CITY COUNCIL REGULAR MEETING AGENDA PACKET

CITY COUNCIL CHAMBERS, CITY HALL
7351 ROSANNA STREET, GILROY, CA 95020

MONDAY, FEBRUARY 5, 2024 | 6:00 PM

MAYOR
Marie Blankley

COUNCIL MEMBERS
Rebeca Armendariz
Dion Bracco
Tom Cline
Zach Hilton
Carol Marques
Fred Tovar

CITY COUNCIL PACKET MATERIALS ARE AVAILABLE ONLINE AT www.cityofgilroy.org
AGENDA CLOSING TIME IS 5:00 P.M. THE TUESDAY PRIOR TO THE MEETING

PUBLIC COMMENTS ON AGENDA ITEMS ARE TAKEN BEFORE THE CITY COUNCIL TAKES ACTION. Please keep your comments to 3 minutes. Time restrictions may vary based on the Mayor's discretion.

Send written comments on any agenda item to publiccomments@cityofgilroy.org or City Hall, 7351 Rosanna Street, Gilroy, CA 95020. Comments received by 1 p.m. on the meeting day will be distributed to the City Council before the meeting. Comments are also available at bit.ly/3NuS1IN.

In compliance with the Americans with Disabilities Act, the City will make reasonable arrangements to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the City Clerk's Office at least 72 hours prior to the meeting at (408) 846-0204 or cityclerk@cityofgilroy.org to help ensure that reasonable arrangements can be made.

If you dispute any planning or land use decision from this meeting in court, you may only raise issues you or someone else presented at this meeting's public hearing or in written letters to the City Council before the hearing. Be aware that the time to seek a judicial review of any final decision made at this meeting is defined by Section 1094.6 of the California Code of Civil Procedure.

During this meeting, a Closed Session may be called under Government Code Section 54956.9 (d)(2). This will happen if, in the City's legislative body's opinion (based on current facts, circumstances, and legal advice), there's a significant risk of a lawsuit against the City.

Additional materials submitted after agenda distribution are available on www.cityofgilroy.org as soon as possible.

KNOW YOUR RIGHTS UNDER THE GILROY OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, task forces, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE, TO RECEIVE A FREE COPY OF THE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION STAFF AT (408) 846-0204.

If you need translation assistance, contact the City Clerk 72 hours before the meeting at 408-846-0204 or cityclerk@cityofgilroy.org.

Si necesita un intérprete durante la junta y gustaría dar un comentario público, comuníquese con el Secretario de la Ciudad un mínimo de 72 horas antes de la junta al 408-846-0204 o envíe un correo electrónico a la Oficina del Secretario de la Ciudad a cityclerk@cityofgilroy.org.

To access written translation during the meeting, please scan the QR Code or click this link:

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The agenda for this meeting is outlined as follows:

1. OPENING

1.1. Call to Order

1.2. Pledge of Allegiance

1.3. Invocation

1.4. City Clerk's Report on Posting the Agenda

1.5. Roll Call

1.6. Orders of the Day

1.7. Employee Introductions

2. CEREMONIAL ITEMS - Proclamations and Awards

3. PRESENTATIONS TO THE COUNCIL

3.1. PUBLIC COMMENT BY MEMBERS OF THE PUBLIC ON ITEMS NOT ON THE AGENDA BUT WITHIN THE SUBJECT MATTER JURISDICTION OF THE CITY COUNCIL

This part of the meeting allows public address on non-agenda topics along with items within Council Correspondence within the Council's jurisdiction. To speak, complete a Speaker's Card from the entrances and give it to the City Clerk. Speaking time ranges from 1-3 minutes based on the Mayor's discretion. Extended discussions or actions on non-agenda items are restricted by law. For Council action, the topic may be listed on a future agenda.

Email written comments on non-agenda topics to publiccomments@cityofgilroy.org or mail them

to City Hall, 7351 Rosanna Street, Gilroy, CA 95020, by 1:00 p.m. on the meeting day. These comments, available at City Hall, will be shared with the Council and included in the meeting record. Late submissions will be shared as soon as possible. A 10-page limit applies to hard-copy materials, but electronic submissions are unlimited.

4. REPORTS OF COUNCIL MEMBERS

Council Member Bracco – Downtown Committee, Santa Clara County Library Joint Powers Authority, Santa Clara Valley Water Joint Water Resources Committee, SCRWA

Council Member Armendariz – Downtown Committee, Santa Clara County Library Joint Powers Authority *(alternate)*, Santa Clara Valley Habitat Agency Governing Board, Santa Clara Valley Habitat Agency Implementation Board, Silicon Valley Clean Energy Authority JPA Board *(alternate)*

Council Member Marques – ABAG, Downtown Committee, Gilroy Gardens Board of Directors, Santa Clara Valley Habitat Agency Governing Board, Santa Clara Valley Habitat Agency Implementation Board, SCRWA *(alternate)*

Council Member Hilton – CalTrain Policy Group *(alternate)*, Silicon Valley Clean Energy Authority JPA Board, VTA Policy Advisory Committee

Council Member Cline – Gilroy Economic Development Partnership *(alternate)*, Gilroy Gardens Board of Directors *(alternate)*, Gilroy Sister Cities Association, Gilroy Youth Task Force, Silicon Valley Regional Interoperability Authority Board, VTA Policy Advisory Committee *(alternate)*, Visit Gilroy California Welcome Center Board, VTA Mobility Partnership Committee

Council Member Tovar – Downtown Committee, Gilroy Youth Task Force *(alternate)*, Santa Clara County Expressway Plan 2040 Advisory Board, Santa Clara Valley Water Commission, SCRWA, South County Youth Task Force Policy Team

Mayor Blankley – ABAG *(alternate)*, CalTrain Policy Group, Downtown Committee, Gilroy Economic Development Partnership, Gilroy Sister Cities Association *(alternate)*, Gilroy Youth Task Force, Santa Clara Valley Water Joint Water Resources Committee, SCRWA, South County Youth Task Force Policy Team, VTA Board of Directors, VTA Mobility Partnership Committee

5. COUNCIL CORRESPONDENCE *(Informational Only)*

5.1. City Administrator Response to Request from the Local Agency Formation Commission (LAFCO) Board to Provide Implementation Plans for the 2023 Countywide Fire Service Review Recommendations

6. FUTURE COUNCIL INITIATED AGENDA ITEMS

7. CONSENT CALENDAR

Items under the Consent Calendar are deemed routine and approved with one motion. If a Council member or a member of the public wishes for a separate discussion on an item, it must be requested for removal before the Council's approval vote. If removed, the item will be discussed in its original order.

7.1. Approval of the Action Minutes of the January 22, 2024 City Council Regular Meeting

7.2. Approve the Third Amendment to the Agreement with Swimming Swan LLC to Extend the Agreement by One Year for $250,348

7.3. Tentative Map Time Extension Request No. 2, Without Any Changes to Project Approval, to Subdivide 8.36 Acres, Creating 14 Single-Family Residential Lots, Two Common Parcels, and One Public Park Parcel, Located at the Northerly End of Greenfield Drive, APN 808-20-008 (TM 16-02)

7.4. Extension and Maintenance of Existing Parklet Permits Until Adoption and Implementation of a Formal Downtown Parklet Program

7.5. Adopt a Resolution of the City Council of the City of Gilroy Authorizing Execution of Administering Agency-State Master Agreements for State and Federal-Aid Funded Projects

7.6. Resolution of the City Council of the City of Gilroy Declaring Weeds a Nuisance

8. BIDS AND PROPOSALS

8.1. Award a Contract to ASG Builders for the FY24 Annual CDBG Sidewalk/Curb Ramp Project No. 24-PW-285 in the amount of $97,290, Approve a Project Contingency of $19,458, and Approve a Total Project Expenditure of $116,748 for Construction

1. Staff Report: Karl Bjarke, Interim Public Works Director
2. Public Comment
3. Possible Action:

   Award a contract to ASG Builders in the amount of $97,290 and approve a project contingency of $19,458 for the FY24 Annual CDBG Sidewalk/Curb Ramp Project (No. 24-PW-285) and authorize the City Administrator to execute the contract and associated documents.

