.
- (9) The Design Consultant shall notify the City's Project Manager of unacceptable work which, in the Design Consultant's opinion, does not conform to the Contract Documents. The Design Consultant shall review and approve all shop drawings, samples and other required submissions of the Contractor in a timely manner. Such general submissions shall be approved for use on the project only if, and when, the Design Consultant has ascertained that they are in conformance with the design concept of the Work Project and in compliance with Contract Documents. Submissions of Contractor(s) shall be acted on and returned to the Contractor within ten (10) days of receipt thereof. If review and return are delayed beyond the time set out above, the Design Consultant shall notify Contractor and City of such delay, in writing, before expiration of the approval date, stating the reason for the delay. Resubmittals shall be acted on and returned to Contractor within five (5) days. The Contractor shall submit to the City Project Manager and Design Consultant prior to the beginning of construction, a schedule of submittals. No shop drawing or submittal will be approved prior to the receipt of the submittal schedule.
- (10) The Design Consultant shall review and analyze all written requests for Change Orders, including any documents offered to substantiate such

requests. The Design Consultant shall submit written recommendations to the City concerning all requests for Change Orders.

- (11) All Change Orders shall be on forms supplied by the City. The Design Consultant shall keep a current record of all variations or departures from the drawings and specifications as originally approved and shall maintain careful supervision over all changes in final drawings in the course of the work.
- (12) The City will transmit a copy of all completed Change Orders to the Design Consultant for use in checking shop drawings and compiling record drawings for project construction.
- (13) The Design Consultant shall use reasonable efforts and professional judgment to ensure that no changes are made in the work, by any party, without prior written consent of the City except as hereinafter provided. Only the City may authorize changes in the work.
- (14) The Design Consultant shall observe and systematically review the performance of the work or in such a manner and at such times as is necessary to determine that the work has been or is being installed in conformance with the Contract Documents. If any work is not in conformance with the Contract Documents, the Design Consultant shall immediately make an oral report of such nonconformance to the City Project Manager, followed by a written report of such nonconformance to both the nonconforming Contractor and the City. The Design Consultant, however, does not assume and is not responsible for any of the Contractor's construction means, methods, techniques, or safety programs in constructing the project. The on-site visits by the Design Consultant shall be made by members of the appropriate design discipline according to the status of the work and may vary with the progress of work from daily to weekly. The frequency of on-site visits shall be that which the Project Manager considers necessary to safeguard the interests of the City through a determination that the Work is being performed in compliance with the Contract Documents, and with applicable laws, statutes, codes, ordinances, rules and regulations and standards.
- (15) On each visit to the site, the Design Consultant shall make, and file within seven (7) days with the City, a written field observation report detailing their observations.
- (16) If the Design Consultant knows or reasonably should have known that the Contractor or any subcontractor fails to comply with the Contract Documents, drawings, specifications, designs and plans prepared by the Design Consultant, the Design Consultant shall report such failure to the City's Project Manager immediately. The Design Consultant shall notify the Project Manager of specific critical observations it intends to carry out during the various phases of the Work Project.
- (17) If the Design Consultant becomes aware of any condition or event constituting a material default by the Contractor or that otherwise justify

termination of the Contractor for cause, the Design Consultant shall notify the City immediately.

- (18) Upon the completion of the entire work or a designated portion thereof, the Design Consultant shall, in consultation with the City, recommend issuance of a Certificate of Substantial Completion in accordance with the provisions of the construction contract and its General and/or Special Contract Conditions. The referenced document will be issued by the City.
- (19) The Design Consultant shall, in consultation with the City, provide to the City a close-out program, including a comprehensive process to ensure timely, efficient and proper completion of all punch list items by the Contractor in accordance with the provisions of the Contract Documents.
- (20) Prior to Final Inspection, the Design Consultant shall obtain the original "Marked-up As Built" drawings and a conformed copy of the Project Specifications from each Contractor. Based on these documents, the Design Consultant shall prepare, as necessary, and deliver to the Project Manager Record Drawings and a conformed copy of the Project Specifications showing all changes made during construction. Such Record Drawings shall reflect all known modifications to the original drawings and shall be made from the "Marked-up As Built" sets of drawings prepared by Contractor. The Record Drawings shall incorporate the Design Consultant's observations, shall be made in a professional manner and shall be stamped and signed by the Design Consultant as being Record Drawings. These drawings shall be delivered on a CD in PDF and DWG format to the City Project Manager, together with all of the "Marked-up As Built" prints provided by the Contractor(s) from which they were derived. If requested by the City, the unstamped reproducibles shall be transmitted to the City with a letter, sealed by the Design Consultant, stating that as of the date of such transmittal, the reproducible drawings are identical to the Record Drawings except for such seals and stamping. The last five percent (5%) of the Design Consultant's basic services fee for each Work Project will not be paid until such Record Drawings and all Record Documents required are received by the City Project Manager and accepted by the City.
- (21) When requested, the Design Consultant shall attend the Final Inspection with the City to ascertain that all Work performed by the Contractor has been performed in accordance with the Contract Documents. At the time of such Final Inspection, a final punch list shall be agreed to by the Design Consultant and the City, and made in sufficient detail to fully outline to the Contractor: (1) any work to be completed; (2) any work not in compliance with the drawings or specifications; and (3) any unsatisfactory work.
- (22) Prior to final payment to the Contractor, the Design Consultant shall review final punch list Work and shall prepare a written report outlining the deficient or outstanding Work and making recommendations as to the ultimate disposition of such outstanding Work.
- (23) One (1) month prior to the expiration of the warranty or other correction of work period provided for in the General and/or Special Contract Conditions

to the Contract Documents, the Design Consultant shall inspect the project for any deficiencies that may have become apparent. Upon completion of such inspection, a written report of the inspection shall be furnished by the Design Consultant to the City.

- (24) The Design Consultant shall also include as part of this phase all services included in the applicable portions of the applicable approved Work Project-specific proposal.

2.08 Surveying and Testing.

- (a) The Design Consultant and its appropriate subconsultant shall review all survey and test results reports and shall follow the recommendation of the soils engineer or other subconsultant unless, in the exercise of appropriate professional judgment, the Design Consultant or appropriate subconsultant discovers, or should in the exercise of professional judgment discover, factors indicating the report or results are not reliable.
- (b) If any such inadequacy or any inconsistency, based upon such exercise of professional judgment, is noted the Design Consultant and/or its appropriate subconsultant shall report such inconsistency or inadequacy promptly to the City such that any inadequacy or inconsistency can be addressed by the soils engineer, testing laboratory or land surveyor before any further use is put to the data.
- (c) It is understood and agreed that this Agreement does not include the investigation, sampling, testing, planning, abatement design, and remediation management of asbestos or other hazardous waste material. Should the presence of asbestos or other hazardous waste material be known to exist on a specific project or if the Design Consultant shall observe the presence of asbestos or hazardous waste material on any Work Project site during its performance of services under this Agreement, the Design Consultant shall notify the City in writing immediately.

2.09 Compliance with SBE Requirements.

- (a) This Agreement is subject to Article VII of Chapter 28, Denver Revised Municipal Code (“D.R.M.C.”), designated as §§ 28-201 to 28-236 (the “SBE Ordinance”), and the Rules and Regulations promulgated pursuant thereto. This Agreement is also subject to the defined selection pool requirements of the SBE Ordinance. The Design Consultant is a certified Small Business Enterprise (“SBE”) and pursuant to § 28-208, D.R.M.C., the Design Consultant is required to self-perform a minimum of 30% of the contract work.
- (b) Under § 28-222, D.R.M.C., the Design Consultant has an ongoing, affirmative obligation for the duration of this Agreement to comply with the SBE defined selection pool requirements and with the SBE self-performance requirements upon which this Agreement was awarded, unless the City initiates a material modification to the scope of work affecting this Agreement through change order, contract amendment, force account, or other modification under § 28-223, D.R.M.C. The Design Consultant acknowledges that:
- (1) It must establish and maintain records and submit regular reports, as required, which will allow the City to assess the Contractor’s compliance

with the defined selection pool requirements and SBE self-performance requirements.

- (2) Design Consultant shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon increase or decrease in the scope of work of this Agreement, upon any of the bases under § 28-223, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification of the change to the City. Any increase in the scope of services of this Agreement, whether by amendment or other modification, which increases the dollar value of the Agreement, if such change is within the scope of work designated for performance by the Contractor at the time of award of this Agreement, shall be promptly submitted to the DSBO.
- (3) The Contractor shall achieve defined selection pool requirements and self-performance requirements with respect to such changed scope of work by performing such work.
- (4) The Contractor shall supply to DSBO documentation required by ordinance with respect to the increased dollar value of this Agreement. The Contractor shall not, during the term of this Agreement:
  - (i) Fail to in fact perform as an SBE to achieve the work scope originally listed at proposal submission in order to achieve defined selection pool and self-performance requirements; or
  - (ii) Modify or eliminate all or any portion of the scope of work upon which self-performance is based and the contract was awarded, unless directed by the City.
- (5) Failure to comply with these provisions may subject the Contractor to sanctions set forth in § 28-229 of the SBE Ordinance.
- (6) Should any question arise regarding DSBO requirements, the Design Consultant should consult the SBE Ordinance or may contact the Project's designated DSBO representative at (720) 913-1999.

