



# City of Emeryville

CALIFORNIA

## PROFESSIONAL SERVICES CONTRACT

### FIRST AMENDMENT

THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT ("Amendment") is effective as of this 28th day of January, 2020, ~~2019~~, by and between THE CITY OF EMERYVILLE, a municipal corporation, ("City") and NOBLE CONSULTANTS, INC. ("Contractor"), individually referred to as a "Party" and collectively as the "Parties."

### WITNESSETH THAT

WHEREAS, the City and Contractor entered into a Professional Services Contract dated June 20, 2018 ("Contract") for the purpose of retaining the services of Contractor to provide study, design, and regulatory permitting services related to the Point Emery Shoreline Protection Project EPW 101-18; and

WHEREAS, the City and Contractor desire to amend the Contract; and

WHEREAS, the public interest will be served by this Amendment.

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

#### 1. AMENDMENT

The Parties agree to amend the Contract as checked below:

##### 1.1 Exhibit A

- ☐ Exhibit A of the Contract is hereby amended in its entirety and replaced with Exhibit A-Revision Number;

OR

- ☒ Exhibit A of the Contract is hereby amended to include the provisions of Exhibit A-R1, attached hereto and incorporated herein by this reference.

##### 1.2 Termination Date

- ☒ The Parties desire to extend the termination date. Section 1.3 of the Contract is hereby amended to extend the termination date to **DECEMBER 31, 2020**.

FOR CITY USE ONLY			
Contract No.	19112-0118-PW01	CIP No.	16243031
Resolution No.	19-139	Project No.	EPW 101-18

**1.3 Total Compensation Amount**

- ☒ The Parties desire to increase the Total Compensation Amount as set forth in Section 3.2 of the Contract by **THIRTY TWO THOUSAND, SIX HUNDRED AND TWENTY DOLLARS AND NO CENTS (\$32,620)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **ONE HUNDRED AND TWENTY TWO THOUSAND SIX HUNDRED AND FIFTY FIVE DOLLARS AND NO CENTS (\$122,655)**.

**2. CONTINUING EFFECT OF CONTRACT**

Except as amended by this Amendment, all other provisions of the Contract remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term "Contract" appears in the Contract, it shall mean the Contract as amended by this Amendment.

**3. ADEQUATE CONSIDERATION**

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment

**4. SEVERABILITY**

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect

**5. WAIVER**

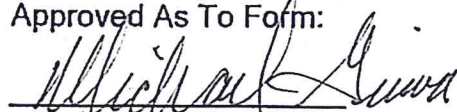
The City's failure to enforce any provision of this Amendment or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

**SIGNATURES ON FOLLOWING PAGE**

6. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT  
FIRST AMENDMENT

IN WITNESS WHEREOF the City and the Contractor have executed this Contract,  
which shall become effective as of the date first written above.

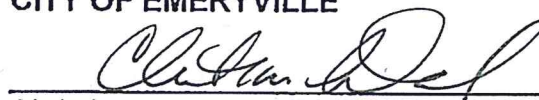
Approved As To Form:

  
City Attorney

Dated:

January 28 <sup>2020</sup>, 2019

CITY OF EMERYVILLE

  
Christine S. Daniel, City Manager

Dated:

Sept. 13, 2019

NOBLE CONSULTANTS INC.

  
Ronald Noble, President (Signature)

COPY





201 Alameda Del Prado, Suite 301  
Novato, CA 94949  
(415) 884-0727 Fax (415) 884-0735  
Ronald M. Noble, P.E., President



July 8, 2019

Michael Roberts, P.E.  
Senior Civil Engineer  
Public Works Department  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

Re: **Proposal: Estimated Additional Fee  
Responses to Regulatory Permitting Comments  
For Shoreline Protection of Point Emery  
Emeryville, CA**

Dear Mike:

Our estimated additional fee proposal is in response to Ryan O'Connell's email of July 3, 2019 to provide additional regulatory permitting services for shoreline protection at Point Emery. These services include responses to the additional review comments from the regulatory agencies such as San Francisco Bay Conservation and Development Commission (BCDC), U.S. Army Corps of Engineers (USACE), and San Francisco Bay Regional Water Quality Control Board (RWQCB).

Scope of Services

Our proposed scope of services consists of the following:

Task 1: Responses to BCDC Comments contained in their 7/01/2019 Email

We submitted our responses on May 30, 2019 to BCDC's May 20, 2019 review comments. We also performed a site visit and discussions with BCDC staff and the City of Emeryville on June 21, 2019. Subsequent to this meeting, we received additional comments, questions, and requirements from BCDC on July 1, 2019 (see attachment). The work for Task 1 consists of the following sub-tasks:

1. Responses to BCDC's July 1, 2019 comments.
2. Revision to the project description and plans based on BCDC's comments.



3. Follow-up with BCDC and responses to further comments by BCDC.

#### Task 2: Responses to Additional Comments by Other Regulatory Agencies

We have discussed with RWQCB their comments, and submitted our responses on May 30, 2019 to USACE's May 28, 2019 review comments. We will respond to additional comments that are expected from these two agencies. We will also consult with other local, state and/or federal agencies, if necessary, for their input in the permitting process.

#### Notes

Please note that we require the following inputs from the City to complete our permitting services:

1. The City will clarify what the involvement for the Alameda County of Environmental Health (ACDEH) will entail in this project and if ACDEH requires discretionary approvals, and provide those approvals if they are required. It is noted that Point Emery is a landfill site regulated by ACDEH. We ask that the City obtain more information from ACDEH about this landfill site, including whether it includes toxic or hazards substances. This input and information is required in Item 6 of BCDC's comments dated July 1, 2019.
2. If applicable to the project site, the City will provide the project approval from the Department of Toxic Substances Control. This is required in Item 7 of BCDC's comments dated July 1, 2019.
3. A portion (westernmost end) of the proposed project appears to be owned by the McLaughlin Eastshore State Park of the East Bay Regional Park District (EBRPD). The City shall provide documentation that is signed by EBRPD as co-applicant to demonstrate EBRPD has adequate legal interest in this property. This is required in Item 8 of BCDC's comments dated July 1, 2019.

It is noted at this time our estimated additional fee does not include any additional work that the regulatory agencies may require from our biological and geotechnical sub-contractors. We will consult with the agencies and will prepare responses to BCDC's comments regarding biological assessment (such as eelgrass) and geotechnical evaluations, mainly included in Items 5 and 6 of BCDC's comments dated July 1, 2019. However, if additional biological or geotechnical work is still deemed necessary by the agencies, these services will be performed at additional cost.

It is also noted that our above scope of work does not include any regulatory agency permitting fees that would be paid directly by the City.

### Current Project Summary

Attached is a current project summary through Friday June 28, 2019. We have highlighted in yellow our contract project tasks, total contract dollar amounts, job to date billings through 6/28/19, and job to date balances. It shows that we are under budget by \$3,214 for Tasks 1 and 2 (Field Investigation and Preliminary Plan). We have not started any of the design contract documents tasks (Tasks 4, 5 and 6) as we will not initiate this work until receiving regulatory permit approvals. Therefore these task budgets remain unused at this time. The attached project summary also shows that we are currently over budget by \$3,160 for Task 3, which includes all regulatory permit processing. Therefore this over budget is currently covered by our under budget for Tasks 1 and 2.

### Estimated Additional Fee

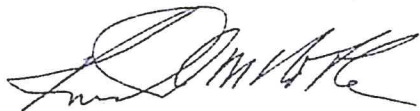
We propose to perform this additional regulatory permitting work on a time and expense basis in accordance with our attached Schedule of Charges. Our estimated fee is an additional \$25,120 above our current contract fee, which we would not exceed without your prior authorization. Attached is a spreadsheet showing the breakdown of this estimated additional fee.

\* \* \* \* \*

We appreciate the opportunity to provide our permitting services to the City for this Point Emery Shoreline Protection project. Please call me if you would like to discuss any aspects of our proposal.

Sincerely,

NOBLE CONSULTANTS, INC.



Ronald M. Noble, P.E., D.CE, D.PE, D.WRE  
President

RMN/WQ  
Attachments

cc: Ryan O'Connell, City of Emeryville



**From:** Deppe, Walt@BCDC  
**To:** Ron Noble  
**Cc:** Michael Roberts; Aarreberg, Arn@Wildlife; Ben Botkin  
**Subject:** Point Emery, BCDC Permit Application No. 2019.002.00, 2nd Response  
**Date:** Monday, July 01, 2019 2:17:39 PM

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Dear Mr. Noble:

Thank you for your response dated and received in this office on May 31, 2019, for the proposed shoreline protection revetment at Point Emery, in the City of Emeryville, Alameda County. Also, thank you for conducting a site visit with us on June 21, 2019. It was very helpful. Mr. Roberts, from the City, has reached out regarding exploring options with phasing and to better understand the major/minor permit thresholds. We will link up with him to discuss further.