8.2. Award a Contract to Hexagon Transportation Consultants, Inc. for the First Street (SR152)/Kern Avenue Traffic Signal Design Project No. 24-RFP-PW-494 in the amount of $264,685, Approve a Project Contingency of $39,703, and Approve a Total Project Expenditure of $304,388 for Design Services

1. Staff Report: Karl Bjarke, Interim Public Works Director
2. Public Comment
3. Possible Action:

   a) Adopt a resolution of the City Council of the City of Gilroy amending the Fiscal Year 2023-2024 budget and appropriating an additional $121,821 from the Traffic Impact Fund (425); and

   b) Award a contract to Hexagon Transportation Consultants, Inc. in the amount of $264,685 and approve a project contingency of $39,703 for a total project expenditure of $304,388 for the design and preparation of bid documents for the First Street (SR152)/Kern Avenue Traffic Signal Design Project No. 24-RFP-PW-494 and authorize the City Administrator to execute the contract and associated documents.

8.3. Award a Contract to HydroScience Engineers, Inc. for the Design of Water Utility Improvements Project No. 24-RFP-PW-497 in the amount of $842,790, Approve a Project Contingency of $126,419, and Approve a Total Project Expenditure of $969,209 for Design Services

1. Staff Report: Karl Bjarke, Interim Public Works Director
2. Public Comment
3. Possible Action:

   a) Adopt a resolution of the City Council of the City of Gilroy to increase the Fiscal Year 2023-2024 (FY24) and decrease the 2024-2025 (FY25) budget by $605,038 in the Water Fund (Fund 705); and

   b) Award a contract to HydroScience Engineers, Inc. in the amount of $842,790 and approve a project contingency of $126,419 for a total project expenditure of $969,209 for the design and preparation of bid documents for Water Utility Improvements Project No. 24-RFP-PW-497 and authorize the City Administrator to execute the contract and associated documents.

8.4. Award a Contract to Villalobos & Associates for the FY24 Annual Citywide Curb Ramp Project No. 24-PW-286 in the amount of $104,130, Approve a Project Contingency of $10,413, and Approve a Total Project Expenditure of $114,543 for Construction

1. Staff Report: Karl Bjarke, Interim Public Works Director
2. Public Comment
3. Possible Action:

   Award a contract to Villalobos & Associates in the amount of $104,130, approve a project contingency of $10,413, approve a total project expenditure of $114,543 for the construction of the Fiscal Year 2024 (FY24) Annual Citywide Curb Ramp Project (No. 24-PW-286), and authorize the City Administrator to execute the contract and associated documents.

9. PUBLIC HEARINGS (NONE)

10. UNFINISHED BUSINESS (NONE)

11. INTRODUCTION OF NEW BUSINESS

11.1. Approval to Enter into an Exclusive Negotiating Agreement with BayEcotarium for Potential Uses of the (Hecker Pass) Recreation Gateway Area

1. Staff Report: Jimmy Forbis, City Administrator
2. Public Comment
3. Possible Action:

   1. Approve an Exclusive Negotiating Rights Agreement between the City of Gilroy and Bay.org (BayEcotarium) and authorize the City Administrator to execute all related documents; and

   2. Create an Ad Hoc Committee consisting of three Gilroy City Council members, and the City Administrator to serve as negotiators.

12. CITY ADMINISTRATOR'S REPORTS

13. CITY ATTORNEY'S REPORTS

14. CLOSED SESSION

14.1. CONFERENCE WITH LABOR NEGOTIATORS – COLLECTIVE BARGAINING UNIT Pursuant to GC Section 54957.6 and GCC Section 17A.11 (4);
Collective Bargaining Units: Local 2805, IAFF Fire Unit Representing Gilroy Fire Fighters
City Negotiators: Jimmy Forbis, City Administrator, LeeAnn McPhillips, HR Director
Anticipated Issues(s) Under Negotiation: Wages, Hours, Benefits, Working Conditions; Memorandums of Understanding: City of Gilroy and Gilroy Fire Fighters Local 2805.

14.2. CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to GC Sec. 54956.8 and GCC Sec. 17A.8(a)(2);
Properties: 10th Street Bridge: APNs 808-19-007, 799-30-006, 799-30-007, 808-19-020, 808-50-999, Thomas Luchessa Bridge: APNs 808-21-025, 808-21-023, 808-21-021, 808-21-018, New Fire Station: APNs 808-18-003, 808-19-029
Negotiators: Jimmy Forbis, City Administrator; Other Party to Negotiations: Glen Loma Corporation, John M. Filice, Jr.;
Negotiating Price and terms of payment regarding purchase, sale.

15. ADJOURN TO OPEN SESSION

Report of any action taken in Closed Session and vote or abstention of each Council Member if required by Government Code Section 54957.1 and GCC Section 17A.13 (a); Public Report of the vote to continue in closed session if required under GCC Section 17A.11 (e).

16. ADJOURNMENT

FUTURE MEETING DATES

February 2024
26 Regular Meeting - 6:00 p.m

March 2024
4 Regular Meeting - 6:00 p.m
18 Regular Meeting - 6:00 p.m

April 2024
8 Regular Meeting - 6:00 p.m
15 Regular Meeting - 6:00 p.m

Meetings are live streamed on the City of Gilroy's website at gilroy.city/meetings and on YouTube at https://bit.ly/45jor03.

Access the 2024 City Council Meeting Calendar at https://bit.ly/3LLzY1n.

5.1. City Administrator Response to Request from the Local Agency Formation Commission (LAFCO) Board to Provide Implementation Plans for the 2023 Countywide Fire Service Review Recommendations

Administration Department

7351 Rosanna Street, Gilroy, California 95020-6197
Telephone: (408) 846-0202
http://www.cityofgilroy.org

Jimmy Forbis
City Administrator

January 31, 2024

Neelima Palacherla, Executive Officer
Santa Clara Local Agency Formation Commission
777 North First Street, Suite 410
San Jose, CA 95112

RE: LAFCO Board Request for Written Responses to 2023 Fire Service Review Recommendations

Ms. Palacherla,

The City Administration appreciates LAFCO's work on the 2023 Fire Service Review. There is valuable information in the study; however, the recommendations staff received were based on the opinions and findings of the consultant hired by LAFCO. The City of Gilroy submitted many comments on the findings and recommendations, some of which the study addressed and others that it did not.

That being said, financial and policy responsibility for fire service in Gilroy lies solely under the jurisdiction of the Gilroy City Council.

The LAFCO Board requested responses to seven report recommendations that were included in Table A (attached). It was asked that the City:

1. *Provide a written response on how you plan to implement the recommendations presented in the Countywide Fire Service Review Report pertaining to your agency/organization and summarized in the attached Table A and Table B; and*
2. *Provide a timeframe for that implementation; or*
3. *Provide an explanation if your agency/organization does not plan to implement a recommendation.*

The City Administration's responses to all recommendations are the same – they depend on policy and funding direction that the Gilroy City Council determines. In the end, City Council direction is achieved through ongoing budget and policy discussions concerning any service in and for the City of Gilroy.

Please contact me with any questions at jimmy.forbis@cityofgilroy.org or (408) 846-0250.

Sincerely,



Jimmy Forbis
City Administrator

Cc: Gilroy City Council
Harjot Sangha, Gilroy Finance Director

Jimmy Forbis

From: Noel, Dunia <Dunia.Noel@ceo.sccgov.org>
Sent: Tuesday, December 19, 2023 5:09 PM
Cc: LAFCO
Subject: EXTERNAL - Implementation of Recommendations from LAFCO's Countywide Fire Service Review
Attachments: Table A.pdf; Table B & Corresponding Maps.pdf

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Fire Chiefs, City Managers, County Executive, and Other Affected Service Providers:

As you know, LAFCO recently adopted its Countywide Fire Service Review which includes recommendations for fire and emergency medical response service providers to consider and potentially implement.