### **SECTION 3 – COMPENSATION, PAYMENT, AND FUNDING**

The City shall compensate the Design Consultant for its services performed and expenses incurred under this Agreement as follows.

3.01 Basic Services. The City agrees to pay the Design Consultant, as compensation for any basic services rendered for a particular Task , either a maximum basic services fee, to be set forth in each approved Task proposal prepared prior to commencement of any work under this Agreement, or an amount based on the Design Consultant's periodic invoices, whichever is less.

3.02 Reimbursable Expenses. Unless expressly authorized by the City as part of any approved Task Order, the City will not compensate the Design Consultant for expenses such as postage, travel, mileage (if the project is within the City and County of Denver boundary), telephone, reproduction and messenger service costs incurred in connection with Work performed under this Agreement. Such costs are, in all such instances, included in the hourly rates paid by the City. Reproduction of submittals requested by the City including such items as end-of-phase reports, drawings, bid documents, record drawing reproductions, etc. are not included in the hourly rates, and will be itemized as part of each on-call Task Order as a not-to-exceed reproducible expense.

3.03 Supplemental Services. The Design Consultant shall be compensated for any supplemental services pre-approved in writing for any assigned Task Order, subject to the terms and conditions set forth herein and supplemental services budget limits for that specific project.

3.04 Invoices. The Design Consultant shall invoice and be paid monthly based on hours worked at hourly rates included in **Exhibit B** on each approved Task Order. Such invoices shall reflect the Design Consultant's actual hours, rates, personnel, sub-consultant costs and reimbursable costs, and shall be based on the hourly rates or other rates for services contained in **Exhibit B**. The rates contained in Exhibit B can be modified only by a written amendatory or other agreement executed by the parties and signed by the signatories to this Agreement in accordance with Section 5.27. The Design Consultant shall maintain hourly records of the time worked by its personnel and subconsultants, records of all allowable reimbursable expenses, and records of expendable supplies and services as necessary to support any audits by the City, and shall bill the City monthly for fees and costs accrued during the preceding month. The Design Consultant's invoice shall be separated by Task Order to show direct charges to specific projects and to distinguish fees and expenses. Upon submission of such invoices to the City, and approval by the City, payment shall be issued. Final payment to the Design Consultant, for each assigned Task Order, shall not be made until after the project is accepted, all guarantees, certificates of completion, and record drawings and reproducible copies are delivered to the City, and the duties agreed to in the approved project proposal for that project are otherwise fully performed by the Design Consultant. No deductions shall be made from the Design Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to any assigned project contractor.

3.05 Maximum Contract Amount; Funding.

- (a) It is understood and agreed by the Parties hereto that payment or reimbursement of all kinds to the Design Consultant, for all Work performed under this Agreement, shall not exceed a maximum of **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND 00/100 CENTS (\$1,500,000.00)**. In no event shall the maximum payment to the Design Consultant, for all Work and services performed throughout the entire term of this Agreement exceed the contract maximum amount set forth above.
- (b) Notwithstanding any other term, provision, or condition herein, all payment obligations under this Agreement shall be limited to the funds duly and lawfully appropriated and encumbered or otherwise made available by the Denver City Council for the particular Task Orders assigned to the Design Consultant under this Agreement for the particular year(s) in which this Agreement is in effect and paid into the Treasury of the City. As of the date of this Agreement, no funds have been appropriated for this Agreement. Instead, it is the City's intent to appropriate the funds necessary to compensate the Design Consultant for the work it performs on any assigned Task Order, at the time it accepts each proposal for a specific project. The Executive Director of DPR, upon reasonable written request, will advise the Design Consultant in writing of the total amount of appropriated and encumbered funds which are or remain available for payment for all Work by the Design Consultant on a specific Work Project.
- (c) The issuance of any form of order or directive by the City which would cause the aggregate amount payable to the Design Consultant for a specific Task Order to exceed the amount appropriated for the Design Consultant's work on a specific Work Project is expressly prohibited. In no event shall the issuance of any Task Order Change or other form of order or directive by the City be considered valid

or binding if it requires additional compensable Work to be performed, which Work will cause the aggregate amount payable for such Work to exceed the amount appropriated and encumbered, unless and until such time as the Design Consultant has been advised in writing by the Executive Director of DPR that a lawful appropriation sufficient to cover the entire cost of such additional Work, has been made. It shall be the responsibility of the Design Consultant to verify that the amounts already appropriated for the Design Consultant's Work on a Work Project are sufficient to cover the entire cost of such Work, and any Work undertaken or performed in excess of the amount appropriated is undertaken or performed in violation of the terms of this Agreement, without the proper authorization for such Work, and at the Design Consultant's own risk and sole expense.

3.06 Appropriation and Funding.

- (a) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
- (b) As of the date of this Agreement, no funds have been appropriated for this Agreement. Instead, it is the City's intent to appropriate the funds necessary to compensate the Consultant for the work it performs on any assigned Project, at the time it executes the Task Order for a Project. The applicable Director or her designee, upon reasonable written request, will advise the Consultant in writing of the total amount of appropriated and encumbered funds which are or remain available for payment for all work by the Consultant on an assigned Project.

**SECTION 4 – TERM AND TERMINATION**

4.01 Term. The initial term of this Agreement shall commence upon execution and shall end four (4) years thereafter; provided, however, that any Task Order in progress that was initiated during the term of this Agreement shall continue and be paid for hereunder until the completion thereof. All terms and conditions of the Agreement shall remain in full force and effect until such completion. The term may be extended, at the sole option of the City by written amendment pursuant to Executive Order 8. In no event, however, shall the Design Consultant's performance under this Agreement, including any extension, exceed a five (5) year period ending on month and day of the execution of this Agreement. In addition, nothing contained herein shall obligate the City to extend the Agreement beyond the initial term.

4.02 Termination.

- (a) Nothing herein shall be construed as giving the Design Consultant the right to perform the services contemplated under this Agreement beyond the time when its services become unsatisfactory to the Executive Director.
- (b) The Executive Director may terminate this Agreement for cause at any time if the Design Consultant's services become unsatisfactory, in the sole discretion of the Executive Director. The City shall have the sole discretion to permit the Design

Consultant to remedy the cause of a contemplated termination for cause without waiving the City's right to terminate the Agreement.

- (c) In the event of a termination for cause, or in the event the Design Consultant becomes unable to serve under this Agreement, the City may take over Work to be done under this Agreement and prosecute the Work to the completion by contract or otherwise, and the Design Consultant shall be liable to City for all reasonable cost in excess of what the City would have paid the Design Consultant had there been no termination for cause.
- (d) The City may, for convenience, cancel and terminate this Agreement by giving not less than thirty (30) days' prior written notice to the Design Consultant, which notice shall state the date of cancellation and termination.
- (e) If the Design Consultant's services are terminated, postponed or revised, or if the Design Consultant shall be discharged before all the Work and services contemplated have been completed, or if the Work Project is, for any reason, stopped or discontinued, the Design Consultant shall be paid only for the portion of work or services which has been satisfactorily completed at the time of such dismissal, termination, cancellation, postponement, revision or stoppage.
- (f) All drawings, specifications, and other documents relating to the design or administration of Work completed or partially completed shall be delivered by the Design Consultant to the City in the event of any dismissal, termination, cancellation, postponement, revision or stoppage.
- (g) In the event of any dismissal, termination, cancellation, postponement, revision or stoppage, the Design Consultant shall cooperate in all respects with the City. Such cooperation shall include, but not be limited to, delivery of drawings, specifications, and other documents referred to herein, and assisting the City during a transition to another Design Consultant, if applicable.

## **SECTION 5 – GENERAL PROVISIONS**

### **5.01 City's Responsibilities.**

- (a) The City shall provide available information regarding its requirements for each Task Order, including related budgetary information, and shall cooperate fully with the Design Consultant at all times. However, the City does not guarantee the accuracy of any such information and assumes no liability therefore. The Design Consultant shall notify City in writing of any information or requirements provided by the City which the Design Consultant believes to be inaccurate or inappropriate to the design or construction of the project.
- (b) If the City observes or otherwise becomes aware of any fault or defect in the project or non-conformance with Contract Documents, it shall give prompt notice thereof to Design Consultant.

### **5.02 Ownership of Documents.**

- (a) The City shall have title and all intellectual and other property rights, in and to all phased and final Design Documents, and all data used in the development of the same, including the results of any tests, surveys or inspections at each project site, and all photographs, drawings, drafts, studies, estimates, reports, models, notes and any other materials or work products, whether in electronic or hard copy format, created by the Design Consultant pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, the "Documents"), whether the Work Project for which the Documents were created is executed or not. The Consultant shall identify and disclose, as requested, all such Documents to the City.
- (b) To the extent permitted by the U.S. Copyright Act, 17 USC § 101 et seq., as the same may be amended from time to time, the Documents are a "work made for hire," and all ownership of copyright in the Documents shall vest in the City at the time the Documents are created. To the extent that the Documents are not a "work made for hire," the Design Consultant hereby assigns and transfers all right, title and interest in and to the Documents to the City, as of the time of the creation of the Documents, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.
- (c) The Design Consultant shall provide (and cause its employees and subcontractors to provide) all assistance reasonably requested in securing for the City's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of such Documents, and shall provide full information regarding the Documents and execute all appropriate documentation in applying for or otherwise registering, in the City's name, all rights to such Documents.
- (d) The Design Consultant agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder.
- (e) The Design Consultant shall be permitted to retain reproducible copies of all of the Documents for the information and reference, and the originals of all of the Documents, including all CAD disks, shall be delivered to the City promptly upon completion thereof, or if authorized by the City's Project Manager, upon termination or expiration of this Agreement.
- (f) If the City reuses Design Documents prepared by the Design Consultant other than for their intended use or at a new location without the Design Consultant's approval, the City will have no claim against the Design Consultant arising out of any alleged defects, deficiencies or flaws in the Design Documents.