We understand some of the following items will require some discussions with other agencies before they can be finalized. We would be happy to have smaller discussions on some of those individual points as you work through that process. Our review of the application has determined that it remains incomplete pending the submittal of the following outstanding items:

1. **Total Project and Site Information.** Thank you for providing revisions to the project description. Please verify whether the proposed project has been described accurately and in full as revised below:

In the Commission's Bay and 100-foot shoreline band jurisdictions and in the "East Shore State Park-Berkeley Waterfront" Waterfront, Beach Park Priority Use Area:

- a. Excavate and grade sections of the shoreline, clear rubble and debris from the work area, and dispose of removed material outside of the Commission's jurisdiction; and
- b. Construct, use, and maintain in-kind, a rip rap revetment consisting of rock, gravel, planting soil, and geotextile fabric, including approximately 15,000 square feet (500 cubic yards) of fill in the Bay and approximately 25,300 square feet (2,800 cubic yards) of fill within the 100-foot shoreline band, including:
  - i. Along approximately 260 linear feet in two segments on the northern shoreline, east and west of the existing revetment; and
  - ii. Along approximately 570 linear feet on the southern shoreline.

Please provide any missing details and additional project information (such as mitigation or public access amenities proposed) if any further changes to the project are made and provide updated plan sets to reflect any such changes.

## 2. **Shoreline Protection**

- a. **Life of Project.** It is important for us to understand the expected life of the proposed project to determine its consistency with the Bay Plan's shoreline protection policies which state, in part, that new shoreline protection projects and the maintenance and reconstruction of existing projects must be properly engineered to provide erosion control and flood protection for life of the project based on a 100-year flood event and sea level rise.



Please provide the expected life of the project and explain how the proposed revetment is designed for the potential impacts of flooding and erosion with projected future sea level rise at the site.

- b. **Erosion and Flooding.** From our resources, it appears that the current FEMA Base Flood Elevation (BFE) at the site is between 12 and 13 feet NAVD88 for the northern and southern shores of Point Emery, respectively. Given that the current and proposed top of bank elevations at Point Emery are below the BFE for the site, please provide information about what effects a 100-year storm with wave action would be expected to have at the site following the proposed project. Please explain if significant flooding or erosion would be expected to occur during such extreme events, if the design of the proposed project and its maintenance plan would be able to provide resilience and safety at the site, and whether plantings at the tops of banks could be used as an erosion control measure. Please explain if the proposed new revetments would be expected to intensify erosion at adjacent areas, including the beach at the northeast corner of the spit.
- c. **Sea Level Rise.** It appears that the still water elevation at the site would likely be higher than the 10-foot NAVD88 elevation of the proposed revetment at the west end of the site in a 100-year flood event for projected sea level rise for the year 2030, and in as little as a 5-year flood event for projected sea level rise for the year 2050 based on medium-to high risk aversion from the Ocean Protection Council's 2018 Sea Level Rise Guidance. With those projections, the west end of the site would experience flooding with King Tides by the year 2060. Please explain how the project is designed to be resilient to erosion and flooding at the site for the expected life of the project.
- d. **Alternatives Analysis.** The newly released "San Francisco Bay Shoreline Adaptation Atlas" by the San Francisco Estuary Institute (<https://www.sfei.org/documents/adaptationatlas>) identifies Point Emery (in Operational Landscape Unit #17, East Bay Crescent) as an area with conditions suitable for beaches along a fortified shoreline, and, on the southern side of the spit only, for nearshore reefs. Please explain if these shoreline protection concepts would be feasible at the site for the life of the proposed project or for future adaptation measures.
3. **Public Access.** We appreciate the discussions we were able to have at the site regarding maximum feasible access associated with the project. Please explain if there are any opportunities to enhance public access at the site or in adjacent areas that will be included as part of the proposed project, such as some of the ideas for amenities and trail improvements that we discussed.
4. **Mitigation for Fill.** Thank you for discussing potential mitigation ideas on our site visit and for indicating that the mitigation to be proposed will be further informed by discussions with other agencies. We look forward to hearing your proposals and would be happy to discuss them with you before they are finalized.

Bay Plan policies on mitigation state that, "[p]rojects should be designed to avoid adverse environmental impacts to Bay natural resources such as to water surface area, volume, or circulation," and that "measures to compensate for unavoidable adverse impacts to the natural resources of the Bay should be required..." Therefore, if the project cannot avoid a

net increase in Bay fill, please consider and describe options to compensate for the proposed Bay fill, such as removal of debris or other Bay fill in order to help offset the impacts of the proposed project.

5. **Eelgrass.** Given that eelgrass is known to occur in the vicinity of the project site, please consult with the California Department of Fish and Wildlife (CDFW) and provide information on whether additional measures would be employed to avoid or minimize potential eelgrass impacts. I spoke with Arn Aarreberg of CDFW (707-576-2889; [Arn.Aarreberg@wildlife.ca.gov](mailto:Arn.Aarreberg@wildlife.ca.gov)), cc'd here, about the project and he said he would be available to consult with you regarding whether eelgrass surveys would be necessary and whether he would recommend any additional mitigation measures or best management practices besides the ones you have already proposed.

6. **Landfill Information.** Your application states that Point Emery is a landfill site regulated by the Alameda County of Environmental Health (ACDEH Facility #01-CR-0002). On our site visit, the representatives from the City of Emeryville mentioned that ACDEH was getting involved in the project. Please clarify what their involvement will entail and if they require and discretionary approvals, please provide those when they are available.

We understand that the proposed project is intended to prevent further erosion of the fill, but we would like to have a better understanding of the nature of the site to ensure we have an understanding of any potential water quality issues there. Please provide more information about this landfill site, including whether it includes toxic or hazardous substances that could become mobilized by erosion and flooding during storm events or by groundwater and negatively impact water quality, especially over the life of the project with projected sea level rise at the site. Please provide any information about whether, during a seismic event, lateral spreading or liquefaction would be anticipated at the site and whether the proposed revetment would be expected to help contain the artificial fill. ACDEH may have some of this information available.

7. **Other Governmental Approvals.** Please provide a copy of the water quality certification or waiver thereof from the San Francisco Bay Regional Water Quality Control Board when it is available. In addition, please provide all consultation documentation and/or approvals from the all state and federal wildlife agencies, if applicable, when they are available. If applicable to the proposed project, we will also need to receive project approval from the Department of Toxic Substances Control. Our regulations prohibit us from filing an application prior to receiving this documentation.
8. **Proof of Adequate Property Interest.** Thank you for providing the grant deed of the City of Emeryville parcel. It appears from the map you provided for the interested parties, that a portion of the project site may be on property owned by the East Bay Regional Parks District (EBRPD).

Please clarify if any of the proposed project would occur on property other than that owned by the City of Emeryville. If any portion of the project occurs on the parcel owned by EBRPD, they may need to sign on as a co-applicant for the project. If that is the case, please also submit documentation, such as a copy of a grant deed or lease which demonstrates that the co-applicant has adequate legal interest in the property.



9. **Processing Fee.** Your application appears to qualify for a major permit. Therefore, based on the estimated total project cost provided of \$500,000, please submit the \$1,200 application fee to enable the continued processing of the application.
10. **Public Notice.** Please post the "Notice of Application" so that it will be visible to the members of the public, complete the form that certifies that you have posted the Notice, and return the form to the Commission's office.
11. **Copies of Applications.** Since the project has been determined to qualify as a major permit, you will also need to provide us with seven (7) copies of your application, which will be distributed to the other primary federal and state regulatory agencies considering the proposed project. We recommend providing these copies once your application is filed as complete.

Until the above-mentioned information is submitted and reviewed for adequacy, your application will be held as incomplete.

**Other Issues.** In addition to the issues cited above, the following matters should be considered in submitting additional materials to us as part of the application process.

- A. **Construction Plans.** One full size set of signed and stamped project plans must be submitted before the proposed project would be able to commence construction. You can either submit these plans now as part of your application for review and approval before the permit is issued or we can include review of these plans as special condition of the permit. These plans must include, at a minimum, a vicinity map, site plan, property lines, existing and proposed structures or improvements (including elevations and sections if necessary), the shoreline (Mean High Water, in this case), any marshes, wetlands or mudflats, the corresponding 100-foot shoreline band line, scale, north arrow, date and the name of the person who prepared the plans. Additional information may be needed on the plans depending upon the scope of the proposed project. A reduced set of plans will be used as exhibits in the staff reports which will be mailed to the Commission and interested parties, so they must be clean and legible.
- B. **Construction Closures, Detours and Signage.** We plan to include a special condition that includes requirements for how construction closures, detours, signage, etc., should be handled. There will likely be a plan review condition related to that but the more information that you can provide now, the less will need to be handled by plan review. We would be happy to review any general information about the proposed publicly accessible areas proposed to be closed to public access during construction, including the locations and length of closures, and about the detours, signage, or alternative access locations, proposed to be provided during that time, and any information about how the Bay Trail, parking amenities, or pedestrian pathways, at the site would be impacted by construction activities. We may be able to provide suggestions for those plans that could make the plan review process post- permit issuance run more smoothly.
- C. **Water Access.** We appreciate the discussions we were able to have with you and Ben Botkin from the SF Bay Area Water Trail and it was good to hear his input from the boardsailing community and others about the ways the water access is typically used at the site. Please explain if you intend to consider adding moving the large piece of driftwood to the proposed



project description in order to address the boardsailing community's concerns about its impacts on water access since its arrival.