LAFCO is requesting that each of the identified agencies / organizations:

1. Provide a written response on how you plan to implement the recommendations presented in the Countywide Fire Service Review Report pertaining to your agency/organization and summarized in the attached Table A and Table B; and
2. Provide a timeframe for that implementation; or
3. Provide an explanation if your agency/organization does not plan to implement a recommendation.

Please provide your response to lafco@ceo.sccgov.org as soon as possible and no later than February 16, 2024. Your response will be provided to the Commission for their consideration at a future LAFCO meeting.

For your convenience we have prepared the following summary to help you quickly identify the recommendations (by number) that pertain to each agency. Please see the attached Tables A & B for the detailed recommendations.

AGENCIES/ORGANIZATIONS	REPORT RECOMMENDATIONS # IN:	
Cities	**Table A**	**Table B**
City of Campbell	2D, 3, 8, 8F, 12	
City of Cupertino	12	
City of Gilroy	2, 2C, 8, 8A, 20, 30, 30A	
City of Los Altos	8, 8J, 12	
Town of Los Altos Hills	12	
Town of Los Gatos	8, 8J, 12	
City of Milpitas	1, 8, 8C	1
City of Monte Sereno	12,	
City of Morgan Hill	1, 4, 8, 8C, 12, 20, 30, 30B	
City of Mountain View	8, 8D, 31	
City of Palo Alto	2, 2B, 8, 8E, 31	24, 25
City of San Jose	1, 2, 2A, 8, 8F, 20	2, 3, 4, 5, 13, 14, 15, 16, 17, 18
City of Santa Clara	8, 8G, 31	

City of Saratoga	12	
City of Sunnyvale	1, 8, 8H, 20, 31	
Fire Districts		
Los Altos Hills County Fire District (LAHCFD)	1, 8, 8I, 12	20, 21, 22, 23
Saratoga Fire Protection District (SFD)	1, 12, 29	
Santa Clara County Central Fire Protection District (CCFD)	1, 2, 2D, 3, 8, 8J, 13, 20, 29, 31	1, 2, 3, 4, 5, 13
South Santa Clara County Fire Protection District (SCFD)	1, 5, 8, 8K, 12, 20, 30, 30C	5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18
Other Providers		
County of Santa Clara (County Executive's Office or other dept.)	5, 28, 32	6, 7, 15, 16, 20, 21
County Office of Emergency Management (OEM)	15, 16, 17, 18	
CAL FIRE	30, 32	5, 9, 19
Silicon Valley Regional Interoperability Authority (SVRIA)	19, 22	
Santa Clara County Fire Chiefs Association	6, 7, 9, 10, 11, 13, 14, 21	
Santa Clara County Fire Safe Council	23, 24, 25, 26, 27	
Midpeninsula Regional Open Space District (MROSD)		17, 18, 19, 20, 21

If you have any questions, please reach out to Dunia Noel at dunia.noel@ceo.sccgov.org.

Lastly, thank you for participating in LAFCO's Countywide Fire Service Review and for your consideration and timely response to this request.

Sincerely,

Neelima Palacherla, Executive Officer

If you have an inquiry, we encourage you to contact us by email at LAFCO@ceo.sccgov.org.

Dunia Noel
Assistant Executive Officer, Santa Clara LAFCO
777 North First Street, Suite 410, San Jose, CA 95112
(408) 993-4704 | Twitter: @SantaClaraLAFCO | www.SantaClaraLAFCO.org

SANTA CLARA LAFCO

60th ANNIVERSARY 1963-2023

TABLE A: COUNTYWIDE FIRE SERVICE REVIEW REPORT RECOMMENDATIONS & POTENTIAL IMPLEMENTORS			
#	Recommendations	Page # in Report	Potential Implemmentors
	FIRE AND EMERGENCY SERVICES OVERVIEW RECOMMENDATIONS		
1	**Emergency Response Performance Standard :** Gilroy, Mountain View, Palo Alto, Santa Clara, and San Jose have adopted performance standards (goals) through their elected officials. Sunnyvale and CCFD (including SFD and LAHCFD) have published response time goal, however, their elected officials have not adopted the standard. Morgan Hill, Milpitas and SCFD have not adopted a response time standard. Organizations should adopt a performance goal and present those to the elected officials for adoption. The organizations should consider a baseline standard that defines the expectation of service for the community.	Pages xiii, 25	Sunnyvale, CCFD (including SFD and LAHCFD), Morgan Hill, Milpitas and SCFD
2	**Unit Utilization Hours:** San Jose, Palo Alto, Gilroy, and CCFD all have units with UHUs of over 10%. These agencies should add additional resources to effectively manage the call volume and improve response time performance.	Pages xiii, 25	San Jose, Palo Alto, Gilroy, and CCFD
2A	**San Jose Units:** 28 engines and medical units exceeding 10% UHU, of which four exceed 20% UHU. Specifically: E01 (17.4%), E02 & E302 (17.9%), E03 (19%), E04 (15.2%), E05 (14.8%), E06 (11.4%), E07 (13.3%), E08 (16.2%), E10 (13.5%), E12 (10.2%), E13 (13.4%), E14 (12.2%), E16 (15.1%), E17 & WT17 (13.1%), E18 & WT18 (20.6%), E19 & E619 (26.5%), E21 & WT21 (19.4%), E23 (10.9%), E24 & E624 (23.1%), E26 & RM26 (28.3%), E27 & E627 (19.8%), E30 (14.1%), RM30 (10.4%), E31 & E631 (14.3%), E34 (15.0%), USAR34 (14.2%), E335 & E35 (12.5%).	Pages 302 - 303	San Jose
2B	**Palo Alto Units:** E61 (10.7%), M61 (22.3%), M62 (18.5%), and M64 (19.1%).	Page 261	Palo Alto
2C	**Gilroy Units:** The Chestnut Station has two units cross-staffed with three personnel assigned to the station, and the crew has an UHU of 10.9%. The Station 47/Chestnut Station crew has an UHU of 10.9%, specifically Sta.47 Cross Staffed (2.1%) + E47 (8.8%).	Page 123	Gilroy
2D	**CCFD Unit:** E81 (10.3%). The City of Campbell needs additional resources to reduce the unit hour utilization rate for the crew at Station 81 to help meet the performance standards adopted for the community. This study did not evaluate whether the city needs an additional fire station or just an additional company at Station 81.	Page 506, 508, 534	Campbell & CCFD

#	Recommendations	Page # in Report	Potential Implemmentors
3	**Call Volume:** The City of Campbell, which contracts with CCFD, is experiencing an increase in service demand and the resources assigned are already exceeding capacity, including the automatic aid stations nearby. The call volume inside the City of Campbell accounts for approximately 20% of all CCFD emergency responses, however, the staffing level only represents 9.3% of the on duty staffing each day. CCFD staffing levels in the city are dependent on contract conditions. The City of Campbell will need additional resources to meet the performance standards adopted for the community.	Page 534	Campbell & CCFD
4	**Morgan Hill:** 3-13: The rise in expenditures is anticipated to outpace increases in General Fund revenues for Morgan Hill through FY 27, causing the city to operate at a deficit in its GF each year from FY 23 to FY 27. Additional measures will be required to increase revenues or reduce expenditures in future years. The city should review its ability to continue with the contract for services in future years and whether to prioritize fire service in its expenditures or find additional revenue to continue providing service at least at the current level.	Page 199	Morgan Hill
5	**SCFD & County of Santa Clara:** 12-14: The sustainability of funding the operations of SCFD is being challenged primarily due to the increased cost of the CAL FIRE agreement. Projections show SCFD will use up all available fund balance by early FY 25; if no further revenue sources can be identified by that time, SCFD's operations will be severely impacted and may need to be reduced or may not be able to continue.	Page 595	SCFD & Santa Clara County (County Executive's Office or other Dept.)
6	**Boundary Drop Response:** While SCFD, Morgan Hill , and Gilroy have entered into a boundary drop agreement to share resources, AP Triton recommends the fire agencies evaluate opportunities for a boundary drop response for critical incidents (where time significantly matters in the outcome) for the entire county. Note: To be more effective, this will require improved interoperability between CAD products for dispatch centers, including the existing agreement between SCFD, Morgan Hill, and Gilroy. This effort should be coordinated by the Santa Clara Fire Chiefs Association.	Pages xiii, 25	Santa Clara County Fire Chiefs Association