5.03 Taxes and Licenses. The Design Consultant shall promptly pay, when they are due, all taxes, excises, license fees and permit fees of whatever nature applicable to the Work and services which it performs under this Agreement, and shall take out and keep current all required municipal, county, state or federal licenses required to perform its services under this Agreement. The Design Consultant shall furnish the Executive Director, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes. The Design Consultant shall promptly pay all owed bills, debts and obligations it incurs performing Work under this Agreement and

shall not allow any lien, verified claim, mortgage, judgment or execution to be filed against land, facilities or improvements owned or beneficially owned by the City as a result of such bills, debts or obligations.

5.04 Examination of Records and Audit. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Design Consultant's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Design Consultant shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Design Consultant to make disclosures in violation of state or federal privacy laws. Design Consultant shall at all times comply with D.R.M.C. 20-276.

5.05 Assignment and Subcontracting. The City is not obligated or liable under this Agreement to any party other than the Design Consultant named herein. The Design Consultant understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting. Any attempt by the Design Consultant to assign or subcontract its rights hereunder without such prior written consent of the City shall, at the option of the City, automatically terminate this Agreement and all rights of the Design Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the City. In the event any such subcontracting shall occur, with the City's approval, such action shall not be construed to create any contractual relationship between the City and such subcontractor, and the Design Consultant named herein shall in any and all events be and remain responsible to the City according to the terms of this Agreement.

5.06 No Discrimination in Employment. In connection with the performance of work under this Agreement, the Design Consultant may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Design Consultant shall insert the foregoing provision in all subcontracts.

5.07 Insurance.

- (a) General Conditions: Design Consultant agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Design Consultant shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent

ten (10) days prior. If such written notice is unavailable from the insurer, Design Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. Design Consultant shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Design Consultant. The Design Consultant shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- (b) Proof of Insurance: Design Consultant may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Design Consultant certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Design Consultant's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- (c) Additional Insureds: For Commercial General Liability and Automobile Liability, Design Consultant and subconsultant's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- (d) Waiver of Subrogation: For all coverages required under this Agreement, Design Consultant's insurer shall waive subrogation rights against the City.
- (e) Subconsultants: Design Consultant shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Design Consultant and appropriate to their respective primary business risks considering the nature and scope of services provided.
- (f) Workers' Compensation/Employer's Liability Insurance: Design Consultant shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- (g) Commercial General Liability: Design Consultant shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

- (h) Automobile Liability: Design Consultant shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- (i) Professional Liability (Errors and Omissions): Design Consultant shall maintain minimum limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years.

5.08 Defense and Indemnification.

(a) To the fullest extent permitted by law, the Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are attributable to the negligence or fault of the Design Consultant or the Design Consultant's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.

(b) Design Consultant's obligation to defend and indemnify may be determined after Design Consultant's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the Parties. Design Consultant's duty to defend and indemnify City shall relate back to the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Design Consultant is not named as a Defendant.

(c) Design Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

(d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Design Consultant under the terms of this indemnification obligation. The Design Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection

(e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

5.09 Colorado Governmental Immunity Act. The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

5.10 Contract Documents; Order of Precedence. This Agreement consists of Sections 1 through 5, which precede the signature page, and the following Exhibits, which are incorporated herein and made a part hereof by reference:

- Exhibit A** Scope of Work
- Exhibit B** Key Professional Personnel and Rates
- Exhibit C** Certificate of Insurance

In the event of an irreconcilable conflict between a provision of Sections 1 through 5 and the listed Exhibits, or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which provision shall control to resolve such conflict, is as follows, in descending order:

Sections 1 through 5

**Exhibit A**

**Exhibit B**

**Exhibit C**

5.11 When Rights and Remedies Not Waived. In no event shall any payment by the City constitute a waiver of any breach of covenant or default which may then exist on the part of the Design Consultant. No assent, expressed or implied, to any breach of the Agreement shall be held to be a waiver of any later or other breach.

5.12 Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

5.13. Conflict of Interest.

- (a) The Parties agree that no employee of the City shall have any personal or beneficial interest in the services or property described herein, and the Design Consultant further agrees not to hire or contract for services with any employee or officer of the City which would be in violation of the Revised Municipal Code Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.
- (b) The Design Consultant agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Design Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Design Consultant by placing the Design Consultant's own interests, or the interests of any party with whom the Design Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Design Consultant written notice which describes the conflict. The Design Consultant shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to the City.

5.14 No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Design Consultant, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the Parties that any person other

than the City or the Design Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

5.15 Time is of the Essence. The Parties agree that in the performance of the terms, conditions and requirements of this Agreement by the Design Consultant, time is of the essence.

5.16 Taxes, Charges and Penalties. The City and County of Denver shall not be liable for the payment of taxes, late charges, or penalties of any nature except as provided in the City's Prompt Payment Ordinance.

5.17 Proprietary or Confidential Information.

- (a) City Information: The Design Consultant acknowledges and accepts that, in performance of its work under the terms of this Agreement, the Design Consultant may have access to Proprietary Data or confidential information which may be owned or controlled by the City and that the disclosure of such data or information may be damaging to the City or third parties. As such, the Design Consultant agrees that all information provided or otherwise disclosed by the City to the Design Consultant be held in confidence and used only in the performance of its obligations under this Agreement. The Design Consultant shall exercise the same standard of care to protect such information as a reasonably prudent professional would to protect its own proprietary or confidential data. "Proprietary Data" shall mean geographic materials or Geographic Information Systems ("GIS") data owned by the City and County of Denver including but not limited to maps, computer programs, aerial photography, methodologies, software, diagnostics and documents; or any other materials or information which may be designated or marked "Proprietary" or "Confidential" and provided to or made available to the Design Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.
- (b) Design Consultant's Information: The Parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. § 24-72-201, et seq., and that in the event of a request to the City for disclosure of such information, the City shall advise the Design Consultant of such request in order to give the Design Consultant the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Design Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Design Consultant further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Design Consultant's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

5.18 Use, Possession or Sale of Alcohol or Drugs. The Design Consultant, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal

to cooperate with implementation of the policy can result in the City's barring the Design Consultant from City facilities or participating in City operations.

5.19 Compliance with Denver Wage Laws: To the extent applicable to the Design Consultant's provision of services hereunder, the Design Consultant shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Design Consultant expressly acknowledges that the Design Consultant is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Design Consultant, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

5.20 Disputes. All disputes between the City and Design Consultant regarding this Agreement shall be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Executive Director.

5.21 Waiver of C.R.S. § 13-20-802, et seq. The Design Consultant specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes (also designated C.R.S. § 13-20-802 *et seq.*) relating to design defects in any project under this Agreement.

5.22 Survival of Certain Contract Provisions. The Parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement, (by expiration of the term or otherwise), shall survive such termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Design Consultant's obligations for the provision of insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

5.23 Advertising and Public Disclosure. The Design Consultant shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of its advertising or public relations materials without first obtaining the written approval of the Executive Director, which will not be unreasonably withheld. Any oral presentation or written materials related to services performed under this Agreement shall include only services that have been accepted by the City. The Executive Director shall be notified in advance of the date and time of any such presentation. Nothing in this provision shall preclude the transmittal of any information to officials of the City, including without limitation the Mayor, the Executive Director, City Council or the Auditor.

5.24 Legal Authority. Design Consultant represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Design Consultant represents and warrants that he has been fully authorized by Design Consultant to execute this Agreement on behalf of Design Consultant and to validly and legally bind Design Consultant to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either Design Consultant or the person signing the Agreement to enter into this Agreement.

5.25 Notices. Notices, bills, invoices or reports required by this Agreement shall be sufficiently delivered if sent in the United States mail, postage prepaid, to the Parties at the following addresses:

to the City: Executive Director of Parks and Recreation  
201 West Colfax Avenue, Dept 904  
Denver, Colorado 80202

with copy to: City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

to the Design Consultant: Flow Design Collaborative, Inc.  
303 W. 45<sup>th</sup> Ave.  
Denver, Colorado 80216

The addresses may be changed by the Parties by written notice.

5.26 Severability. It is understood and agreed by the Parties hereto that, if any part, term, or provision of this Agreement, except for the provisions of this Agreement requiring prior appropriation and limiting the total amount to be paid by the City, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

5.27 Agreement as Complete Integration-Amendments. This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the Parties and signed by the signatories to the original Agreement. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

5.28 Electronic Signatures and Electronic Records. Design Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**REMAINDER OF PAGE LEFT INTENTIONALLY BLANK**

**Contract Control Number:** PARKS-202683466-00  
**Contractor Name:** FLOW DESIGN COLLABORATIVE INC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

PARKS-202683466-00  
FLOW DESIGN COLLABORATIVE INC

Signed by:  
By: Jay Henke  
A317414D61F543D...