If you have any questions, please do not hesitate to contact me.

Sincerely,  
Walt

Walt Deppe  
Coastal Program Analyst  
San Francisco Bay Conservation & Development Commission  
455 Golden Gate Ave., Suite 10600  
San Francisco, CA 94102  
415.352.3622  
walt.deppe@bccdc.ca.gov

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# Project Summary

Noble Consultants, Inc.

For the period 7/1/2019 - 7/31/2019

Wednesday, July 3, 2019  
12:18:23 PM

	Total Contract	JTD Billing	JTD Balance Billing	JTD Hours	Budget Hours	Hours Billing	Budget	% Bud Exp	Balance Hours
Project Number: 9500.0000956.003 Shoreline Protection of Point Emery									
Phase Number: 1 Engineering Design									
Task Number: 1 Field Investigation									
Labor		3,866.00	2,774.00		24.00	6,640.00		58.22	9.00
Reimb. Exp.		15,952.69	32.31			15,985.00		99.80	
Total for 1	22,625.00	19,818.69	2,806.31	15.00	24.00	22,625.00		87.60	9.00
Task Number: 2 Preliminary Plan									
Labor		9,736.00	408.00	45.00	48.00	10,144.00		95.98	3.00
Total for 2	10,144.00	9,736.00	408.00	45.00	48.00	10,144.00		95.98	3.00
Task Number: 4 50% Construction Drawings									
Labor			11,164.00		58.00	11,164.00			58.00
Total for 4	11,164.00		11,164.00		58.00	11,164.00			58.00
Task Number: 5 90% Construction Drawings									
Labor			12,952.00		68.00	12,952.00			68.00
Total for 5	12,952.00		12,952.00		68.00	12,952.00			68.00
Task Number: 6 100% Construction Drawings									
Labor			7,780.00		40.00	7,780.00			40.00
Total for 6	7,780.00		7,780.00		40.00	7,780.00			40.00
Task Number: 7 Expenses									
Reimb. Exp.		33.84							
Total for 7	345.00	33.84	33.84						
Total for 1	65,010.00	29,588.53	35,076.47	60.00	238.00	64,665.00		45.76	178.00
Phase Number: 2 Regulatory Permit Processing									
Task Number: 3 City of JARPA Permits									
Labor		27,840.00	(9,100.00)	123.00	98.00	18,740.00		148.56	-25.00
Reimb. Exp.			5,940.00			5,940.00			
Total for 3	24,680.00	27,840.00	(3,160.00)	123.00	98.00	24,680.00		112.80	-25.00
Task Number: 7 Expenses									
Reimb. Exp.		55.40							
Total for 7	345.00	55.40	22.05						
Total for 2	25,025.00	27,895.40	(3,215.40)	123.00	98.00	24,680.00		113.03	-25.00
Final Totals	90,035.00	57,483.93	31,861.07	183.00	336.00	89,345.00		64.34	153.00

# NOBLE

CONSULTANTS, INC.

## SCHEDULE OF CHARGES

### Labor\* (per hour)

Senior Principal Engineer	\$310	Construction Cost Estimator	\$150
Principal Engineer	260	Senior Survey Engineer	150
Senior Associate Engineer	228	Staff Engineer III	146
Associate Engineer	212	Staff Engineer II	142
Associate Economist	212	Staff Engineer I	127
Senior Structural Engineer II	198	Surveyor II	122
Senior Structural Engineer I	184	Surveyor I	108
Senior Engineer II	198	Senior Construction Inspector	118
Senior Engineer I	184	CADD Designer/Operator	118
Structural Engineer	172	Assistant Engineer	113
Project Engineer II	162	Construction Inspector	108
Project Engineer I	150	Technician	93
Construction Manager	158	Word Processing / Clerical	84

\* Depositions, mediations, arbitrations, and court appearance labor is two times the rate shown and billed in 1/2-day increments.

### Reimbursable Expenses\*\*

#### In-house

Survey Vessel	\$300 per day	CADD Plots	\$2.00 per page
RTK-DGPS Surveying	375 per day	Imagenex Profiling Sonar	375 per day
Locus DGPS Surveying	275 per day	Imagenex Side Scan Sonar	375 per day
DGPS Navigation System	375 per day	Sparker Sub-bottom Profiler	400 per day
Gyro	25 per day	Uniboom Sub-bottom Profiler	350 per day
Motion Compensator	200 per day	3.5 Tuned Transducer System	250 per day
Precision Depth Sounder	75 per day	Marine Magnetometer	200 per day
Tide Gage	75 per day	Underwater Video System	125 per day
Theodolite/Total Station	150 per day	Truck	100 per day
Radios	15 per day	Generator	50 per day
Photocopying	0.30 per page	Inspector Boat	100 per day
Color Photocopy (8-1/2x11)	1.00 per page	Automobile	1.00 per mile
Color Photocopy (11x17)	1.25 per page		

#### Out-of-Pocket

Travel, Subconsultants, Printing, Communication, etc.

\*\* In-house at scheduled rate plus 15%. Out-of-pocket at cost plus 15%.

### Invoices

Bills are due and payable on presentation. Interest at 1.5% per month (but not exceeding the maximum rate allowable by law) is payable on any amounts not paid within 30 days.



**NOBLE**  
CONSULTANTS

Date of Estimate: 8-Jul-19

COPY		24	68
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/23/2019

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 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	CONTACT NAME: Debbie Rachal
ALEXANDER AND SANDERS INSURANCE AGENCY, INC.	PHONE (A/C, No, Ext): (225) 295-2995
4610 BLUEBONNET BLVD., SUITE A	FAX (A/C, No): (225) 368-2145
	E-MAIL ADDRESS: info@alexsand.com
	INSURER(S) AFFORDING COVERAGE
BATON ROUGE LA 70809	INSURER A: CNA-Continental Insurance Co
INSURED	INSURER B: Travelers Property Casualty Co of Amer
NOBLE CONSULTANTS-G.E.C., INC.	INSURER C: XL-XL Specialty Insurance Co
P.O. Box 84010	INSURER D:
	INSURER E:
Baton Rouge LA 70884	INSURER F:

## COVERAGES

CERTIFICATE NUMBER: 19/20 All

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	Y	6076172054	4/30/2019	4/30/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X	Y	6076172023	4/30/2019	4/30/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			6076172037	4/30/2019	4/30/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	UB6N736825	1/1/2019	1/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	PROFESSIONAL LIABILITY CLAIMS MADE FORM			DPR9941821	5/1/2019	5/1/2020	PER CLAIM \$5,000,000 AGGREGATE \$5,000,000

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

\*Certificate Holder includes the City, its officials, employees, agents and authorized volunteers. CONSULTING ENGINEER - FOR PROFESSIONAL LIABILITY COVERAGE, THE AGGREGATE LIMIT IS THE TOTAL INSURANCE AVAILABLE FOR ALL COVERED CLAIMS PRESENTED WITHIN THE POLICY PERIOD. THE LIMIT WILL BE REDUCED BY PAYMENTS OF INDEMNITY AND EXPENSE. Certificate holder is included as Additional Insured on General and Automobile Liability along with a Waiver of Subrogation as required by written contract; these insurances are primary and non-contributory as required by written contract. Waiver of subrogation included on Workers Compensation policy as required by written contract. General Liability, Automobile Liability,

## CERTIFICATE HOLDER

## CANCELLATION

City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

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

AUTHORIZED REPRESENTATIVE

Wyatt Sanders/ATURN

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## COMMENTS/REMARKS

Professional Liability and Workers Compensation policies include 30 Day Notice of Cancellation endorsements in accordance with the terms, exclusions and conditions of the policy. Professional Liability policy is subject to a \$200,000 each claim, with a retroactive date of 4/18/1988. THIS CERTIFICATE SUPERCEDES AND REPLACES ALL PREVIOUSLY ISSUED CERTIFICATES.



## Policy Holder Notice - Countrywide

It is understood and agreed that:

If the **Named Insured** has agreed under written contract to provide notice of cancellation to a party to whom the Agent of Record has issued a Certificate of Insurance, and if the Insurer cancels a policy term described on that Certificate of Insurance for any reason other than nonpayment of premium, then notice of cancellation will be provided to such Certificate holders at least 30 days in advance of the date cancellation is effective.