#	Recommendations	Page # in Report	Potential Implemmentors
7	**Station Identifiers:** All agencies have unique unit identifiers; however, only San Jose and CCFD have station numbers that match the unit assigned. Each agency should consider assigning station numbers (in addition to station names) that match the unit identifier assigned across the county to improve awareness of the home station of response units. This effort should be coordinated by the Santa Clara Fire Chiefs Association.	Pages xiii, 25	Santa Clara County Fire Chiefs Association
	FACILITY REPLACEMENT & MAINTENANCE PLANNING RECOMMENDATIONS		
8	**Facility Replacement & Maintenance Planning:** Establish a comprehensive facility replacement plan and a maintenance plan for fire stations. Please see specifics below.		Gilroy, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose, Santa Clara, Sunnyvale, and LAHCFD,
8A	**Gilroy:** With two of Gilroy Fire Department's three stations being over forty years old, there should be a facility replacement plan in place. (Chestnut - 51 years) and (Las Animas - 45 years). In reviewing the city's current capital improvement budget, there were no fire facilities identified.	Pages 128-129, 133	Gilroy
8B	**Milpitas:** With one of Milpitas' four stations over fifty years, there should be a facility replacement plan in place. (Station 3 - 54 years). The older Milpitas fire stations do not meet the requirements of modern firefighting. The City's current Capital Improvement Plan only identified project related to fire stations was a portable building replacement project at Station 1 that is housing the Office of Emergency Services.	Pages 162-163, 168	Milpitas
8C	**Morgan Hill:** The City of Morgan Hill is building a new station that is expected to open in 2024. AP Triton did not identify any other capital projects in the current budget documents. Ensuring the stations are in good repair also requires regular maintenance and scheduled replacement of specialized equipment. Plans for updating and repairing systems such as heating and air conditioning (HVAC), generators, roofs, driveways, parking areas, security gates, painting, carpet replacement, and small appliances can keep costs down and buildings in service longer. In addition, establishing a facility replacement and maintenance plan will enable the city to plan for ongoing service from each station more efficiently.	Page 195	Morgan Hill

#	Recommendations	Page # in Report	Potential Implemmentors
8D	**Mountain View:** Two (Station 3 - 61 years & Station 4 - 55 years) of five stations over 50 years old...The City of Mountain View Public Works Department is responsible for the planning and maintenance of all facilities. The Fire Chief stated that Fire Station 3 is on the schedule for a capital replacement, however per Public Works, it is an "unfunded capital replacement project."...Fire Stations and the Fire Department's Training Division/Center are critical infrastructures which should be components of capital improvement and replacement plan for the city.	Pages 230, 235	Mountain View
8E	**Palo Alto:** Five of seven station over 50 years in age and/or were identified as not meeting the needs of a modern fire station: (Station 1 - 57 years), (Station 2 - 57 years), (Station 4 - 69 years), (Station 5 - 55 years), (Station 6 - 50 years), and Station 8. The city's current five-year Capital Improvement Plan only identifies Station 4 for replacement. It was not apparent if an additional plan was in place for the other older stations. Station 6 is owned and maintained by Stanford University. Palo Alto has worked to update its facilities, including seismic protection, however, Stations 1, 2, 5, and 8 are nearing end of life and should be included in a plan for replacement.	Pages 270, 277	Palo Alto
8F	**San Jose:** With 15 of San José Fire Department's 35 stations being over fifty years old there should be a more robust facility replacement plan in place. (Station 5 - 63 years), (Station 6 - 60 years), (Station 7 - 86 years), (Station 8 - 73 years), (Station 9 - 60 years), (Station 10 - 62 years), (Station 13 - 54 years), (Station 14- 60 years), (Station 15 - 60 years), (Station 16 - 62 years), (Station 18 - 59 years), (Station 22 - 57 years), (Station 23 - 56 years), (Station 26 - 74 years), (Station 30 - 67 years). Additionally, eighteen of the fire stations have no known seismic protection. The Fire Department's current Capital Improvement Plan has identified only two remodel projects.	Pages 340, 344, 351	San Jose
8G	**Santa Clara:** With five of Santa Clara Fire Department's nine stations being over forty years old, there should be a facility replacement plan in place. (Station 1 - 57 years), (Station 5 - 61 years), (Station 7 - 51 years), (Station 8 - 47 years), (Station 9 - 40 years). The Fire Department's Capital Improvement Plan has identified a major gap in not having a funding source for major infrastructure needs for stations 1, 5, 7, and 9.	Pages 384-385, 389	Santa Clara

#	Recommendations	Page # in Report	Potential Implemmentors
8H	**Sunnyvale:** With five of Sunnyvale's six stations being over fifty years old, there should be a facility replacement plan in place. (Station 1 - 62 years), (Station 2 - 62 years), (Station 3- 62 years), (Station 4 - 62 years), (Station 6 - 62 years). Sunnyvale's Capital Improvement Plan (CIP) states the following: "The advancement of fire service standards and continued population growth of the city establishes the recognition for the need to begin replacing or expanding older, smaller fire stations built in the 1960s. The current facilities are becoming functionally inadequate and driving the need for a master plan. The master plan's recommendations will be utilized to develop a project plan which will be brought forward for consideration during the next CIP budget cycle." At this time, there appears to be funding identified to replace Station 2 but there are only remodels listed for the remaining stations.	Pages 419-420, 424	Sunnyvale
8I	**LAHCFD:** A facility replacement plan should be established for the Station 74 (El Monte) Fire Station. While it is only 26 years old, it has been rated in fair condition and does not meet the needs of a modern fire stations. It does, however, have seismic protection.	Pages 447, 450	LAHCFD
8J	**CCFD, Los Altos, Campbell, Los Gatos:** The majority of CCFD's fire stations are older and do not meet the requirements of moder firefighting. With seven of CCFD's stations over fifty years old, a facility replacement plan should be in place. [Station 75 (City of Los Altos) - 54 years)], [Station 78 (CCFD) - 74 years)], [Station 79 (CCFD) - 57 years)], [Station 80 (City of Campbell) - 53 years)], [Station 82 (City of Los Gatos - 62 years)], [Station 83 (City of Los Gatos) - 58 years)], [Station 85 (CCFD) - 57 years)]. In reviewing the current Capital Improvement Plan, CCFD has identified that most facilities need some sort of update, repair, or replacement. CCFD established a capital fund in 2020 that will assist in funding the necessary improvements. Also, some facilities are not owned by the district and rely on each city or district to maintain or replace them. Most stations need a remodel to create gender separation in both sleeping areas and restrooms/shower areas.	Pages 527-528, 535	CCFD, Los Altos, Campbell, and Los Gatos