Name: Jay Henke  
(please print)

Title: Principal  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

## **Exhibit A**

### **Scope of Work**

#### **A. GENERAL DESCRIPTION:**

The City's Department of Parks and Recreation (DPR) has identified a need for landscape architectural planning, design, and related consultant services on a continuing on-call basis. The work will typically consist of (but is not limited to) assessment, planning, design, and construction observation services related to parks and park facilities.

Types of work may include:

- System-wide planning and park-specific master planning efforts (individual park master plans, system-wide assessment reports, asset specific planning, public engagement and outreach);
- Design of new, or renovation of existing, parks and assets (fields, courts, playgrounds, picnic facilities, walkways, etc.);
- Improvements and upgrades to system-wide assets (regional trail and greenway systems, bridges, medians);
- Mountain Parks and Natural Areas improvements (trails and trailheads, roadways/parking, historic structures, etc.); and
- Deferred maintenance and other repairs to parks and recreation facilities (recreation centers, maintenance and operations facilities, renovation and rehabilitation of historic buildings, fountains, and monuments).

#### **C. BACKGROUND INFORMATION:**

For strategic guidance and planning DPR relies on The Game Plan for a Healthy City, which can be accessed at:

<https://www.denvergov.org/content/denvergov/en/denveright/parks-recreation.html>

All DPR projects are expected to embrace and demonstrate how they are consistent with the strategic pillars identified in the plan, as supported by Denver citizens:

- Adapt to a changing climate
- Diversify parks and recreation services and programs
- Grow parks and recreation access
- Reinvest in parks resources and people
- Connect to Denver's nature and culture

Denver has adopted goals and policies to address climate change. It is expected that all projects initiated by DPR will recognize and address current efforts at developing resiliency and reducing waste. DPR is exploring opportunities to apply Sustainable Sites Initiative (SITES) certification for selected projects. In all cases, projects should recognize the value of ecosystem services and strive to incorporate the principles of sustainability and resilience. On-call consultants shall consider and apply triple bottom line (environmentally sound, socially equitable, economically feasible) benefits including, but not limited to, protection of natural and cultural resources, water and soil conservation and quality, reduction of urban heat island effect, sustainably harvested and manufactured materials, recycling and materials reuse, energy conservation and opportunities for renewable energy integration, responsible use of local and locally appropriate materials, and other innovative practices.

In addition to the Game Plan, DPR has adopted standard policies, practices, specifications and details that are to be followed in all planning and design Task Orders. These policies and practices are detailed in the DPR Planning Design and Construction (PD&C) Manual (2021), which will be made available to all firms that are selected for this on-call contract.

**D. DESCRIPTION OF SERVICES:**

The consultant(s) shall provide professional landscape architectural, parks planning, design, which may include architecture, surveying, engineering, irrigation, and related technical services, as required for the performance of planning, conceptual design, design development, construction drawings/plans/specifications, and construction observation services for various city projects.

The consultant and its team of subconsultants must be able to provide the following core services:

| <b>Planning Services</b>  |
|---|
| System-wide planning for parks, recreation and open space uses  |
| Master planning for parks, recreation amenities, open space, and trail systems  |
| Landscape Architecture Services   |
| Ecological/natural resource planning and analysis   |
| Historic preservation assessment and design   |
| Community recreational needs assessments including demographic, economic research   |
| Public information and community outreach, including public meetings  |
| Multi-modal transportation, traffic, circulation and parking planning   |
| Preparation of written reports, summaries, conceptual drawings and graphics, or other services ancillary to the above-described planning activities |

| <b>Related Technical Services</b>                                 |
|---|
| Project management  |
| Project scheduling  |
| Construction cost estimating                                      |
| Bidding assistance  |
| Construction observation  |
| Stormwater, Floodplain and Erosion Control Design                 |
| Green Infrastructure and Resiliency Design                        |
| Architectural design  |
| Civil engineering   |
| Site surveying  |
| Structural engineering  |
| Geotechnical engineering and materials testing                    |
| Mechanical engineering and plumbing                               |
| Electrical engineering and lighting design                        |
| Environmental services  |
| Historic preservation design                                      |
| ADA and code compliance services                                  |
| Irrigation Design   |
| Community Engagement & Public involvement                         |
| Preparation of written reports, illustrations, and graphic design |

Exhibit B

**ATTACHMENT 1**  
**Key Personnel, Billing Rates & Reimbursable Expenses**

Provide one copy for the prime consultant as well as each subconsultant.  
 The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** Flow Design Collaborative, Inc

| PERSONNEL                  |   |                       |
|----------------------------|---|-----------------------|
| CLASSIFICATION             | RESPONSIBILITY  | BILLING RATE PER HOUR |
| Principal                  | Provides overall firm leadership, sets vision, manages client relationships, and oversees project delivery.                   | \$ 160 / hr           |
| Senior Associate           | Supports firm leadership, manages complex projects, guides staff, and leads client coordination.                              | \$ 130 / hr           |
| Senior Landscape Architect | Oversees design development and technical documentation, mentors staff, and ensures quality control.                          | \$ 125 / hr           |
| Project Manager            | Coordinates project schedules, budgets, and consultant teams to ensure successful delivery.                                   | \$ 125 / hr           |
| Landscape Architect        | Manages day-to-day project design and documentation, coordinates with clients and consultants, and supports project delivery. | \$ 120 / hr           |
| Landscape Designer         | Produces design concepts, drawings, and technical documents under senior staff direction.                                     | \$ 100 / hr           |
| Irrigation Designer        | Specializes in efficient irrigation system design, calculations, and documentation.   | \$ 100 / hr           |
| Intern Landscape Designer  | Assists with drafting, research, and design tasks while gaining professional experience.                                      | \$ 70 / hr            |
| CAD Drafter                | Provides document development support.  | \$ 85 / hr            |

| REIMBURSABLE EXPENSES                                       |                  |
|---|------------------|
| ITEM  | CHARGE RATE      |
| B&W Copies (8.5 x 11")                                      | \$ 0.20 /each    |
| B&W Copies (11 x 17")                                       | \$ 0.35 /each    |
| Color Prints (8.5 x 11")                                    | \$ 0.40 /each    |
| Color Prints (11 x 17")                                     | \$ 0.85 /each    |
| Color Print Boards (24 x 36")                               | \$ 75 /each      |
| Foam Core (24 x 36")  | \$ 45 /each      |
| Other Presentation Materials as requested or approved by PM | Actual Cost +10% |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1 Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name: Loewen Engineering, Inc.**

| PERSONNEL   |   |                       |
|---|---|-----------------------|
| CLASSIFICATION  | RESPONSILITY  | BILLING RATE PER HOUR |
| Principal   | Responsible for overseeing civil engineering projects.  | \$190                 |
| Licensed Professional   | Professional Civil Engineer, responsible for planning, designing, and overseeing civil engineering projects   | \$175                 |
| Engineering Intern – Student (0+ Experience, Some College Coursework Completed) | Assists Professional Engineer (PE) and Engineer(s) with in planning, designing, and overseeing civil engineering projects. This role has significant oversight from Engineers and PE. | \$55                  |
| Engineer I, (0-2 Years Experience, E.I.T.)                                      | Assists Professional Engineer (PE) in planning, designing, and overseeing civil engineering projects. This role has oversight from Engineers and PE.                                  | \$101                 |
| Engineer II (2-3 Years Experience, E.I.T.)                                      | Assists Professional Engineer (PE) in planning, designing, and overseeing civil engineering projects. This role has moderate oversight from Engineers and PE.                         | \$125                 |
| Engineer III (3-5 Years Experience, E.I.T)                                      | Assists Professional Engineer (PE) in planning, designing, and overseeing civil engineering projects. This role has minimal oversight from Engineers and PE.                          | \$138                 |

| REIMBURSABLE EXPENSES         |             |
|-------------------------------|-------------|
| ITEM                          | CHARGE RATE |
| Copies (8.5 x 11")            | \$ /each    |
| Copies (8.5 x 14")            | \$ /each    |
| Redline copies                | \$ /S.F.    |
| Reproducible Materials        | \$ /page    |
| Other – <i>please specify</i> |             |
|                               |             |
|                               |             |
|                               |             |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1 Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** Aschermann Consulting

| PERSONNEL               |  |                       |
|-------------------------|--|-----------------------|
| CLASSIFICATION          | RESPONSILITY   | BILLING RATE PER HOUR |
| Principal               | Will be the civil principal-in-charge and provide project oversight and review.  | \$250                 |
| Associate               | Will be one of the civil project managers and act as the main point of contact. Will design and review engineering elements and construction documents                                     | \$225                 |
| Senior Project Engineer | Will be one of the civil project managers and act as the main point of contact. Will fully design engineering elements and construction documents for review by the Principal or Associate | \$210                 |
| Project Engineer        | Will assist with basic project management elements and produce advanced engineering design elements for review by the project manager.   | \$180                 |
| Professional Engineer   | Will provide advanced engineering design calculations for review by the project manager.   | \$165                 |
| EIT III                 | Will design intermediate engineering elements for review by the project manager.   | \$150                 |
| EIT II                  | Will design basic engineering elements for review by the project manager.  | \$140                 |
| Designer                | Will maintain CAD base files and plan sets and design basic engineering elements for review by the project manager.  | \$155                 |
| CAD Tech                | Will maintain CAD base files and plan sets.  | \$140                 |
| Admin                   | Will provide administrative assistance for project support.  | \$100                 |

| REIMBURSABLE EXPENSES  |             |
|------------------------|-------------|
| ITEM                   | CHARGE RATE |
| Copies (8.5 x 11")     | \$ /each    |
| Copies (8.5 x 14")     | \$ /each    |
| Redline copies         | \$ /S.F.    |
| Reproducible Materials | \$ /page    |