If notice is mailed, then proof of mailing to the last known mailing address of the Certificate holder on file with the Agent of Record will be sufficient to prove notice.

Any failure by the Insurer to notify such persons or organizations will not extend or invalidate such cancellation, or impose any liability or obligation upon the Insurer or the Agent of Record.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

40020005460761720543377





**CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

**I. LIABILITY COVERAGE**

**A. Who Is An Insured**

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
  - b. The insurance afforded by this provision A.1. does not apply to any such entity that is an insured under any other liability "policy" providing auto coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision A.2.:

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
  - (1) Bodily injury or property damage caused by an accident that occurred before you acquired or formed the organization; or
  - (2) Any such organization that is an insured under any other liability "policy" providing auto coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an insured but only with respect to their legal liability for acts or omissions of a person, who qualifies as an insured under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An employee of yours is an insured while operating an auto hired or rented under a contract or agreement in that employee's name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision A. Who Is An Insured, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

**B. Bail Bonds and Loss of Earnings**

**Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:**

1. In a.(2), the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In a.(4), the limit for the loss of earnings is changed from \$250 to \$500 a day.



**C. Fellow Employee**

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

**II. PHYSICAL DAMAGE COVERAGE**

**A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles**

The following is added to Section III, Paragraph A.3.:

With respect to any covered auto, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

**B. Transportation Expenses**

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

**C. Loss of Use Expenses**

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

**D. Hired "Autos"**

The following is added to Section III. Paragraph A.:

**5. Hired "Autos"**

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered auto you lease, hire, rent or borrow without a driver; and
- b. Any covered auto hired or rented by your employee without a driver, under a contract in that individual employee's name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one accident or loss is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered auto. No deductible applies to loss caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned autos.
- e. Such physical damage coverage for hired autos will:
  - (1) Include loss of use, provided it is the consequence of an accident for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
  - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per accident.

**E. Airbag Coverage**

The following is added to Section III, Paragraph B.3.:

The accidental discharge of an airbag shall not be considered mechanical breakdown.





**F. Electronic Equipment**

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered auto also applies to loss to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

**G. Diminution In Value**

The following is added to Section III, Paragraph B.6.:

Subject to the following, the diminution in value exclusion does not apply to:

- a. Any covered auto of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered auto of the private passenger type hired or rented by your employee without a driver for a period of 30 days or less, under a contract in that individual employee's name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a diminution in value loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for loss to a covered auto in any one accident is the lesser of:
  - (1) \$5,000; or
  - (2) 20% of the auto's actual cash value (ACV).

**III. Drive Other Car Coverage – Executive Officers**

The following is added to Sections II and III:

- 1. Any auto you don't own, hire or borrow is a covered auto for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
  - a. An auto owned by that "executive officer" or a member of that person's household; or
  - b. An auto used by that "executive officer" while working in a business of selling, servicing, repairing or parking autos.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered auto; and
  - (2) Excess over any other collectible insurance.
- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are insureds while using a covered auto described in this provision.

**IV. BUSINESS AUTO CONDITIONS**

**A. Duties In The Event Of Accident, Claim, Suit Or Loss**

The following is added to Section IV, Paragraph A.2.a.:



- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.:**

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

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

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

**C. Concealment, Misrepresentation or Fraud**

The following is added to **Section IV, Paragraph B.2.:**

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

**D. Other Insurance**

The following is added to **Section IV, Paragraph B.5.:**

Regardless of the provisions of Paragraphs 5.a. and 5.d. above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

**E. Policy Period, Coverage Territory**

**Section IV, Paragraph B. 7.(5).(a).** is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

**V. DEFINITIONS**

**Section V. paragraph C.** is deleted and replaced by the following:

**Bodily injury** means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.





**NOTICE OF CANCELLATION TO CERTIFICATEHOLDERS**

It is understood and agreed that:

If you have agreed under written contract to provide notice of cancellation to a party to whom the Agent of Record has issued a Certificate of Insurance, and if we cancel a policy term described on that Certificate of Insurance for any reason other than nonpayment of premium, then notice of cancellation will be provided to such Certificateholders at least 30 days in advance of the date cancellation is effective.

If notice is mailed, then proof of mailing to the last known mailing address of the Certificateholder on file with the Agent of Record will be sufficient to prove notice.

Any failure by us to notify such persons or organizations will not extend or invalidate such cancellation, or impose any liability or obligation upon us or the Agent of Record.

All other terms and conditions of the policy remain unchanged

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.

**Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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## Contractors' General Liability Extension Endorsement

## 1. ADDITIONAL INSURED

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

**A. Controlling Interest**

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

**B. Co-owner of Insured Premises**

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

**C. Lessor of Equipment**

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

**D. Lessor of Land**

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

**E. Lessor of Premises**

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

**F. Mortgagee, Assignee or Receiver**

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

**G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits**

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
  - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
  - b. the construction, erection, or removal of elevators; or
  - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

**H. Trade Show Event Lessor**

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:



**Contractors' General Liability Extension Endorsement**

- a. the **Named Insured's** acts or omissions; or
  - b. the acts or omissions of those acting on the **Named Insured's** behalf,  
in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

**2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE**

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

**3. BODILY INJURY – EXPANDED DEFINITION**

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

**Bodily injury** means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

**4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE**

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

**A. BROAD KNOWLEDGE OF OCCURRENCE**

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

**B. NOTICE OF OCCURRENCE**

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

**5. BROAD NAMED INSURED**

**WHO IS AN INSURED** is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
  - a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

- (a) any partnership, limited liability company or joint venture; or
- (b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, management control means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or
  - B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.
4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:
- a. **bodily injury** or **property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
  - b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.
5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

**6. BROADENED LIABILITY COVERAGE FOR DAMAGE TO YOUR PRODUCT AND YOUR WORK**

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusions k. and l. and replace them with the following:

This insurance does not apply to:

**k. Damage to Your Product**

**Property damage to your product** arising out of it, or any part of it except when caused by or resulting from:

- (1) fire;
- (2) smoke;
- (3) collapse; or
- (4) explosion.

**l. Damage to Your Work**

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

This exclusion does not apply:

- (1) If the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor; or





**Contractors' General Liability Extension Endorsement**

(2) If the cause of loss to the damaged work arises as a result of:

- (a) fire;
- (b) smoke;
- (c) collapse; or
- (d) explosion.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for the sum of **damages** arising out of any one **occurrence** because of **property damage to your product** and **your work** that is caused by fire, smoke, collapse or explosion and is included within the **product-completed operations hazard**. This sublimit does not apply to **property damage to your work** if the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor.

C. This **Broadened Liability Coverage For Damage To Your Product And Your Work** Provision does not apply if an endorsement of the same name is attached to this policy.

## 7. CONTRACTUAL LIABILITY – RAILROADS

With respect to operations performed within 50 feet of railroad property, the definition of **insured contract** is replaced by the following:

**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 to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner is not an **insured contract**;
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to the **Named Insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

(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.

## 8. ELECTRONIC DATA LIABILITY

**Contractors' General Liability Extension Endorsement**

- A. Under **COVERAGES**, Coverage A – Bodily Injury and Property Damage Liability, the paragraph entitled **Exclusions** is amended to delete exclusion p. **Electronic Data** and replace it with the following:

This insurance does not apply to:

p. **Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data** that does not result from physical injury to tangible property.

However, unless Paragraph (1) above applies, this exclusion does not apply to **damages** because of **bodily injury**.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relation expenses or any other loss, cost or expense incurred by the **Named Insured** or others arising out of that which is described in Paragraph (1) or (2) above.

- B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for all **damages** arising out of any one **occurrence** because of **property damage** that results from physical injury to tangible property and arises out of **electronic data**.

- C. The following definition is added to **DEFINITIONS**:

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

- D. For the purpose of the coverage provided by this **ELECTRONIC DATA LIABILITY** Provision, the definition of **property damage** in **DEFINITIONS** is replaced by the following:

**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;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate **electronic data**, resulting from physical injury to tangible property. All such loss of **electronic data** shall be deemed to occur at the time of the **occurrence** that caused it.

For the purposes of this insurance, **electronic data** is not tangible property.

- E. If Electronic Data Liability is provided at a higher limit by another endorsement attached to this policy, then the \$100,000 limit provided by this **ELECTRONIC DATA LIABILITY** Provision is part of, and not in addition to, that higher limit.

9. **ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES**

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for



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claims arising solely out of their capacity or status as such and, in the case of a **spouse**, where such claim seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

**10. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE**

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

**Expected or Intended Injury**

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

**11. GENERAL AGGREGATE LIMITS OF INSURANCE - PER PROJECT**

A. For each construction project away from premises the **Named Insured** owns or rents, a separate Construction Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:

1. All **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
2. All medical expenses under **Coverage C**,

that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Construction Project General Aggregate Limit of any other construction project.