#	Recommendations	Page # in Report	Potential Implemmentors
8K	**SCFD:** The majority of fire stations, including SCFD's, are older and do not meet the requirements of modern firefighting. With two of the four stations serving SCFD being over 50 years old, there should be a facility replacement plan in place. [Headquarters (Shared with CAL FIRE) - 69 years)], and [Masten (owned by SCFD) - 57 years)]. The difficulty for SCFD is the mix of state-owned and local government-owned facilities and some with shared staffing. Getting the right funding at the right time for a multiagency building project is challenging. We did not identify any existing capital projects in the current SCFD budget documents.	Pages 590-591, 595	SCFD
	FIRE PREVENTION & PUBLIC EDUCATION RECOMMENDATIONS		
9	**Coordinate Consistency in Fire Codes:** The Santa Clara County Fire Marshals Association should continue to work toward consistency in its fire codes through coordination or reduction of amendments. Amendments to vegetation management and fire sprinkler requirements should receive special attention as inconsistencies have the greatest impact on residents and the development community.	Pages xiii, 25, 43	Santa Clara County Fire Chiefs Association
10	**Report on Status of Fire Inspections:** Each jurisdiction should annually report the status of mandated inspections to its governing body in accordance with state law (California Health & Safety Code 13146.4). This will allow the governing body to assess and make decisions regarding resources and corrective action. A similar report should be submitted to the State Fire Marshal per the 2020 letter of request from the State Fire Marshal.	Pages xiv, 37, 44	Santa Clara County Fire Chiefs Association
11	**Provide Information on Plan Review and Construction Requirements:** The Santa Clara County Fire Marshals Association should consider creating processes like the one used for hazardous materials for plan reviews and construction inspections. Unidocs is an excellent way to clearly convey who is responsible, where to go, and what is required for service. Updates on requirements and/or turnarounds times, and other relevant information can be kept current on this living, web-based document.	Pages xiv, 44	Santa Clara County Fire Chiefs Association

#	Recommendations	Page # in Report	Potential Implemmentors
12	**Service Provider Transparency for Cities and Districts with Fire Prevention Services provided by other agencies:** Cupertino, Los Gatos, Monte Sereno, Los Altos, Morgan Hill, Saratoga, Campbell, SFD, LAHCFD, SCFD should all provide an explanation and links on their websites to connect community members with the agency providing fire prevention services. Those providing the service should consider adding guidelines and checklists used by staff to assist customers.	Pages xiv, 38, 44	Cupertino, Los Gatos, Monte Sereno, Los Altos, Los Altos Hills, Morgan Hill, Saratoga, Campbell, SFD, LAHCFD, and SCFD
13	**Provide Access to Incident Data**: CCFD and CAL FIRE should provide access to the incident database for every fire agency in Santa Clara County. The Fire Investigation Task Force is a best practice, and the data collected can be used to identify the fire problem countywide. The data quality must be high enough to determine what caused the fire (ignition source and material first ignited), where it occurred (fire origin in specific occupancy type, as well as geographic location), who caused it, if applicable (age, sex, etc.), and why it occurred (the action that brought the ignition source and material first ignited together). A shared database/geocoded map would facilitate the creation of programs that target specific populations and occupancies in areas at risk.	Pages xiv, 40, 44	CCFD and CAL FIRE
14	**Coordinate Public Education re. Community Risk Reduction:** Public education regarding community risk reduction is sparse and distinct among the agencies. Many rely on their websites to provide information and links. Creating a set of coordinated materials, programs, and messages, based on the identified fire (and EMS) problem(s), would go a long way in providing a clear, consistent message to targeted occupancies and populations throughout the county. A Public Education Task Force, working with local CERT and Red Cross groups, would be a best practice in efficiency as well as maximize the potential for behavior change in impacted populations. The Santa Clara County Fire Marshals Association should coordinate this recommendation with all the fire agencies in the County.	Pages xv, 44	Santa Clara County Fire Chiefs Association
	EMERGENCY MANAGEMENT RECOMMENDATIONS		
15	**Emergency Operations Plan Updates:** The County Office of Emergency Management should develop a schedule for regular updates of the Emergency Operations Plan.	Pages xv, 49	County Office of Emergency Management
16	**Emergency Management Outreach:** The County Office of Emergency Management should build community resiliency to disasters through regular outreach and scheduled drills.	Pages xv, 49	County Office of Emergency Management

#	Recommendations	Page # in Report	Potential Implemmentors
17	**Fire Safe Council Representation:** The County Office of Emergency Management should consider adding a representative from the Santa Clara County Fire Safe Council as a partner in plan updates and revisions.	Pages xv, 49	County Office of Emergency Management
18	**Reference Community Wildfire Protection Plan:** The County Office of Emergency Management should include references to the Community Wildfire Protection Plan (CWPP) in the wildfire threat summary portion of the Santa Clara County Emergency Operations Plan to help ensure coordination.	Pages xv, 49	County Office of Emergency Management
	EMERGENCY COMMUNICATIONS RECOMMENDATIONS		
19	**CAD-to-CAD Interoperability:** Establish a CAD-to-CAD connection between dispatch centers to enhance interoperability. This connection would enable the transfer of information and real-time monitoring of neighboring agency resource status. It would streamline the process of requesting resources from neighboring centers and facilitate the determination of available resources outside the center for specific incidents. Silicon Valley Regional Interoperability Authority (SVRIA) should provide the coordination with all the Fire Dispatch Centers to meet this recommendation.	Pages xv, 57	Silicon Valley Regional Interoperability Authority (SVRIA) to coordinate with the fire agencies and dispatch centers.
20	**AVL Dispatch of Resources:** Gilroy, Morgan Hill, San Jose, Sunnyvale, CCFD, and SCFD are not currently utilizing Automatic Vehicle Location (AVL) technology to dispatch the closest available resource for emergencies. By integrating AVL into the CAD system through GIS mapping, the system can identify and dispatch the nearest unit to the incident. AVL Dispatch can help improve overall response times, potentially making a significant difference in critical calls. Each of these agencies should implement AVL dispatch in their dispatch center.	Pages xvi, 57	Gilroy, Morgan Hill, San Jose, Sunnyvale, CCFD, and SCFD
21	**Data Quality and Access:** The Santa Clara County Fire Chiefs should coordinate data standardization among the fire agencies, promote a single CAD system for the County with access for each agency to review their data sets, and all agencies should review the quality of inputs by their personnel.	Page xvi	Santa Clara County Fire Chiefs Association

#	Recommendations	Page # in Report	Potential Implemmentors
22	**Communications Feasibility Study:** Due to their existing Joint Powers Agreement (JPA) with the service providers, Silicon Valley Regional Interoperability Authority (SVRIA) should commission a comprehensive feasibility study to address weaknesses in the overall emergency communications system in the county. The study should focus on reducing the number of Public Safety Answering Points (PSAPs), establishing a common Computer-Aided Dispatch (CAD) platform for fire and EMS agencies, and evaluating the benefits and challenges of combining fire and EMS dispatch centers, at least virtually. This study will provide valuable insights to improve services for individual agencies and the entire county. SVRIA's mission aligns with the goal of this proposed study, and it can facilitate collaboration and support for implementing improvements.	Pages xvi, 58	Silicon Valley Regional Interoperability Authority (SVRIA)
	WUI HAZARD MITIGATION IN SANTA CLARA COUNTY RECOMMENDATIONS		
23	**Coordinate Community Wildfire Protection Plan Updates:** Santa Clara County Fire Safe Council should coordinate CWPP updates with particular emphasis on ensuring all communities within Santa Clara County are participating (Milpitas does not have an Annex).	Pages xvi, 74	Santa Clara County Fire Safe Council
24	**Multi Party Fuel Mitigation, monitoring and outreach :** Santa Clara County Fire Safe Council should concentrate on multi-party mitigation, monitoring, and outreach in the CWPP update. Santa Clara County Fire Safe Council should consider combining mitigation strategies from city Annexes into a single list that can be used to locate fuel breaks and fuel modifications to protect multiple jurisdictions, recognizing efficiencies of scale. The list should be prioritized to fund the most significant risks to the County first. The Santa Clara County Fire Safe Council should also develop public messages and online tools for all fire agencies to echo and make available to residents. Grants are available to fund projects. Implementation of projects should involve staff of impacted fire agencies, cities, and County OES, as well as hired contractors. Napa, Marin, and San Diego counties have already implemented this best practice and can serve as examples.	Pages xvi, 74	Santa Clara County Fire Safe Council
25	**Annual Updates of the CWPP:** Santa Clara County Fire Safe Council should conduct annual CWPP and fire agency updates regarding project planning, implementation, and maintenance.	Pages xvii, 74	Santa Clara County Fire Safe Council