**Aschermann Consulting does not anticipate charging the city for reimbursable expenses during on-call contracts.**

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1

### Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
 The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** San Engineering

| PERSONNEL            |                                |                       |
|----------------------|--------------------------------|-----------------------|
| CLASSIFICATION       | RESPONSIBILITY                 | BILLING RATE PER HOUR |
| Principal            | Design / Management            | \$250                 |
| Group Manager        | Design / Management            | \$210                 |
| Sr. Project Engineer | Design / Coordination          | \$195                 |
| Staff Engineer       | Design / Production            | \$185                 |
| Sr. CAD Drafter      | Drafting / Design / Production | \$165                 |
| Drafter              | Drafting                       | \$140                 |

| REIMBURSABLE EXPENSES  |               |
|------------------------|---------------|
| ITEM                   | CHARGE RATE   |
| Copies (8.5 x 11")     | \$ 0.15/each  |
| Copies (8.5 x 14")     | \$ 0.25/each  |
| Redline copies         | \$ 3.00/S.F.  |
| Reproducible Materials | \$ 25.00/page |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1 Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** IMEG -Denver

| PERSONNEL                           |              |                       |
|-------------------------------------|--------------|-----------------------|
| CLASSIFICATION                      | RESPONSILITY | BILLING RATE PER HOUR |
| Client Executive                    |              | \$285                 |
| Project Executive                   |              | \$265                 |
| Senior Engineer 3                   |              | \$235                 |
| Senior Engineer 2                   |              | \$205                 |
| Senior Engineer 1                   |              | \$190                 |
| Project Engineer 2                  |              | \$170                 |
| Project Engineer 1                  |              | \$155                 |
| Graduate Designer 2                 |              | \$135                 |
| Graduate Designer 1                 |              | \$120                 |
| Senior Designer 3                   |              | \$195                 |
| Senior Designer 2                   |              | \$190                 |
| Senior Designer 1                   |              | \$170                 |
| Project Designer 2                  |              | \$155                 |
| Project Designer 1                  |              | \$140                 |
| Designer 2                          |              | \$125                 |
| Designer 1                          |              | \$115                 |
| Intern                              |              | \$90                  |
| Senior Virtual Design Coordinator 2 |              | \$145                 |
| Senior Virtual Design Coordinator 1 |              | \$135                 |
| Virtual Design Coordinator 2        |              | \$130                 |
| Virtual Design Coordinator 1        |              | \$115                 |

| REIMBURSABLE EXPENSES  |             |
|------------------------|-------------|
| ITEM                   | CHARGE RATE |
| Copies (8.5 x 11")     | \$ /each    |
| Copies (8.5 x 14")     | \$ /each    |
| Redline copies         | \$ /S.F.    |
| Reproducible Materials | \$ /page    |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1 Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** enLighten Engineering, LLC

| PERSONNEL       |   |                       |
|-----------------|---|-----------------------|
| CLASSIFICATION  | RESPONSILITY  | BILLING RATE PER HOUR |
| Principal       | Principal-in-Charge, Professional Engineer, Lighting Designer, Quality Control  | \$185/HR              |
| Project Manager | Senior Project Manager, Electrical Designer, Lighting Designer, Quality Control | \$160/HR              |
| Engineer        | Electrical Engineer, Lighting Designer, Quality Control                         | \$160/HR              |
| CAD Drafter     | Electrical Designer, Revit and AutoCAD Drafter                                  | \$115/HR              |

| REIMBURSABLE EXPENSES  |              |
|------------------------|--------------|
| ITEM                   | CHARGE RATE  |
| Copies (8.5 x 11")     | \$ 0.15/each |
| Copies (8.5 x 14")     | \$ 0.20/each |
| Redline copies         | \$ 2.50/S.F. |
| Reproducible Materials | \$ 6.30/page |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1

### Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
 The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Consultant Name:** JENSEN HUGHES, INC.

| PERSONNEL           |  |                       |
|---------------------|--|-----------------------|
| CLASSIFICATION      | RESPONSILITY                                 | BILLING RATE PER HOUR |
| Administrative      | Administrative duties                        | \$ 110                |
| Project Admin.      | Project specific administrative support      | \$ 135                |
| Technician / Intern | Technical assistance & support               | \$ 150                |
| Associate 1         | Consulting & support                         | \$ 180                |
| Associate 2         | Consulting & support                         | \$ 200                |
| Associate 3         | Consulting & support                         | \$ 215                |
| Associate 4         | Consulting & support                         | \$ 225                |
| Consultant 1        | Consulting, project mgmt., supervision, QAQC | \$ 245                |
| Consultant 2        | Consulting, project mgmt., supervision, QAQC | \$ 255                |
| Consultant 3        | Consulting, project mgmt., supervision, QAQC | \$ 265                |
| Consultant 4        | Consulting, project mgmt., supervision, QAQC | \$ 290                |
| Senior Consultant 1 | Consulting, project mgmt., supervision, QAQC | \$ 310                |
| Senior Consultant 2 | Consulting, project mgmt., supervision, QAQC | \$ 325                |
| Senior Consultant 3 | Consulting, project mgmt., supervision, QAQC | \$ 345                |
| Senior Consultant 4 | Consulting, project mgmt., supervision, QAQC | \$ 360                |
| Senior Consultant 5 | Consulting, project mgmt., supervision, QAQC | \$ 370                |

| REIMBURSABLE EXPENSES  |              |
|------------------------|--------------|
| ITEM                   | CHARGE RATE  |
| Copies (8.5 x 11")     | \$ 0.15/each |
| Copies (8.5 x 14")     | \$ 0.15/each |
| Redline copies         | \$ n/a /S.F. |
| Reproducible Materials | \$ n/a /page |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1 Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** Two Forks Collective LLC

| PERSONNEL      |  |                       |
|----------------|--|-----------------------|
| CLASSIFICATION | RESPONSIBILITY   | BILLING RATE PER HOUR |
| Principal      | Community Engagement, Partnership Cultivation, Engagement event design and coordination, Surveys | \$110.00              |
|                |  |                       |
|                |  |                       |
|                |  |                       |
|                |  |                       |
|                |  |                       |

| REIMBURSABLE EXPENSES         |             |
|-------------------------------|-------------|
| ITEM                          | CHARGE RATE |
| Copies (8.5 x 11")            | \$ /each    |
| Copies (8.5 x 14")            | \$ /each    |
| Redline copies                | \$ /S.F.    |
| Reproducible Materials        | \$ /page    |
| Other – <i>please specify</i> |             |
|                               |             |
|                               |             |
|                               |             |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1 Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** studiotrope Design Collective

| PERSONNEL              |  |                       |
|------------------------|--|-----------------------|
| CLASSIFICATION         | RESPONSIBILITY   | BILLING RATE PER HOUR |
| Principal              | Project oversight, primary point of contact, designer                                  | \$231                 |
| Senior Project Manager | Oversight of project management  | \$205                 |
| Designer III           | Technical detailing, consultant coordination, drafting oversight, drawing coordination | \$196                 |
| Project Manager        | Manager of day-to-day operations, schedule, budget                                     | \$196                 |
| Designer II            | Drafting oversight, drawing coordination   | \$177                 |
| Technology Specialist  | Management of 3D visualization tools   | \$170                 |
| Designer I             | Drafting   | \$159                 |
| Design Assistant       | Drafting   | \$144                 |
| Administration         | Invoicing, courier, bookkeeping, general office  | \$118                 |

| REIMBURSABLE EXPENSES         |              |
|-------------------------------|--------------|
| ITEM                          | CHARGE RATE  |
| Copies (8.5 x 11")            | \$ 0.32/each |
| Copies (8.5 x 14")            | \$ 0.37/each |
| Redline copies                | \$ 1.10/S.F. |
| Reproducible Materials        | \$ NA/page   |
| Other – <i>please specify</i> |              |
|                               |              |
|                               |              |
|                               |              |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1

### Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
 The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** AloTerra Restoration Services, Inc.

| PERSONNEL                     |  |                       |
|-------------------------------|--|-----------------------|
| CLASSIFICATION                | RESPONSIBILITY                             | BILLING RATE PER HOUR |
| Principal                     |  | \$ 195.00             |
| Project Manager               |  | \$ 160.00             |
| Project Landscape Architect   |  | \$                    |
| Staff Landscape Architect     |  | \$                    |
| Executive/Manager             |  | \$                    |
| Licensed Professional         | Certified Herbicide Application Supervisor | \$ 125.00             |
| Designer                      |  | \$ 115.00             |
| Engineer                      |  | \$ 165.00             |
| Surveyor/GPS Tech             |  | \$ 175.00             |
| CAD Drafter                   |  | \$ 85.00              |
| Administrative Support        |  | \$ 65.00              |
| Other – <i>please specify</i> |  |                       |
| Restoration Ecologist         |  | \$160.00              |
| Plant Ecologist/Botanist      |  | \$115.00              |
|                               |  |                       |
|                               |  |                       |
|                               |  |                       |

| REIMBURSABLE EXPENSES         |             |
|-------------------------------|-------------|
| ITEM                          | CHARGE RATE |
| Copies (8.5 x 11")            | \$ /each    |
| Copies (8.5 x 14")            | \$ /each    |
| Redline copies                | \$ /S.F.    |
| Reproducible Materials        | \$ /page    |
| Other – <i>please specify</i> |             |
|                               |             |
|                               |             |
|                               |             |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1

### Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** Tailwater Limited

| PERSONNEL                     |   |                       |
|-------------------------------|---|-----------------------|
| CLASSIFICATION                | RESPONSIBILITY  | BILLING RATE PER HOUR |
| Principal                     | Senior Professional; Oversight  | \$ 200                |
| Project Manager               | Ensure timely delivery and oversee project goals are met.   | \$ 175                |
| Licensed Professional         | Professional Engineer   | \$ 175                |
| Designer                      |   | \$                    |
| Engineer                      |   | \$ 175                |
| Surveyor/GPS Tech             | Technician (non-licensed) + GPS base, rover, and data collector (assumes 8 hr. day)                   | \$ 185                |
| CAD Drafter                   | Plan production, Civil 3D and GIS analyses  | \$ 130                |
| Administrative Support        | Editing, contracting, and billing   | \$ 100                |
| Other – <i>please specify</i> |   |                       |
| LiDAR Drone Pilot             | Drone mapping of the existing ground surface (2 hr. minimum)  | \$ 400                |
| Mapping Drone Pilot           | Drone mapping for aerial imagery (2 hr. minimum)  | \$ 215                |
| Restoration Ecologist         | Vegetation assessment, soil sampling, plant/seed plan development, wetland delineation and reporting. | \$ 150                |

| REIMBURSABLE EXPENSES  |             |
|------------------------|-------------|
| ITEM                   | CHARGE RATE |
| Copies (8.5 x 11")     | \$ /each    |
| Copies (8.5 x 14")     | \$ /each    |
| Redline copies         | \$ /S.F.    |
| Reproducible Materials | \$ /page    |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1

### Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
 The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** Topographic Co.

| PERSONNEL                                 |  |                       |
|---|--|-----------------------|
| CLASSIFICATION                            | RESPONSIBILITY   | BILLING RATE PER HOUR |
| Licensed Professional Land Surveyor (PLS) | Project oversight, QA/QC, review/approval final delivery of products | \$ 220.00             |
| Licensed Professional Engineer (PE)       | LEED consultation, drawing review (SUE as needed)                    | \$ 220.00             |
| Project Manager II                        | Project management, calcs, research, field data processing           | \$ 148.00             |
| Surveyor/GPS Tech                         | Survey Crew – 1 person – field work                                  | \$ 192.00             |
| Surveyor/GPS Tech                         | Survey Crew – 2 person – field work                                  | \$ 214.00             |
| CAD Drafter                               | Drafting   | \$ 132.00             |
| Administrative Support                    | Contracting, progress reports, as-needed document formatting         | \$ 82.00              |

| REIMBURSABLE EXPENSES   |               |
|---|---------------|
| ITEM  | CHARGE RATE   |
| Copies (8.5 x 11")  | \$ na/each    |
| Copies (8.5 x 14")  | \$ na/each    |
| Redline copies  | \$ na/S.F.    |
| Reproducible Materials  | \$ na/page    |
| Subconsultants (as needed: traffic control, utility locates, title) | \$ Cost + 10% |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1 Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** Kumar & Associates, Inc.

| PERSONNEL                                    |   |                       |
|--|---|-----------------------|
| CLASSIFICATION                               | RESPONSIBILITY  | BILLING RATE PER HOUR |
| Principal                                    | Project Oversight, Contracts/Negotiations   | \$235                 |
| CAD Drafter                                  | Development of drawings/schematics, IT support  | \$100                 |
| Administrative Support                       | Word processing of reports, filing/record keeping & data entry  | \$65                  |
| Other – Senior Project Manager               | Project Oversight, Geotechnical Report Review, Value Engineering, Attend Meetings, Budget Management  | \$215                 |
| Senior Project Engineer                      | Coordinates and conducts geotechnical subsurface investigative programs, provides geotechnical report review and recommendations  | \$180                 |
| Project Engineer                             | Preparation of geotechnical engineering reports, performs geotechnical engineering study/investigation(s), coordinates drilling procedures/scheduling                                 | \$145                 |
| Staff Engineer                               | Performs analysis of field and laboratory data for generation of geotechnical recommendations   | \$115                 |
| Field Engineer                               | Supervises drilling activities including logging and sampling of subsurface conditions  | \$100                 |
| Exploration Manager                          | Coordinates drilling schedule and performs drilling procedures  | \$105                 |
| Materials Testing Project Manager/Supervisor | Project supervision, supervises/schedules field/engineering technicians, reviews test reports for accuracy, attends meetings, generates test reports based on laboratory test results | \$150                 |
| Lead Inspector                               | Performs field/engineering observation and materials testing  | \$120                 |
| Senior Technician/Project Inspector          | Performs field/engineering observation and materials testing  | \$120                 |
| Technician III                               | Performs field/engineering observation and materials testing  | \$80                  |
| Technician II                                | Performs field/engineering observation and materials testing  | \$75                  |
| Technician I                                 | Performs field observation and materials testing  | \$70                  |
| Managing Environmental Scientist             | Overall project management and staff allocation, report review  | \$125                 |
| Project Environmental Scientist              | Supervise staff scientists during Phase I and II ESAs and other field work, report preparation/review   | \$120                 |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

**ATTACHMENT 1**  
**Key Personnel, Billing Rates & Reimbursable Expenses**

Provide one copy for the prime consultant as well as each subconsultant.  
 The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** Kumar & Associates, Inc.

| PERSONNEL                     |  |                       |
|-------------------------------|--|-----------------------|
| CLASSIFICATION                | RESPONSILITY   | BILLING RATE PER HOUR |
| Staff Environmental Scientist | Perform Phase I and II ESAs and other field work, report preparation | \$100                 |

| REIMBURSABLE EXPENSES  |             |
|------------------------|-------------|
| ITEM                   | CHARGE RATE |
| Copies (8.5 x 11")     | \$ /each    |
| Copies (8.5 x 14")     | \$ /each    |
| Redline copies         | \$ /S.F.    |
| Reproducible Materials | \$ /page    |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

## ATTACHMENT 1

### Key Personnel, Billing Rates & Reimbursable Expenses

Provide one copy for the prime consultant as well as each subconsultant.  
 The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

### Proposer Name: Fehr & Peers

| PERSONNEL              |   |                       |
|------------------------|---|-----------------------|
| CLASSIFICATION         | RESPONSIBILITY  | BILLING RATE PER HOUR |
| Principal 4/5          | Project oversight, report review, QC of deliverables  | \$375                 |
| Principal 3            | Project oversight, project management, report review, QC of technical analysis and deliverables             | \$345                 |
| Principal 2            | Project oversight, project management, report review/preparation, QC of technical analysis and deliverables | \$320                 |
| Principal 1            | Project oversight, project management, report review/preparation, QC of technical analysis and deliverables | \$310                 |
| Sr. Associate 2        | Project management, report preparation, QC of technical analysis and deliverables                           | \$285                 |
| Sr. Associate 1        | Project management, report preparation, QC of technical analysis and deliverables                           | \$270                 |
| Associate 2            | Project management, report preparation, analysis and deliverable preparation                                | \$260                 |
| Associate 1            | Project management, report preparation, analysis and deliverable preparation                                | \$240                 |
| Sr. Engineer/Planner 3 | Project management, technical memorandum preparation, analysis and deliverable preparation                  | \$230                 |
| Sr. Engineer/Planner 2 | Project management, technical memorandum preparation, analysis and deliverable preparation                  | \$210                 |
| Sr. Engineer/Planner 1 | Project management, technical memorandum preparation, analysis and deliverable preparation                  | \$195                 |
| Engineer/Planner 3     | Project management, data collection, analysis and deliverable preparation                                   | \$185                 |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