B. All:

1. **Damages** under **Coverage B**, regardless of the number of locations or construction projects involved;
2. **Damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single construction project, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
3. Medical expenses under **Coverage C** caused by accidents which cannot be attributed solely to ongoing operations at a single construction project,

will reduce the General Aggregate Limit shown in the Declarations.

C. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Construction Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular construction project.

D. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.

**Contractors' General Liability Extension Endorsement**

- E. If a single construction project away from premises owned by or rented to the **Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- F. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

**12. IN REM ACTIONS**

A quasi in rem action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were in personam against the **Named Insured**.

**13. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE**

Solely with respect to **bodily injury** that arises out of a **health care incident**:

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Insuring Agreement** is amended to replace Paragraphs 1.b.(1) and 1.b.(2) with the following:
- b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:
- (1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.
- (2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and
- B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:
- i. add the following to the **Employers Liability** exclusion:
- This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).
- ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:
- This insurance does not apply to:
- Contractual Liability**
- the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.
- iii. add the following additional exclusions:
- This insurance does not apply to:
- Discrimination**
- any actual or alleged discrimination, humiliation or harassment, including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.
- Dishonesty or Crime**
- Any actual or alleged dishonest, criminal or malicious act, error or omission.
- Medicare/Medicaid Fraud**



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any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

**Services Excluded by Endorsement**

Any **health care incident** for which coverage is excluded by endorsement.

**C. DEFINITIONS** is amended to:**i.** add the following definitions:

**Health care incident** means an act, error or omission by the **Named Insured's employees or volunteer workers** in the rendering of:

**a.** professional health care services on behalf of the **Named Insured** or

**b.** Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

**Professional health care services** means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

**a.** Physician;

**b.** Nurse;

**c.** Nurse practitioner;

**d.** Emergency medical technician;

**e.** Paramedic;

**f.** Dentist;

**g.** Physical therapist;

**h.** Psychologist;

**i.** Speech therapist;

**j.** Other allied health professional; or

**Professional health care services** does not include any services rendered in connection with human clinical trials or product testing.

**ii.** delete the definition of **occurrence** and replace it with the following:

**Occurrence** means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

**iii.** amend the definition of **Insured** to:**a.** add the following:

the **Named Insured's employees** are **Insureds** with respect to:

- (1) **bodily injury** to a co-employee while in the course of the co-employee's employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

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- (2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

the **Named Insured's** **volunteer workers** are **Insureds** with respect to:

- (1) **bodily injury** to a **co-volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

- (2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of **WHO IS AN INSURED**.

- D. The **Other Insurance** condition is amended to delete Paragraph b.(1) in its entirety and replace it with the following:

**Other Insurance**

b. **Excess Insurance**

- (1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

**14. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES**

**WHO IS AN INSURED** is amended to delete its last paragraph and replace it with the following:

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, except that if the **Named Insured** was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense first occurred after such termination date;
- the **bodily injury** or **property damage** first occurred after such termination date; and
- there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company; and

If the joint venture, partnership or limited liability company is or was insured under a **consolidated (wrap-up) insurance program**, then such insurance will always be considered valid and collectible for the purpose of paragraph c. above. But this provision will not serve to exclude **bodily injury**, **property damage** or **personal and advertising injury** that would otherwise be covered under the **Contractors General Liability Extension Endorsement** provision entitled **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS**. Please see that provision for the definition of **consolidated (wrap-up) insurance program**.

**15. LEGAL LIABILITY – DAMAGE TO PREMISES / ALIENATED PREMISES / PROPERTY IN THE NAMED INSURED'S CARE, CUSTODY OR CONTROL**

- A. Under **COVERAGES**, Coverage A – **Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion j. **Damage to Property** in its entirety and replace it with the following:

This insurance does not apply to:



**Contractors' General Liability Extension Endorsement****j. Damage to Property****Property damage to:**

- (1) Property the **Named Insured** owns, rents, or occupies, 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 the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- (3) Property loaned to the **Named Insured**;
- (4) Personal property in the care, custody or control of the **Insured**;
- (5) That particular part of real property on which the **Named Insured** or any contractors or subcontractors working directly or indirectly on the **Named Insured's** 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 rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** 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 **LIMITS OF INSURANCE**.

Paragraph (2) of this exclusion does not apply if the premises are **your work**.

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

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

Paragraphs (3) and (4) of this exclusion do not apply to **property damage** to:

- i. tools, or equipment the **Named Insured** borrows from others, nor
- ii. other personal property of others in the **Named Insured's** care, custody or control while being used in the **Named Insured's** operations away from any **Named Insured's** premises.

However, the coverage granted by this exception to Paragraphs (3) and (4) does not apply to:

- a. property at a job site awaiting or during such property's installation, fabrication, or erection;
- b. property that is **mobile equipment** leased by an **Insured**;
- c. property that is an **auto**, aircraft or watercraft;
- d. property in transit; or
- e. any portion of **property damage** for which the **Insured** has available other valid and collectible insurance, or would have such insurance but for exhaustion of its limits, or but for application of one of its exclusions.

A separate limit of insurance and deductible apply to such property of others. See **LIMITS OF INSURANCE** as amended below.

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- B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions c. through n. do not apply to damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **LIMITS OF INSURANCE**.

- C. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$25,000 is the most the Insurer will pay under **Coverage A** for damages arising out of any one **occurrence** because of the sum of all **property damage** to borrowed tools or equipment, and to other personal property of others in the **Named Insured's** care, custody or control, while being used in the **Named Insured's** operations away from any **Named Insured's** premises. The Insurer's obligation to pay such **property damage** does not apply until the amount of such **property damage** exceeds \$1,000. The Insurer has the right but not the duty to pay any portion of this \$1,000 in order to effect settlement. If the Insurer exercises that right, the **Named Insured** will promptly reimburse the Insurer for any such amount.

- D. Paragraph 6., Damage To Premises Rented To You Limit, of **LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to Paragraph 5. above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **Coverage A** for damages because of **property damage** to any one premises while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, including contents of such premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. The Damage To Premises Rented To You Limit is the greater of:

- a. \$500,000; or
- b. The Damage To Premises Rented To You Limit shown in the Declarations.

- E. Paragraph 4.b.(1)(a)(ii) of the **Other Insurance** Condition is deleted and replaced by the following:

- (ii) That is property insurance for premises rented to the **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

**16. LIQUOR LIABILITY**

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Liquor Liability**.

This **LIQUOR LIABILITY** provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

**17. MEDICAL PAYMENTS**

- A. **LIMITS OF INSURANCE** is amended to delete Paragraph 7. (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph 5. above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

- (1) \$15,000 unless a different amount is shown here: \$N,NNN,NNN,NNN; or
- (2) the amount shown in the Declarations for Medical Expense Limit.



**Contractors' General Liability Extension Endorsement**

- B. Under **COVERAGES**, the **Insuring Agreement of Coverage C – Medical Payments** is amended to replace Paragraph 1.a.(3)(b) with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

**18. NON-OWNED AIRCRAFT**

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
3. the aircraft is not being used to carry persons or property for a charge.

**19. NON-OWNED WATERCRAFT**

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

- (2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

- (a) less than 75 feet long; and
- (b) not being used to carry persons or property for a charge.

**20. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION**

- A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

- B. Under **COVERAGES**, **Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

**Knowing Violation of Rights of Another**

**Personal and advertising injury** caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

- (a) the **Named Insured**; or
- (b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. add the following exclusions:

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This insurance does not apply to:

**Employment Related Discrimination**

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

**Premises Related Discrimination**

**discrimination or humiliation** arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

Provision 1. **ADDITIONAL INSURED** of this endorsement; or

attachment of an additional insured endorsement to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

**21. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY**

A. Under **COVERAGES**, Coverage B –Personal and Advertising Injury Liability, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability**.

B. Solely for the purpose of the coverage provided by this **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** provision, the following changes are made to the section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:

1. Paragraph 2.d. is replaced by the following:

d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph 2.f.(2)(b) is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

C. This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply if Coverage B –Personal and Advertising Injury Liability is excluded by another endorsement attached to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

**22. PROPERTY DAMAGE – ELEVATORS**

A. Under **COVERAGES**, Coverage A – Bodily Injury and Property Damage Liability, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs (3), (4) and (6) of the **Damage to Property** Exclusion do not apply to property damage that results from the use of elevators.



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- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

**23. SUPPLEMENTARY PAYMENTS**

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph **1.b.** is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph **1.d.** is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

**24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

**25. WAIVER OF SUBROGATION - BLANKET**

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

**26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS**

**Note:** The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor

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2. **Bodily injury or property damage** included within the **products-completed operations hazard** that arises out of those portions of the project that are not **residential structures**.

B. Condition 4. **Other Insurance** is amended to add the following subparagraph 4.b.(1)(c):

This insurance is excess over:

- (c) Any of the other insurance whether primary, excess, contingent or any other basis that is insurance available to the **Named Insured** as a result of the **Named Insured** being a participant in a **consolidated (wrap-up) insurance program**, but only as respects the **Named Insured's** involvement in that **consolidated (wrap-up) insurance program**.