#	Recommendations	Page # in Report	Potential Implemmentors
26	**Annual CWPP Project Coordination Meetings:** Santa Clara County Fire Safe Council should conduct annual project coordination meetings between fire agencies, land management agencies, local non-profits, and the Santa Clara County Fire Safe Council to evaluate project priorities and review project accomplishments.	Pages xvii, 74	Santa Clara County Fire Safe Council
27	**Maintain CWPP Project Database:** Santa Clara County Fire Safe Council should maintain an extensive project database available to the community.	Pages xvii, 74	Santa Clara County Fire Safe Council
28	**Funding Santa Clara County Fire Safe Council:** The Santa Clara County Fire Safe Council is actively working at a countywide level to improve mitigation efforts. While the Fire Safe Council has access to some grant funding, the Fire Safe Council needs sustainable funding to provide consistent long-term service. AP Triton recommends Santa Clara County provide some level of consistent funding each year to the Fire Safe Council. In addition, funding for projects within a fire agency's jurisdiction should be budgeted by the fire agency in accordance with CWPP timeframes.	Pages xvii, 74	Santa Clara County (County Executive's Office or other Dept.)
	GOVERNANCE STRUCTURE ALTERNATIVES RECOMMENDATIONS		
29	**SFD:** 11-16: There are potential alternatives with regards to SFD's governance and administration, where duplicated efforts could be minimized, as identified in LAFCO's Countywide Fire Service Review in 2010 and in Section III: Governance Structure Alternatives of this report. The review affirms that there are redundancies in SFD's current service structure that could be more efficient with just one fire district serving the area. It is recommended that SFD's receptiveness to reorganization to enhance services efficiencies be assessed.	Page xviii, Page 562	SFD and CCFD

#	Recommendations	Page # in Report	Potential Implemmentors
30	**Gilroy, Morgan Hill and SCFD:** Exploring options for alternative service structures, such as joint powers authorities combining operations of two or more neighboring agencies, could potentially bring efficiencies and value-added services to Morgan Hill, Gilroy, and SCFD. While CAL FIRE provides contractual service of a large-scale fire agency to Morgan Hill and SCFD, creating a larger local entity consisting of Morgan Hill, Gilroy, and SCFD with a unified structure could offer benefits such as increased accountability, improved efficiency, and enhanced effectiveness in delivering fire services to the community. While reorganization, consolidation, and other shared service structures will likely have efficiencies from which agencies can benefit, if they are facing service-related constraints, these structure alternatives do not provide a singular solution to all constraints to services and must be combined with other strategies. It is recommended that SCFD and the cities of Morgan Hill and Gilroy enter into a Memorandum of Understanding, in coordination with CAL FIRE, outlining the agencies' commitment to providing long-term cooperative fire services and establishing a joint strategic planning team to assess potential cooperative service elements for implementation.	Page xviii , Page 135, Page 201	Gilroy, Morgan Hill, SCFD, and CALFIRE
30A	**Gilroy:** Considering the staffing and facility constraints specific to the City of Gilroy, collaborating with the City of Morgan Hill and SCFD to establish a larger entity may hold particular value.	Page 135	Gilroy
30B	**Morgan Hill:** While Morgan Hills' services are satisfactory and appear to be sustainable, there are facility capacity constraints and regionalization could offer opportunities to pool resources, share expertise, and optimize operations, leading to improved service delivery.	Page 201	Morgan Hill
30C	**SCFD:** SCFD has the economies of scale through its contract with CAL FIRE that allow for greater efficiency and effectiveness. However, due to financing constraints, and the need to either enhance revenues or reduce service costs, there may be further opportunities for regionalization between Morgan Hill, Gilroy, and SCFD to form a larger local entity.	Page 597	SCFD

#	Recommendations	Page # in Report	Potential Implemmentors
31	**Mountain View, Palo Alto, Sunnyvale, Santa Clara, and CCFD:** Exploring options for alternative structures, such as joint powers authorities combining two or more neighboring agencies (Mountain View, Palo Alto, Sunnyvale, Santa Clara, and CCFD), could potentially bring efficiencies and value-added services to Mountain View and other smaller fire service providers in Santa Clara County. Creating a larger entity with a unified structure can offer benefits such as increased accountability, improved efficiency, and enhanced effectiveness in delivering fire services to the community. While Mountain View's services are satisfactory and appear to be sustainable, there could be opportunities to pool resources, share expertise, and optimize operations, leading to improved service delivery.	Page 237 (Mountain View); Page 279 (Palo Alto); Page 391 (Santa Clara); Page 426 (Sunnyvale); and Page 537 (CCFD)	Mountain View, Palo Alto, Sunnyvale, Santa Clara, and CCFD
32	Six counties in California have opted to provide contract services to the State to fill CAL FIRE's obligations with their counties. Given the changes to fire service that have occurred over the last two decades, reassessing the possibility of Santa Clara County transitioning to a "contract county" may be warranted. Inclusion of Alameda County and Contra Costa County in the restructuring, should their fire agencies express interest, would create a more cohesive fire service structure in the Bay Area and likely enhance bargaining power with the State. A challenge may be CAL FIRE's long-term established presence in the County and existing infrastructure that is in place.	Pages xix, 94	Santa Clara County (County Executive's Office or other Dept.) and CALFIRE

7.1. Approval of the Action Minutes of the January 22, 2024 City Council Regular Meeting

City of Gilroy
City Council Regular Meeting Minutes
Monday, January 22, 2024 | 6:00 PM

1. OPENING

1.1. Call to Order

The meeting was called to order by Mayor Blankley at 6:00 PM.

1.2. Pledge of Allegiance

Council Member Bracco led the Pledge of Allegiance.

1.3. Invocation

There was none.

1.4. City Clerk's Report on Posting the Agenda

City Clerk Pham reported on the Posting of the Agenda.

1.5. Roll Call

Attendance	Attendee Name
Present	Rebeca Armendariz, Council Member Dion Bracco, Council Member Tom Cline, Council Member Zach Hilton, Council Member Carol Marques, Mayor Pro Tempore Fred Tovar, Council Member Marie Blankley, Mayor
Absent	None

1.6. Orders of the Day

There were none.

1.7. Employee Introductions

City Administrator Forbis introduced Utilities Director Heath McMahon.

2. CEREMONIAL ITEMS - Proclamations and Awards

2.1. Proclamation Proclaiming January 29 – February 2, 2024 as Catholic Schools Week at St. Mary School in Gilroy

Mayor Blankley read aloud the proclamation and presented it to Tanaya Stumpf of St. Mary School in Gilroy.

3. PRESENTATIONS TO THE COUNCIL

3.1. PUBLIC COMMENT BY MEMBERS OF THE PUBLIC ON ITEMS NOT ON THE AGENDA BUT WITHIN THE SUBJECT MATTER JURISDICTION OF THE CITY COUNCIL

Mayor Blankley opened Public Comment. The following speakers spoke on items that were not on the agenda.

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Donald Perino praised the senior meals program managed by Adam Henig for its health-conscious offerings, acknowledged the work of volunteers, and recommended watching a program on Direct TV channel 348.

Peter Mandel discussed the eviction of Limelight Theater from the Gilroy Center for the Arts, highlighting the theater's impact on the community and its search for a new venue.

Ron Kirkish expressed concerns about a Council Member's endorsement of Plan Bay Area 2050 and its potential financial and infrastructural impacts on Gilroy.

Diana Bentz expressed disappointment with the Council's decision not to appoint a sole commission candidate, highlighting a need for more inclusivity and respect, especially towards individuals facing language barriers.

Robert Zepeda discussed an opinion piece about COVID-19, questioning the effectiveness of vaccines and expressing skepticism towards public health measures and their implications for society and small businesses.

Ana Mendoza requested the Gilroy City Council to implement tenant protection policies and address illegal rent increases in local mobile home parks.

Flint Worley shared his experience of a significant rent increase at his mobile home park, expressing concerns about potential homelessness and requesting the Council ensure legal compliance and protect residents' rights.