**Proposer Name: Fehr & Peers**

| <b>PERSONNEL</b>               |  |                              |
|--------------------------------|--|------------------------------|
| <b>CLASSIFICATION</b>          | <b>RESPONSILITY</b>  | <b>BILLING RATE PER HOUR</b> |
| Engineer/Planner 2             | Data collection, analysis and deliverable preparation                        | \$170                        |
| Engineer/Planner 1             | Data collection, analysis and deliverable preparation                        | \$150                        |
| Intern                         | Data collection and analysis   | \$105                        |
| Sr. Engineering Tech 5         | Analysis, CAD/GIS, design preparation, design review                         | \$230                        |
| Sr. Engineering Tech 4         | Analysis, CAD/GIS, design preparation, design review                         | \$215                        |
| Sr. Engineering Tech 3         | Analysis, CAD/GIS, design preparation, design review                         | \$200                        |
| Sr. Engineering Tech 2         | Analysis, CAD/GIS, design preparation, design review                         | \$185                        |
| Sr. Engineering Tech 1         | Analysis, CAD/GIS, design preparation, design review                         | \$170                        |
| Engineering Tech 3             | Analysis, CAD/GIS, design preparation  | \$160                        |
| Engineering Tech 2             | Analysis, CAD/GIS, design preparation  | \$150                        |
| Engineering Tech 1             | Analysis, CAD/GIS, design preparation  | \$140                        |
| Sr. Business Services Admin. 5 | Subconsultant/vendor management, project setup, project accounting, graphics | \$200                        |
| Sr. Business Services Admin. 4 | Subconsultant/vendor management, project setup, project accounting, graphics | \$190                        |
| Sr. Business Services Admin. 3 | Subconsultant/vendor management, project setup, project accounting, graphics | \$180                        |
| Sr. Business Services Admin. 2 | Subconsultant/vendor management, project setup, project accounting, graphics | \$170                        |
| Sr. Business Services Admin. 1 | Subconsultant/vendor management, project setup, project accounting, graphics | \$160                        |
| Business Services Admin. 3     | Project setup, project accounting  | \$150                        |
| Business Services Admin. 2     | Project setup, project accounting  | \$140                        |
| Business Services Admin. 1     | Project setup, project accounting  | \$130                        |
| Sr. Engineering Tech 2         | Analysis, CAD/GIS, design preparation, design review                         | \$185                        |
| Sr. Engineering Tech 1         | Analysis, CAD/GIS, design preparation, design review                         | \$170                        |
| Engineering Tech 3             | Analysis, CAD/GIS, design preparation  | \$160                        |

**PRICING**

**ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES**

**Proposer Name: Fehr & Peers**

| <b>PERSONNEL</b>               |  |                              |
|--------------------------------|--|------------------------------|
| <b>CLASSIFICATION</b>          | <b>RESPONSILITY</b>  | <b>BILLING RATE PER HOUR</b> |
| Engineering Tech 2             | Analysis, CAD/GIS, design preparation  | \$150                        |
| Engineering Tech 1             | Analysis, CAD/GIS, design preparation  | \$140                        |
| Sr. Business Services Admin. 5 | Subconsultant/vendor management, project setup, project accounting, graphics | \$200                        |
| Sr. Business Services Admin. 4 | Subconsultant/vendor management, project setup, project accounting, graphics | \$190                        |
| Sr. Business Services Admin. 3 | Subconsultant/vendor management, project setup, project accounting, graphics | \$180                        |
| Sr. Business Services Admin. 2 | Subconsultant/vendor management, project setup, project accounting, graphics | \$170                        |
| Sr. Business Services Admin. 1 | Subconsultant/vendor management, project setup, project accounting, graphics | \$160                        |
| Business Services Admin. 3     | Project setup, project accounting  | \$150                        |
| Business Services Admin. 2     | Project setup, project accounting  | \$140                        |
| Business Services Admin. 1     | Project setup, project accounting  | \$130                        |

| <b>REIMBURSABLE EXPENSES</b> |                    |
|------------------------------|--------------------|
| <b>ITEM</b>                  | <b>CHARGE RATE</b> |
| Copies (8.5 x 11")           | \$ 0.10/each       |
| Copies (8.5 x 14")           | \$ 0.10/each       |
| Redline copies               | \$ 0.10/S.F.       |
| Reproducible Materials       | \$ 0.10/page       |

PRICING

ATTACHMENT 1 - KEY PERSONNEL, BILLING RATES & REIMBURSABLE EXPENSES

**ATTACHMENT 1**  
**Key Personnel, Billing Rates & Reimbursable Expenses**

Provide one copy for the prime consultant as well as each subconsultant.  
 The consultant may modify this page and continue on additional pages as needed, to conform to the services being offered.

Please reference Section 3. C. for guidelines on pricing and billing rates

**Proposer Name:** Daley Land Surveying

| PERSONNEL           |                |                       |
|---------------------|----------------|-----------------------|
| CLASSIFICATION      | RESPONSIBILITY | BILLING RATE PER HOUR |
| Principal           |                | \$165                 |
| Project Manager/PLS |                | \$160                 |
| Surveyor 1 Man Crew |                | \$185                 |
| Surveyor 2 Man Crew |                | \$295                 |
| CAD Drafter         |                | \$145                 |
| Travel              |                | \$120                 |
| Clerical            |                | \$65                  |

| REIMBURSABLE EXPENSES  |             |
|------------------------|-------------|
| ITEM N/A               | CHARGE RATE |
| Copies (8.5 x 11")     | \$ /each    |
| Copies (8.5 x 14")     | \$ /each    |
| Redline copies         | \$ /S.F.    |
| Reproducible Materials | \$ /page    |



EXHIBIT C

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/6/2026

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

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

|   |  |                                      |              |
|---|--|--------------------------------------|--------------|
| PRODUCER License # 0757776<br>HUB International Insurance Services (COL)<br>2000 S. Colorado Blvd<br>Tower 2, Suite 150<br>Denver, CO 80222 | CONTACT NAME: <b>WAH.Vickie Laidley</b><br>PHONE (A/C, No, Ext): <b>(970) 541-6027</b><br>E-MAIL ADDRESS: <b>WAH.Vickie.Laidley@hubinternational.com</b> | FAX (A/C, No): <b>(866) 243-0727</b> |              |
|   | INSURER(S) AFFORDING COVERAGE  |                                      | NAIC #       |
| INSURED<br><br>Flow Design Collaborative inc.<br>303 W 45th Ave<br>Denver, CO 80216   | INSURER A : <b>Twin City Fire Insurance Company</b>  |                                      | <b>29459</b> |
|   | INSURER B : <b>Sentinel Insurance Company, Ltd.</b>  |                                      | <b>11000</b> |
|   | INSURER C : <b>Hartford Fire Insurance Company</b>   |                                      | <b>19682</b> |
|   | INSURER D :  |                                      |              |
|   | INSURER E :  |                                      |              |
|   | INSURER F :  |                                      |              |

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

| INSR LTR | TYPE OF INSURANCE  | ADDL INSD | SUBR WVD | POLICY NUMBER  | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS  |              |                             |              |
|----------|--|-----------|----------|----------------|-------------------------|-------------------------|---|--------------|-----------------------------|--------------|
| A        | COMMERCIAL GENERAL LIABILITY   | X         | X        | 34SBAAA1837    | 7/20/2025               | 7/20/2026               | EACH OCCURRENCE   | \$ 1,000,000 |                             |              |
|          | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR   |           |          |                |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence)                                       | \$ 1,000,000 |                             |              |
|          | <input checked="" type="checkbox"/> Business Liability   |           |          |                |                         |                         | MED EXP (Any one person)  | \$ 10,000    |                             |              |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER: |           |          |                |                         |                         | PERSONAL & ADV INJURY   | \$ 1,000,000 |                             |              |
| A        | AUTOMOBILE LIABILITY   | X         |          | 34SBAAA1837    | 7/20/2025               | 7/20/2026               | COMBINED SINGLE LIMIT (Ea accident)   | \$ 1,000,000 |                             |              |
|          | <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY   |           |          |                |                         |                         | BODILY INJURY (Per person)  | \$           |                             |              |
|          | <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS                                       |           |          |                |                         |                         | BODILY INJURY (Per accident)  | \$           |                             |              |
|          | <input type="checkbox"/> NON-OWNED AUTOS ONLY  |           |          |                |                         |                         | PROPERTY DAMAGE (Per accident)  | \$           |                             |              |
|          |  |           |          |                |                         |                         |   | \$           |                             |              |
|          | UMBRELLA LIAB  |           |          |                |                         |                         | EACH OCCURRENCE   | \$           |                             |              |
|          | EXCESS LIAB  |           |          |                |                         |                         | CLAIMS-MADE   | AGGREGATE    | \$                          |              |
|          | DED  |           |          |                |                         |                         | RETENTION \$  |              | \$                          |              |
| B        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY  |           |          | 34WECAC0G7Y    | 7/20/2025               | 7/20/2026               | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER |              |                             |              |
|          | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)  |           |          |                |                         |                         | <input type="checkbox"/> Y / N  | N / A        | E.L. EACH ACCIDENT          | \$ 1,000,000 |
|          | If yes, describe under DESCRIPTION OF OPERATIONS below   |           |          |                |                         |                         |   |              | E.L. DISEASE - EA EMPLOYEE  | \$ 1,000,000 |
|          |  |           |          |                |                         |                         |   |              | E.L. DISEASE - POLICY LIMIT | \$ 1,000,000 |
| C        | Professional Liab.   |           |          | 34OH0458719-25 | 7/20/2025               | 7/20/2026               | 1,000,000 /   | 2,000,000    |                             |              |

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

RE: RFP # 202581846, On-Call Landscape Architecture Design and Related Services (SBE)

As required by written contract The City and County of Denver, its elected and appointed officials, employees and volunteers are included as additional insured with regards to the general liability and automobile liability.

|  |   |
|--|---|
| CERTIFICATE HOLDER<br><br>City & County of Denver<br>Executive Director of Parks and Recreation<br>201 West Colfax Ave., Dept. 601<br>Denver, CO 80202 | CANCELLATION<br><br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE<br> |
|--|---|