C. **DEFINITIONS** is amended to add the following definitions:

**Consolidated (wrap-up) insurance program** means a construction, erection or demolition project for which the prime contractor/project manager or owner of the construction project has secured general liability insurance covering some or all of the contractors or subcontractors involved in the project, such as an Owner Controlled Insurance Program (O.C.I.P.) or Contractor Controlled Insurance Program (C.C.I.P.).

**Residential structure** means any structure where 30% or more of the square foot area is used or is intended to be used for human residency, including but not limited to:

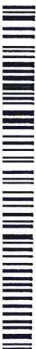
1. single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments; and
2. the common areas and structures appurtenant to the structures in paragraph 1. (including pools, hot tubs, detached garages, guest houses or any similar structures).

However, when there is no individual ownership of units, **residential structure** does not include military housing, college/university housing or dormitories, long term care facilities, hotels or motels. **Residential structure** also does not include hospitals or prisons.

This **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.







PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of this 20 day of June, 2018, by and between THE CITY OF EMERYVILLE, a municipal corporation, ("City") and NOBLE CONSULTANTS-G.E.C., INC. ("Consultant"), collectively referred to as the "Parties."

WITNESSETH THAT

WHEREAS, the City desires to repair and protect the shoreline of San Francisco Bay at Point Emery; and

WHEREAS, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Agreement; and

WHEREAS, the City has determined that the Consultant is qualified by training and experience to render such services; and

WHEREAS, the Consultant desires to provide such services; and,

WHEREAS, the public interest will be served by this Agreement; and

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES AND TERMINATION DATE

1.1 Project Description

A complete Project Description is described in Fee Proposal Letter, attached as Exhibit A.

1.2 Services

The services to be completed under this Agreement ("Services") are described in Exhibit A.

1.3 Schedule and Completion Date

The services to be provided by Consultant under this Agreement shall commence on or about June 20, 2018 and terminate on May 31, 2019.

FOR CITY USE ONLY			
Contract No.	18037-0000-PW01	CIP No.	16475021
Resolution No.	18-102	EPW No.	101-18



## 2. WORK CHANGES

### 2.1 City Rights to Change

The City reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders agreed to and executed by the Consultant and the City. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time.

### 2.2 Additional Work Changes

Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order duly executed on behalf of the City and the Consultant.

### 2.3 City Manager Execution

The City Manager has authority to execute without further action of the Emeryville City Council, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section 3.2 below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$90,035.00 must be approved by resolution of the Emeryville City Council.

## 3. COMPENSATION AND METHOD OF PAYMENT

### 3.1 Compensation for Services Performed

City agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the City that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the City of invoices setting forth in detail the services performed and costs incurred. The City shall pay the Consultant within forty-five (45) days after approval of the invoice by City staff.

### 3.2 Total Compensation Amount

The total amount paid under this Agreement as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **NINETY THOUSAND AND THIRTY FIVE DOLLARS AND NO CENTS (\$90,035.00)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be computed based upon the estimate of hours and the hourly rates as set forth in Exhibit B. Reimbursement for costs incurred shall be limited as follows. Long distance



telephone and telecommunications, facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 15% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

#### **4. COVENANTS OF CONSULTANT**

##### **4.1 Assignment of Agreement**

The Consultant covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the City. As to any approved subcontractors, the Consultant shall be solely responsible for reimbursing them and the City shall have no obligation to them.

##### **4.2 Responsibility of Consultant and Indemnification of City**

It is the intent of the parties that the language of this Paragraph complies fully with the requirements of section 2782.8 of the California Civil Code. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Consultant or subconsultants as well as any claim by any employee, agent, Consultant or independent contractor hired or employed by Consultant that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and the costs of investigation, to the extent arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them or anyone that they control, whether or not there is alleged to be concurrent negligence on the part of the City, but, to the extent required by law, excluding liability caused by the conduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

##### **4.3 Independent Contractor**

The Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the services as an independent contractor and not as the agent or employee of the City. The Consultant agrees to be solely responsible for its own matters relating to the time and place the services are performed; the



instrumentalities, tools, supplies and/or materials necessary to complete the services; hiring of consultants, agents or employees to complete the services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

#### 4.4 Insurance

##### 4.4.1 REQUIREMENTS

The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. If requested, Consultant shall provide the City with copies of all insurance policies. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.

##### 4.4.2 MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

- A. Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and, if required by City, products and completed operations coverage for the term of the policy.
- B. Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000).
- C. Professional Liability of One Million Dollars (\$1,000,000) providing coverage on a claims made basis for errors, omissions or malpractice. Professional liability insurance must be continued for at least 5 years after termination or final payment under the Agreement, whichever is later.

- D. Workers' Compensation limits as required by the laws of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

No Workers' Compensation insurance shall be required if Consultant completes the following certification:

I certify that my business has no employees and that I do not employ anyone. I am exempt from the legal requirement to provide Workers' Compensation Insurance.

\_\_\_\_\_ (Consultant's Initials)

#### 4.4.3 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.

#### 4.4.4 OTHER INSURANCE PROVISIONS

The policy is to contain, or be endorsed to contain, the following provisions:

##### A. General Liability and Automobile Liability Coverage

1. Consultant shall name the City of Emeryville, its officials, employees, agents and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Consultant submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG 20 10 11 85 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance) or equivalent as determined by the City (. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers, except where limited by State laws.

When a certificate says, "certificate issued to" this does not mean the same as additional insured and is not acceptable.

2. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.



4. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
6. The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
7. All endorsements to policies shall be executed by an authorized representative of the insurer.

B. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

C. All Coverages

Each insurance policy required by this clause shall be endorsed to state that City will be provided thirty (30) days written notice of cancellation and Consultant shall inform the City within ten calendar days of any material change in the policy language or terms.

4.4.5 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A:VII.

4.4.6 VERIFICATION OF COVERAGE

Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this Agreement prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

#### 4.4.7 SUBCONTRACTORS

Consultant shall either include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor demonstrating that subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage required by this Agreement, including but not limited to naming the City, its officials, employees, agents and volunteers as additional insureds.

#### 4.4.8 CLAIMS-MADE POLICIES

Consultant shall extend any claims-made insurance policy for at least 5 years after termination or final payment under the Agreement, whichever is later.

### 4.5 Records, Reports and Audits

#### 4.5.1 RECORDS

- A. Records shall be established and maintained by the Consultant in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

#### 4.5.2 REPORTS AND INFORMATION

Upon request, the Consultant shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by the City.

#### 4.5.3 AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement. The Consultant will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.



#### **4.6 Conflicts of Interest**

The Consultant covenants and declares that, other than this Agreement, it has no holdings or interests within the City of Emeryville, nor business holdings or agreements with any official, employee or other representative of the City. For the duration of this Agreement, in the event the Consultant or its principals, agents or employees acquire such a holding, interest or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Consultant will immediately notify the City of such holding, interest or agreement in writing.

#### **4.7 Confidentiality**

The Consultant agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

#### **4.8 Discrimination Prohibited**

The Consultant covenants and agrees that in performing the services required under this Agreement, the Consultant shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability.

#### **4.9 Licenses, Certifications and Permits**

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

#### **4.10 Key Personnel**

Ron Noble as Principal and Rachel Kamman as Project Manager are necessary for the successful prosecution of the work due to their unique expertise and depth and breadth of experience. There shall be no change in Consultant's Project Manager or members of the project team. Consultant recognizes that the composition of this team was instrumental in the City's decision to award the work to Consultant and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Consultant's obligations under this Agreement and shall be grounds for termination.



#### 4.11 Authority to Contract

The Consultant covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement, if applicable.

#### 4.12 Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the services to be performed by the Consultant ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Consultant or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Consultant assumes all risk of loss, damage or destruction of or to such Materials prior to delivery to the City. If any Materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

#### 4.13 Living Wage

If this Agreement provides for compensation to Consultant of \$25,000 or more within a single fiscal year for providing services to the City, then Consultant shall comply with the requirements of the City's Living Wage Ordinance set forth in Chapter 31 of Title 5 of the Emeryville Municipal Code, unless (i) Consultant is a governmental entity, (ii) this Agreement is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Agreement is subject to federal or state laws or regulations that would preclude the application of the City's laws.

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Agreement for all employees of Consultant who perform at least twenty-five percent (25%) of the work arising from this Agreement, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to Section 5-31.08. Consultant shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Consultant for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Agreement and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.