Jeff Orth, representing the Gilroy Downtown Business Association, thanked the Mayor, the City Administrator, and Council for their support in 2023, highlighting improvements in downtown Gilroy and expressing views on the plywood ordinance and vacancy tax.

There being no further speakers, Mayor Blankley closed Public Comment.

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4. REPORTS OF COUNCIL MEMBERS

Council Member Bracco reported on the Santa Clara County Library Joint Powers Authority.

Council Member Armendariz reported on the Santa Clara Valley Habitat Agency Governing Board, Santa Clara Valley Habitat Agency Implementation Board, Silicon Valley Clean Energy JPA Board, and the Latino Health Equity Survey Steering Committee.

Council Member Marques reported on the Santa Clara Valley Habitat Agency Governing Board, Santa Clara Valley Habitat Agency Implementation Board, and the Downtown Committee.

Council Member Hilton reported on VTA Policy Advisory Committee and Silicon Valley Clean Energy Authority JPA Board.

Council Member Cline reported on the Gilroy Sister Cities Association.

Council Member Tovar expressed gratitude to Frank Johnson from Visit Gilroy, Jane Howard from the Chamber, and Jeff Orth for their insights on downtown development, which helped shape his upcoming Downtown Subcommittee report.

Mayor Blankley reported on the South County Youth Task Force Policy Team and VTA Board of Directors.

5. COUNCIL CORRESPONDENCE

5.1. Council Information Request – Animal Services Cost Comparison

The Council acknowledged the letter.

Council Member Armendariz requested that members of the public may speak on this item. Her request received majority support.

Mayor Blankley opened Public Comment.

Michelle Rodriguez inquired about the designated contact person for animal control in Gilroy for cases of injured animals after hours, expressing frustration over the lack of a clear point of contact despite her repeated requests.

Karen Fortino discussed the challenges faced by animal rescuers in Gilroy, particularly after hours, emphasizing the need for clearer communication and guidelines from the City regarding who to contact and how to handle situations involving animals.

There being no further speakers, Mayor Blankley closed Public Comment.

6. FUTURE COUNCIL INITIATED AGENDA ITEMS

There were none.

7. CONSENT CALENDAR

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

Motion: Approve the Consent Calendar.	
RESULT:	**Pass**
MOVER:	Fred Tovar, Council Member
SECONDER:	Rebeca Armendariz, Council Member
AYES:	Council Member Armendariz, Council Member Bracco, Council Member Cline, Council Member Hilton, Mayor Pro Tempore Marques, Council Member Tovar, Mayor Blankley
NOES:	None
ABSENT:	None
ABSTAIN:	None

7.1. Approval of the Action Minutes of the January 8, 2024 City Council Regular Meeting

A motion was made to approve the minutes.

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7.2. Adoption of the City of Gilroy Donation and Fundraising Policy

A motion was made to adopt the Donation and Fundraising Policy.

7.3. Claim of Gilroy Arroyo One, LLC and Gilroy Arroyo Two, LLC (The City Administrator recommends a "yes" vote under the Consent Calendar shall constitute a denial of the claim)

A motion was made to deny the claim.

8. BIDS AND PROPOSALS

There were none.

9. PUBLIC HEARINGS

There were none.

10. UNFINISHED BUSINESS

10.1. Downtown Parklet Program

Economic Development Manager Valencia provided a staff presentation.

Mayor Blankley opened Public Comment.

Tom Miller discussed the development of a parklet at his property, emphasizing its compliance with various regulations and its potential benefits to downtown Gilroy while clarifying misconceptions about its establishment.

Dan Nelson, owner of Tempo Kitchen and Bar, advocated for continuing the parklet program, emphasizing its importance for business and customer experience and aligning with Gilroy's downtown development plans.

Ana Mendoza, advocating for the community, discussed a survey about the parklets in downtown Gilroy. She expressed concerns about inclusivity and accessibility, sharing a personal experience of being denied seating at a parklet. Mendoza urged the Council to develop clear policies and consider the community's needs in their decision-making.

Teo Castillo, owner of Station 55, briefly expressed that the decision on parklets is crucial for the survival of her business and the livelihoods of her employees. She emphasized the parklet as their only hope to continue and urged careful consideration of its impact on local businesses.

Evelyn Hudson spoke on behalf of the owners of Station 55, urging the Council to reconsider their stance on the parklet at Station 55, which she described as essential for the restaurant's survival and beneficial to the community. She emphasized the ongoing impact of the pandemic and the importance of supporting local businesses.

Ruth Garcia, a local realtor and business owner, advocated for the permanence of parklets, emphasizing their positive impact on Gilroy's dining experience and criticizing the City's handling of the situation with

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the parklet at a specific business, which was led to believe it could be a permanent addition by the Gilroy Downtown Business Association.

Sammy Trujillo advocated for implementing a parklet plan in downtown Gilroy, emphasizing their importance for business success and community engagement.

Jeff Orth, Chairman of the Gilroy Downtown Business Association, expressed mixed support for parklets in Gilroy, advocating for clear city guidelines on outdoor dining experiences, and suggested evaluating the specific situation of Station 55 to find a workable solution.

Ron Kirkish shared his positive dining experience at Maurizio's in Morgan Hill, highlighting the importance of their parklet for customer accommodation and business success, leading him to support the idea of parklets.

There being no further speakers, Mayor Blankley closed Public Comment.

Motion:

- **Staff to pursue a Downtown Parklet Program;**
- **Allow temporary permission for existing parklets at Station 55 and Tempo and that their permits will not be revoked or changed until the new parklet policy is established;**
- **Expedite the process with assistance from the Downtown Committee; and**
- **Document the formal extension for Station 55 at the next City Council Regular Meeting.**

RESULT:	**Pass**
MOVER:	Fred Tovar, Council Member
SECONDER:	Rebeca Armendariz, Council Member
AYES:	Council Member Armendariz, Council Member Bracco, Council Member Cline, Council Member Hilton, Mayor Pro Tempore Marques, Council Member Tovar, Mayor Blankley
NOES:	None
ABSENT:	None
ABSTAIN:	None

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11. INTRODUCTION OF NEW BUSINESS

11.1. Resolution Establishing Gilroy Police Department Towing Rates

Council Member Bracco recused himself from the item due to a conflict of interest.

Captain Powell provided a staff presentation and responded to Council Member questions.

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

Motion: Adopt a resolution establishing tow rates pursuant to Section 24A.8 - Regulations, of the Gilroy City Code Chapter 24A - Towing Services.	
RESULT:	**Pass**
MOVER:	Tom Cline, Council Member
SECONDER:	Carol Marques, Mayor Pro Tempore
AYES:	Council Member Armendariz, Council Member Cline, Council Member Hilton, Mayor Pro Tempore Marques, Council Member Tovar, Mayor Blankley
NOES:	None
ABSENT:	None
ABSTAIN:	None
RECUSED:	Council Member Bracco

Enactment No.: Resolution No. 2024-02

11.2. Quality-of-Life Police Officer Program

Captain Powell provided a staff presentation and responded to Council Member questions.

Mayor Blankley opened Public Comment.

Gregory Felios praised the Quality-of-Life program led by Corporal Griffith and Officer Helms for addressing the unhoused population, advocating for its expansion and greater community awareness.

Tim Davis, Director of the South County Compassion Center, commended the work of officers in the Quality-of-Life program for balancing the needs of the homeless with community concerns and advocated for making their positions permanent alongside investing in housing solutions.

Kelly Ramirez shared her experience of a ride-along with Corporal Griffith, emphasizing his exceptional de-escalation skills and respectful and compassionate interactions with both business owners and homeless individuals, and advocated for making the Quality-of-Life officer positions permanent due to their significant impact on the community.

Ron Kirkish supported the previous speakers, emphasizing the importance of the Quality-of-Life officers in maintaining community standards and advocating for the expansion of the program with additional officers to enhance city safety and quality of life.