**QUICK REFERENCE  
BUSINESS LIABILITY COVERAGE FORM  
READ YOUR POLICY CAREFULLY**

| <b>BUSINESS LIABILITY COVERAGE FORM</b>                          | <b>Beginning on Page</b> |
|--|--------------------------|
| <b>A. COVERAGES</b>  | <b>1</b>                 |
| Business Liability   | <b>1</b>                 |
| Medical Expenses   | <b>2</b>                 |
| Coverage Extension - Supplementary Payments                      | <b>2</b>                 |
| <b>B. EXCLUSIONS</b>   | <b>3</b>                 |
| <b>C. WHO IS AN INSURED</b>                                      | <b>10</b>                |
| <b>D. LIABILITY AND MEDICAL EXPENSES<br/>LIMITS OF INSURANCE</b> | <b>14</b>                |
| <b>E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS</b>      | <b>15</b>                |
| 1. Bankruptcy  | <b>15</b>                |
| 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit     | <b>15</b>                |
| 3. Financial Responsibility Laws                                 | <b>16</b>                |
| 4. Legal Action Against Us                                       | <b>16</b>                |
| 5. Separation Of Insureds  | <b>16</b>                |
| 6. Representations   | <b>16</b>                |
| 7. Other Insurance   | <b>16</b>                |
| 8. Transfer Of Rights Of Recovery Against Others To Us           | <b>17</b>                |
| <b>F. OPTIONAL ADDITIONAL INSURED COVERAGES</b>                  | <b>18</b>                |
| Additional Insureds  | <b>18</b>                |
| <b>G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS</b>             | <b>20</b>                |



# BUSINESS LIABILITY COVERAGE FORM

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

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

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

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

## A. COVERAGES

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

#### Insuring Agreement

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

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

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

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

- b. This insurance applies:

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

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

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

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

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

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

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

**BUSINESS LIABILITY COVERAGE FORM**

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

**e. Incidental Medical Malpractice**

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

**2. MEDICAL EXPENSES**

**Insuring Agreement**

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

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an accident;
  - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

**3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS**

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

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

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

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

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

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

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

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

**B. EXCLUSIONS**

**1. Applicable To Business Liability Coverage**

This insurance does not apply to:

**a. Expected Or Intended Injury**

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

**b. Contractual Liability**

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

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

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

**BUSINESS LIABILITY COVERAGE FORM**

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

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

**c. Liquor Liability**

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

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

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

**d. Workers' Compensation And Similar Laws**

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

**e. Employer's Liability**

"Bodily injury" to:

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

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

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

This exclusion applies:

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

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

**f. Pollution**

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

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

- (i)** "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
- (ii)** "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

**BUSINESS LIABILITY COVERAGE FORM**

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

released as part of the operations being performed by such insured, contractor or subcontractor;

- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

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

**BUSINESS LIABILITY COVERAGE FORM**

**g. Aircraft, Auto Or Watercraft**

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

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

This exclusion does not apply to:

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

**h. Mobile Equipment**

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

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

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

**i. War**

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

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

**j. Professional Services**

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

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

**BUSINESS LIABILITY COVERAGE FORM**

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

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

**k. Damage To Property**

"Property damage" to:

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

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

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

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

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

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

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

**l. Damage To Your Product**

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

**m. Damage To Your Work**

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

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

**n. Damage To Impaired Property Or Property Not Physically Injured**

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

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

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

**BUSINESS LIABILITY COVERAGE FORM**

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

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

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

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

**p. Personal And Advertising Injury**

"Personal and advertising injury":

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

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

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

(c) Title of any literary or artistic work;

- (8) Arising out of an offense committed by an insured whose business is:
  - (a) Advertising, broadcasting, publishing or telecasting;
  - (b) Designing or determining content of web sites for others; or
  - (c) An Internet search, access, content or service provider.

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

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

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

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

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

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

**q. Electronic Data**

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

**r. Employment-Related Practices**

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

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

This exclusion applies:

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

**s. Asbestos**

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

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

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

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

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

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

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

**BUSINESS LIABILITY COVERAGE FORM**

**2. Applicable To Medical Expenses Coverage**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

**c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers' Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

**f. Products-Completed Operations Hazard**

Included with the "products-completed operations hazard".

**g. Business Liability Exclusions**

Excluded under Business Liability Coverage.

**C. WHO IS AN INSURED**

1. If you are designated in the Declarations as:

**a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

**b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

**c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

**d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

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

2. Each of the following is also an insured:

**a. Employees And Volunteer Workers**

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

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

**(1)** "Bodily injury" or "personal and advertising injury":

**(a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

**(b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;

**(c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or

**(d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

**(2)** "Property damage" to property:

**(a)** Owned, occupied or used by,

**BUSINESS LIABILITY COVERAGE FORM**

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

**b. Real Estate Manager**

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

**c. Temporary Custodians Of Your Property**

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

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

**d. Legal Representative If You Die**

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

**e. Unnamed Subsidiary**

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

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

**3. Newly Acquired Or Formed Organization**

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

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

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. Operator Of Mobile Equipment**

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

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

**5. Operator of Nonowned Watercraft**

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

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

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

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

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

**BUSINESS LIABILITY COVERAGE FORM**

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

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

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

**a. Vendors**

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

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

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

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

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

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

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

**b. Lessors Of Equipment**

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

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

**c. Lessors Of Land Or Premises**

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

**d. Architects, Engineers Or Surveyors**

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

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

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

**f. Any Other Party**

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

**BUSINESS LIABILITY COVERAGE FORM**

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

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

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

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

**D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**

**1. The Most We Will Pay**

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

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

**2. Aggregate Limits**

The most we will pay for:

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

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

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

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

**3. Each Occurrence Limit**

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

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

**4. Personal And Advertising Injury Limit**

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

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

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

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

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

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

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

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

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

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

**E. LIABILITY AND MEDICAL EXPENSES  
GENERAL CONDITIONS**

**1. Bankruptcy**

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

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

**a. Notice Of Occurrence Or Offense**

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

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

**b. Notice Of Claim**

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

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

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

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

You and any other involved insured must:

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

**d. Obligations At The Insured's Own Cost**

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

**e. Additional Insured's Other Insurance**

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

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

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

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

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

**BUSINESS LIABILITY COVERAGE FORM**

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

**3. Financial Responsibility Laws**

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

**4. Legal Action Against Us**

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

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

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

**5. Separation Of Insureds**

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

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

**6. Representations**

**a. When You Accept This Policy**

By accepting this policy, you agree:

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

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

**b. Unintentional Failure To Disclose Hazards**

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

**7. Other Insurance**

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

**a. Primary Insurance**

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

**b. Excess Insurance**

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

**(1) Your Work**

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

**(2) Premises Rented To You**

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

**(3) Tenant Liability**

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

**(4) Aircraft, Auto Or Watercraft**

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

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

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

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

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

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

That is other insurance available to an additional insured.

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

**(a) Primary Insurance When Required By Contract**

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

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

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

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

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

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

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

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

**c. Method Of Sharing**

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

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

**8. Transfer Of Rights Of Recovery Against Others To Us**

**a. Transfer Of Rights Of Recovery**

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

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

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

**BUSINESS LIABILITY COVERAGE FORM**

**F. OPTIONAL ADDITIONAL INSURED COVERAGES**

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

**1. Additional Insured - Designated Person Or Organization**

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

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

**2. Additional Insured - Managers Or Lessors Of Premises**

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

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

This insurance does not apply to:

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

**3. Additional Insured - Grantor Of Franchise**

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

**4. Additional Insured - Lessor Of Leased Equipment**

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

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

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

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

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

This insurance does not apply to:

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

**6. Additional Insured - State Or Political Subdivision – Permits**

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

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

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

This insurance does not apply to:

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

**7. Additional Insured – Vendors**

- a.** WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b.** The insurance afforded to the vendor is subject to the following additional exclusions:

- (1)** This insurance does not apply to:
  - (a)** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
  - (b)** Any express warranty unauthorized by you;
  - (c)** Any physical or chemical change in the product made intentionally by the vendor;
  - (d)** Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e)** Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f)** Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g)** Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h)** "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (i)** The exceptions contained in Subparagraphs **(d)** or **(f)**; or
  - (ii)** Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

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

**8. Additional Insured – Controlling Interest**

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

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

**BUSINESS LIABILITY COVERAGE FORM**

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

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

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

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

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

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

**10. Additional Insured – Co-Owner Of Insured Premises**

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

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

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

**G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS**

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

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

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

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

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

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

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

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

5. "Bodily injury" means physical:

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

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

6. "Coverage territory" means:

**BUSINESS LIABILITY COVERAGE FORM**

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

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

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

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

**12. "Insured contract" means:**

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

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

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

**BUSINESS LIABILITY COVERAGE FORM**

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

**BUSINESS LIABILITY COVERAGE FORM**

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

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

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

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

**BUSINESS LIABILITY COVERAGE FORM**

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

**24. "Your product":**

**a. Means:**

**(1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a)** You;
- (b)** Others trading under your name; or
- (c)** A person or organization whose business or assets you have acquired; and

**(2)** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**b. Includes:**

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

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

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

**25. "Your work":**

**a. Means:**

**(1)** Work or operations performed by you or on your behalf; and

**(2)** Materials, parts or equipment furnished in connection with such work or operations.

**b. Includes:**

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

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