Consultant shall notify each of its affected employees regarding wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$15.26 per hour (as of July 1, 2017, subject to increase annually on July 1st to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

#### **4.14 Prevailing Wages**

To the extent the services to be provided by Consultant pursuant to this Agreement constitutes "public work" as defined in Labor Code Section 1720, Consultant shall pay and shall ensure that all subconsultants or subcontractors pay all persons providing labor to perform the work under this Agreement applicable prevailing wage rates for the work to be performed as determined in the General Prevailing Wage Determination ("Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code sections 1770, 1773, et. seq., and otherwise comply with all provisions of this Section IV.N. A copy of the applicable Wage Determination is on file in the offices of the City.

Consultant is required to comply with the following provisions and to ensure that all subcontracts include the following provisions. If, for some reason, these provisions are not included in subcontracts, they shall nevertheless apply:

##### **4.14.1 HOURS OF LABOR**

Eight hours' labor constitutes a legal day's work. Consultant shall forfeit, as penalty, Twenty-Five Dollars (\$25) for each worker employed in the performance of the Agreement by Consultant or by any subconsultant under him for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) calendar week in violation of the provisions of the California Labor Code and in particular sections 1810 to 1815 thereof, inclusive, except that work performed by employees of Consultant in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted under compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay, as provided in said section 1815.

##### **4.14.2 LABOR NON-DISCRIMINATION**

Consultant shall not discriminate against any employee who is employed on the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, gender identity, or age of such persons, except as provided in section 12940 of the Government Code.



#### 4.14.3 PREVAILING WAGES

Consultant shall comply with California Labor Code sections 1770 to 1780, inclusive. In accordance with section 1775, Consultant shall forfeit as a penalty an amount determined by the Labor Commissioner, not to exceed Fifty Dollars (\$50), for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Agreement by him or by any subconsultant under him in violation of the provisions of the Labor Code, and in particular, Labor Code sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Consultant.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations and can be obtained online at [www.dir.ca.gov](http://www.dir.ca.gov). It is mandatory for Consultant and any subcontractor to pay not less than the specified rates to laborers and workers employed by them in the execution of this Agreement.

Consultant shall comply with the provisions enacted by AB 854 that require Consultant and any subcontractor be registered with the State Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. Consultant shall post job site notices, pursuant to Title 8 California Code of Regulations Section 16451.

Consultant shall make travel and subsistence payments to each worker needed to execute the work in accordance with the requirements of section 1773.8.

#### 4.14.4 PAYROLL RECORDS

Consultant shall be responsible for the compliance with Labor Code section 1776 by his subconsultants.

- A. Each Consultant and subconsultant shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.



- B. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:
1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
  2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
  3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Consultant, subconsultant and the entity through which the request was made. The public shall not be given access to such records at the principal office of Consultant.
- C. The certified payroll records shall be on forms provided by the division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- D. Each Consultant shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant shall not be marked or obliterated.



- F. In the event of noncompliance with the requirement of this section, Consultant shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with this section. Should noncompliance still be evident after such ten (10) day period, Consultant shall, as a penalty to the State or City, forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

The penalties specified in subdivision (g) of Labor Code section 1776 for noncompliance with the provisions of said section 1776 may be deducted from any monies due or which may become due to Consultant.

Consultant and each subconsultant shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.

#### 4.14.5 APPRENTICES

Consultant shall fully comply with the requirements of sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with section 1777.5, Consultant shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. Consultant shall require each subconsultant who will perform work or labor or render service to Consultant in or about the construction of the work to comply fully with sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

#### 4.14.6 WORKERS' COMPENSATION

Pursuant to the requirements of section 1860 of the California Labor Code, Consultant will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Agreement, Consultant certifies the following:

"I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

#### 4.14.7 EVENT OF DEFAULT

Failure by Consultant to comply with any provision of this Section shall constitute a default of this Agreement and shall be grounds for termination as provided in this Agreement.



**5. TERMINATION**

- A. The City shall have the right to terminate this Agreement for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Consultant shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Consultant in performing this Agreement, whether completed or in process, in the form specified by the City.
- E. The rights and remedies of the City and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

**6. NO PERSONAL LIABILITY**

No member, official or employee of the City shall be personally liable to the Consultant or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Consultant or successor or on any obligation under the terms of this Agreement.

**7. ENTIRE AGREEMENT**

This Agreement constitutes the complete agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both parties with appropriate authorization.

**8. SUCCESSORS AND ASSIGNS**

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

**9. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Agreement shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

**10. SEVERABILITY**

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect to the extent possible.

**11. BUSINESS LICENSE**

Prior to commencement of the services to be provided hereunder, Consultant shall apply to the City of Emeryville Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

**12. NOTICES**

**12.1 Communications Relating to Daily Activities**

All communications relating to the day-to-day activities of the work shall be exchanged between Michael Roberts for the City and Ronald Noble for the Consultant.



## 12.2 Official Notices

All other notices, writings or correspondence as required by this Agreement shall be directed to the City and the Consultant, respectively, as follows:

### CITY

Michael Roberts  
1333 Park Avenue  
Emeryville, California 94608  
Phone No.: (510) 596-4333  
Fax No.: (510) 596-4389  
E-Mail: mroberts@emeryville.org

### CONSULTANT


Ronald Noble  
201 Alameda Del Prado, Suite 301  
Novato, CA 94949  
Phone No.: (415) 884-0727  
Fax No.: (415) 884-0735  
E-Mail: moble@nobleconsultants.com

## 13. WAIVER OF AGREEMENT

The City's failure to enforce any provision of this Agreement or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.


**IN WITNESS WHEREOF** the City and the Consultant have executed this Agreement, which shall become effective as of the date the City Manager executes this Agreement on behalf of the City.

Approved As To Form:

  
\_\_\_\_\_  
Michael A. Guina, City Attorney

Dated: 9/4, 2018

CITY OF EMERYVILLE

  
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Carolyn Leff, City Manager  
*Lisa Lopez, Acting*  
CONSULTANT

Dated: 6/04, 2018

BY: 

ITS: President



March 12, 2018

Mr. Michael Roberts, P.E.  
Senior Civil Engineer  
Public Works Department  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

Re: Revised Fee Proposal  
Engineering Design and Permitting Services  
For Shoreline Protection of Point Emery  
Emeryville, CA

Dear Mike:

This revised fee proposal is in response to our telephone conversation of March 9, 2018, your email of October 12, 2017, and subsequent correspondence to provide engineering design and regulatory permitting services for providing shoreline protection to Point Emery. The figure below, that you provided in your email of Oct. 12<sup>th</sup>, shows the intended scope of protection for Point Emery.





### Scope of Services

Our proposed scope of services consists of the following:

#### Task 1: Field Investigation

**Topographic Survey:** Towill, Inc. will perform a topographic survey to support our shoreline design work. This survey will cover both sides of Point Emery extending down to the -5.0 feet MLLW level. The landside topographic survey will be performed during low tide conditions, while the waterside will be performed during high tide conditions by use of a small aluminum vessel to perform a hydrographic survey down to -5.0 feet MLLW. Topographic data collected will be used to develop mapping at 1"=20' scale with a 1.0 feet contour interval. The survey will be performed using NAD83 horizontal datum and NAVD88 vertical datum with the NAVD88 elevation of MLLW determined. Deliverables will consist of a survey report listing primary control monuments with coordinates and elevations. An AutoCAD DWG file containing the merged topographic survey for use at 1"=20' scale will also be provided.

**Geotechnical Investigation:** Miller Pacific Engineering Group will perform the geotechnical investigation consisting of the following:

1. Site reconnaissance, pre-mark site for utility location (USA).
2. Hand auger two test borings, 5 to 10 feet deep, sample soil.
3. Perform laboratory testing of soils.
4. Perform engineering evaluation of data, and prepare geotechnical report with recommendations for shoreline protection along with boring logs and figures.

**Shoreline Investigation:** After completion of the topographic survey, Noble Consultants will perform a site field reconnaissance to inspect the existing shoreline and any existing shoreline protection in order to identify and record existing site conditions and assess the extent of required new shoreline protection.

#### Task 2: Preliminary Shoreline Protection Plan

Using the results of our topographic survey, and geotechnical and shoreline investigations, we will prepare a preliminary plan of the proposed shoreline protection improvements consisting of a plan view with typical elevation cross-sections. This will consist of two AutoCAD drawing sheets; one

for the plan view and one for the typical cross-sections. After submittal to the City for your review, we will meet with you in Emeryville to discuss any review comments.

### Task 3: Regulatory Permitting

It is expected that this shoreline protection project will require processing and obtaining permits from the following regulatory agencies:

1. City Planning Commission and/or the Emeryville/Oakland Joint Planning Authority (E/OJPA). Since Emeryville is the lead agency regarding CEQA it is expected that the permit processing will be through the City's Planning Department. Our proposal is based on the City finding this project categorically exempt, otherwise additional work could be required including an Initial Study commissioned by the City as the lead agency.
2. San Francisco Bay Conservation and Development Commission (BCDC).
3. U.S. Army Corps of Engineers.
4. San Francisco Bay Regional Water Quality Control Board (RWQCB).
5. Possibly the California Department of Fish and Game (DFG).

Our regulatory permitting work will consist of the following tasks:

1. Using the findings and results of the above Tasks 1 and 2, we will prepare a detailed project description of the proposed shoreline protection including proposed construction materials, construction equipment & methodology, construction staging area, construction schedule, other alternative shoreline protection schemes considered including plus and negative impacts compared to the selected protection plan, and drawings showing the protection plan.
2. Padre Associates, Inc. will prepare a biological characterization and assessment of the Point Emery shoreline protection project. Their work will consist of performing a literature review to determine special-status plant and animal species that could occur within the project site; performing biological field surveys to evaluate biological resources; and prepare a biological technical report for our use in applying for regulatory permit approval.
3. Meet with the City Planning Department to discuss the proposed shoreline protection project and to review their permit application requirements for this project.
4. Prepare and submit the required City permit applications.
5. Prepare the regulatory permit applications for the BCDC (San Francisco Bay Conservation Development Commission), the RWQCB (California Regional Water Quality Control Board), the COE (U.S. Army Corps of Engineers), and if necessary the California



Department of Fish and Game (DFG). These 4 permits can be prepared on a JARPA (San Francisco Bay Area Joint Aquatic Resource Permit Application) permit form.

6. Respond to any and all regulatory permitting agencies' questions for more information.

#### Task 4: Fifty Percent Construction Drawings

We will prepare a fifty percent set of construction drawings with plan view, elevation cross-sections, and any necessary details of the approved preliminary plan for shoreline improvements to the Point Emery shoreline. This will also include sufficient technical notes and conditions on the drawing set. Any regulatory permitting requirements will be incorporated in either our fifty percent drawings or ninety percent drawings as they become available. We will also provide our engineer's opinion of estimated construction cost at the fifty percent submittal. After submittal to the City for your review, we will meet with you in Emeryville to discuss any review comments.

#### Task 5: Ninety Percent Construction Drawings to include full PS&E

We will prepare a ninety percent set of construction drawings with plan view, elevation cross-sections, and any necessary details of the approved fifty percent construction drawings for shoreline improvements to the Point Emery shoreline. This will also include all sufficient technical notes and conditions on the drawing set, and will include the construction contract documents with the technical specification sections for construction bidding. We assume that the City will provide us with a Word version of your standard construction documents for our edits and additions as necessary. We will provide our updated engineer's opinion of estimated construction cost at the ninety percent submittal.

#### Task 6: One-Hundred Percent Construction Drawings to include full PS&E

We will prepare a one-hundred percent (final) set of construction drawings with plan view, elevation cross-sections, and any necessary details of the approved ninety percent construction drawings for shoreline improvements to the Point Emery shoreline. This will also include all sufficient technical notes and conditions on the drawing set, and will include the construction contract documents with the technical specification sections for construction bidding. We will provide our updated engineer's opinion of estimated construction cost at the one-hundred percent submittal.

**Note:** Our above scope of work does not include any regulatory agency permitting fees that would be paid directly by the City. It also includes only a reasonable minimum estimated effort for

responding to regulatory agency follow-up questions regarding the submitted permit applications. This estimate could vary depending on the amount of effort required to receive permit approval.

#### Schedule and Fee

We estimate that this project will take approximately 12 months to complete from the time of receiving authorization. This assumes that the regulatory agencies approvals of the proposed project are received without difficulty. We propose to perform this work on a time and expense basis in accordance with our attached Schedule of Charges. Our estimated fee is \$90,035, which we would not exceed without your prior authorization. Also attached is our fee spreadsheet showing the breakdown of our estimated fee.

\* \* \* \* \*

We appreciate the opportunity to provide our design and permitting services to the City for this Point Emery Shoreline Protection project. Please call me if you would like to discuss any aspects of our proposal.

Sincerely,

NOBLE CONSULTANTS, INC.



Ronald M. Noble, P.E., D.CE, D.PE, D.WRE  
President

RMN/rmn  
Attach.



## SCHEDULE OF CHARGES

### Labor\* (per hour)

Senior Principal Engineer	\$310	Construction Cost Estimator	\$150
Principal Engineer	260	Senior Survey Engineer	150
Senior Associate Engineer	228	Staff Engineer III	146
Associate Engineer	212	Staff Engineer II	142
Associate Economist	212	Staff Engineer I	127
Senior Structural Engineer II	198	Surveyor II	122
Senior Structural Engineer I	184	Surveyor I	108
Senior Engineer II	198	Senior Construction Inspector	118
Senior Engineer I	184	CADD Designer/Operator	118
Structural Engineer	172	Assistant Engineer	113
Project Engineer II	162	Construction Inspector	108
Project Engineer I	150	Technician	93
Construction Manager	158	Word Processing / Clerical	84

\* Depositions, mediations, arbitrations, and court appearance labor is two times the rate shown and billed in 1/2-day increments.

### Reimbursable Expenses\*\*

#### In-house

Survey Vessel	\$300 per day	CADD Plots	\$2.00 per page
RTK-DGPS Surveying	375 per day	Imagenex Profiling Sonar	375 per day
Locus DGPS Surveying	275 per day	Imagenex Side Scan Sonar	375 per day
DGPS Navigation System	375 per day	Sparker Sub-bottom Profiler	400 per day
Gyro	25 per day	Uniboom Sub-bottom Profiler	350 per day
Motion Compensator	200 per day	3.5 Tuned Transducer System	250 per day
Precision Depth Sounder	75 per day	Marine Magnetometer	200 per day
Tide Gage	75 per day	Underwater Video System	125 per day
Theodolite/Total Station	150 per day	Truck	100 per day
Radios	15 per day	Generator	50 per day
Photocopying	0.30 per page	Inspector Boat	100 per day
Color Photocopy (8-1/2x11)	1.00 per page	Automobile	1.00 per mile
Color Photocopy (11x17)	1.25 per page		

#### Out-of-Pocket

Travel, Subconsultants, Printing, Communication, etc.

\*\* In-house at scheduled rate plus 15%. Out-of-pocket at cost plus 15%.

### Invoices

Bills are due and payable on presentation. Interest at 1.5% per month (but not exceeding the maximum rate allowable by law) is payable on any amounts not paid within 30 days.

## Fee Estimate Spreadsheet

Project: Point Emery Shoreline Protection  
Client: City of Emeryville



Date of Estimate:

12-Mar-18

Personnel		SPE	PE	Assoc	MPGM	GEC	WP				Totals
NCI Labor Rate		\$310	\$260	\$212	\$146	\$150	\$84				Hours Dollars
Task 1 -	Field Investigation (Shoreline)	8	8								16 \$4,560
	Coordination with Subs		8								8 \$2,080
Task 2	Preliminary Plan	4	16		24						44 \$8,904
	Review with City	4									4 \$1,240
Task 3	Regulatory Permit Processing										
	Prepare Detailed Project Description	2	16								18 \$4,780
	Meet w/ City Planning Dept re Permit Req'ts		4								4 \$1,040
	Prepare City Permit Applications		4		20						24 \$3,960
	Prepare JARPA for BCDC, Corps, Water Board, DFG		4		40						44 \$6,880
	Coordination w/ Permit Agencies/Respond to Questions		8								8 \$2,080
Task 4	Fifty Percent Construction Drawings	2	12		28	4					46 \$8,428
	Sizing Protection-Wave Analysis			8							8 \$1,696
	Review with City		4								4 \$1,040
Task 5	Ninety Percent Construction Drawings	2	8		28	4					42 \$7,388
	Ninety Percent Full PS&E	2	8	8	8						26 \$5,564
Task 6	One-Hundred Percent Construction Drawings	1	8		12	4					25 \$4,742
	One-Hundred Percent Full PS&E	1	6		8						15 \$3,038
Sub-Totals		26	114	16	168	12					336 \$67,420
Subconsultants											
Towill, Inc.		Field Investigation-Surveying									\$9,500
Miller Pacific Engineering Group		Field Investigation-Geotechnical									\$4,400
Padre Associates		Permitting-Biological Site Assessment									\$5,165
Total Subconsultants		Handling charge @ 15%									Sub-total \$21,925
Expenses											
car											\$350
Flight											
Expenses											\$250
Reproduction											
Construction Phase Travel (Sim to breakout above)											
Total Reimbursable Expenses		Handling charge @ 15%									Sub-total \$690
Grand Total											\$90,035





### Scope and Cost Summary:

Among the additional tasks that Noble will perform are review, research, response and design changes related to BCDC, USACE and RWQCB comments and coordination with City staff on obtaining East Bay Regional Park District, Alameda County Department of Environmental Health and the California Department of Toxic Substances review and approval.

### **FISCAL IMPACT**

The First Amendment to the Noble Agreement for the amount of \$32,620 includes a \$7,500 contingency amount for unforeseeable additional work necessary to deliver the design and permitting for the project.