There being no further speakers, Mayor Blankley closed Public Comment.

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Motion: Approve the City's permanent Quality-of-Life Officer Program, approve the reclassification of a Police Officer to a Police Corporal in the Quality-of-Life Office Program, and adopt a resolution updating the City's Position Control List for FY 2024-25.	
RESULT:	**Pass**
MOVER:	Tom Cline, Council Member
SECONDER:	Fred Tovar, Council Member
AYES:	Council Member Armendariz, Council Member Bracco, Council Member Cline, Council Member Hilton, Mayor Pro Tempore Marques, Council Member Tovar, Mayor Blankley
NOES:	None
ABSENT:	None
ABSTAIN:	None

Enactment No.: Resolution No. 2024-03

11.3. City Council Downtown Committee (Part 2) - Subcommittee Reports and Recommendations – Beautification of Downtown and Noise Ordinance

Mayor Blankley and Toni Bowles, representing the Noise Ordinance Sub-Committee, provided the subcommittee's presentation and responded to Council Member questions.

Council Member Tovar and Old City Hall Restaurant Owner Fran Beaudet, representing the Downtown Beautification Subcommittee, provided the subcommittee's presentation and responded to Council Member questions.

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

Council received both reports and directed staff to create a noise ordinance, utilizing the information and recommendations provided by the Downtown Committee. Additionally, for the beautification of downtown, staff received specific recommendations, providing guidance on the council's expectations and preferences and ensuring a focused approach to downtown beautification efforts.

11.4. Consent to the Appointment of Heba El-Guindy as Public Works Director

Council waived staff presentation.

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

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Motion: Consent to the City Administrator's recommendation to appoint Heba El-Guindy to the department head position of Public Works Director.	
RESULT:	**Pass**
MOVER:	Carol Marques, Mayor Pro Tempore
SECONDER:	Rebeca Armendariz, Council Member
AYES:	Council Member Armendariz, Council Member Bracco, Council Member Cline, Council Member Hilton, Mayor Pro Tempore Marques, Council Member Tovar, Mayor Blankley
NOES:	None
ABSENT:	None
ABSTAIN:	None

12. CITY ADMINISTRATOR'S REPORTS

There were none.

13. CITY ATTORNEY'S REPORTS

City Attorney Faber provided his report and responded to Council Member questions.

14. CLOSED SESSION

Mayor Blankley opened Public Comment. There being no speakers, Mayor Blankley closed Public Comment.

Mayor Blankley recessed the open session at 9:20 PM.

Mayor Blankley called the Closed Session to order at 9:25 PM.

A motion was made to go into Closed Session. The motion received unanimous approval.

14.1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to GC Sec. 54956.8 and GCC Sec.17A.8 (a) (2)

Property: City-Owned 536 Acres at Hecker Pass (Including Gilroy Gardens Theme Park), 3050 Hecker Pass Highway, Gilroy, CA (APN's: 810-17-024, 810-17-026, 810-17-029, 810-17-030, 810-17-031, 810-18-002, 810-18-013, 810-19-005, 810-19-007, 810-19-010, 810-19-011, 810-19-014)

Negotiators: Jimmy Forbis, City Administrator; Victoria Valencia, Economic Development Manager

Other Parties to Negotiations: Paul Nakamoto, Bay.Org (DBA Aquarium of the Bay/Bay Ecotarium); Chris Sutton, Select Contracts; Nicholas Singer, Purchase Capital;

Under Negotiations: Price and terms of payment for sale or lease.

No reportable action.

14.2. CONFERENCE WITH LABOR NEGOTIATORS – COLLECTIVE BARGAINING UNIT Pursuant to GC Section 54957.6 and GCC Section 17A.11 (4);

Collective Bargaining Units: Local 2805, IAFF Fire Unit Representing Gilroy Fire Fighters

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City Negotiators: Jimmy Forbis, City Administrator, LeeAnn McPhillips, HR Director

Anticipated Issues(s) Under Negotiation: Wages, Hours, Benefits, Working Conditions; Memorandums of Understanding: City of Gilroy and Gilroy Fire Fighters Local 2805.

No reportable action.

14.3. CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to GC Sec. 54956.8 and GCC Sec. 17A.8(a)(2);

Properties: 10th Street Bridge: APNs 808-19-007, 799-30-006, 799-30-007, 808-19-020, 808-50-999, Thomas Luchessa Bridge: APNs 808-21-025, 808-21-023, 808-21-021, 808-21-018, New Fire Station: APNs 808-18-003, 808-19-029

Negotiators: Jimmy Forbis, City Administrator; Other Party to Negotiations: Glen Loma Corporation, John M. Filice, Jr.;

Negotiating Price and terms of payment regarding purchase, sale.

No reportable action.

15. ADJOURN TO OPEN SESSION

Mayor Blankley reported on the items listed above.

16. ADJOURNMENT

Mayor Blankley adjourned the meeting was adjourned at 10:27 PM.

I HEREBY CERTIFY that the foregoing minutes were duly and regularly adopted at a regular meeting of the City Council of the City of Gilroy.

/s/Thai Nam Pham, MMC, CPMC
City Clerk

DRAFT

7.2. Approve the Third Amendment to the Agreement with Swimming Swan LLC to Extend the Agreement by One Year for $250,348

City of Gilroy

STAFF REPORT

Agenda Item Title:	**Approve the Third Amendment to the Agreement with Swimming Swan LLC to Extend the Agreement by One Year for $250,348**
Meeting Date:	February 5, 2024
From:	Jimmy Forbis, City Administrator
Department:	Recreation
Submitted By:	Adam Henig, Recreation Manager
Prepared By:	Adam Henig, Recreation Manager

STRATEGIC PLAN GOALS Ensure Neighborhood Equity from City Services

RECOMMENDATION

Approve the Third Amendment to the Agreement with Swimming Swan LLC.

EXECUTIVE SUMMARY

Swimming Swan LLC has completed year two of its agreement and is eligible for a one-year extension option if the City approves its exercise, which staff is recommending approval. Due to the pandemic-related reduction of recreational services, Swimming Swan took over aquatic operations at Christopher High School (CHS) in 2022 through a request for proposals (RFP) process. For the past two summers, they have offered recreational swimming, swim lessons for youth and adults, lifeguarding courses, and additional aquatics-related programs and services. In 2024, if approved, they plan to continue to offer these services.

BACKGROUND

The Christopher High School Aquatics Center was built in partnership with the Gilroy Unified School District (GUSD) and opened to the public in the summer of 2012. Through 2019, the Gilroy Recreation Department operated a seasonal aquatic program at Christopher High School, with swimming lessons, recreation swim, certification classes, water aerobics, and a private party reservation program.

Due to the pandemic-related reduction of recreational services, the City's aquatics program at Christopher High School (CHS) was eliminated in 2020. To provide public swim lessons and recreational swimming in 2022, a request for proposals (RFP) was distributed, seeking the services of an aquatics operator to manage the CHS Aquatics Center. In February 2022, the City Council approved the selected aquatics operator, Swimming Swan, LLC.

As approved in the agreement, the annual management fee is intended to cover the following expenses:

- Taxes
- Insurance (general pool liability)
- Technology platform
- Administrative cost
- External audit through the Red Cross
- Custodial costs
- Additional equipment/uniforms as needed

This proposed option would be effective only for the 2024 season. Following this season, staff will issue a similar RFP for a management organization to oversee recreational aquatic operations at Christopher High School for 2025 and beyond.

ANALYSIS

Since Swimming Swan has managed CHS Aquatics Center in 2022, they have served thousands of Gilroy residents. Below is a two-year overview of the number of people who have participated in a Swimming Swan program:

	# of Swim Lesson Participants	# of Recreation Swim Participants	Annual total # of participants
2022	1,347	3,968	5,315
2023	1,192[1]	5,107	6,299
2-year Total	2,539	9,075	11,614

Beyond swim lessons and recreation swimming, Swimming Swan also offers lap swimming, CPR classes, private party rentals, and aqua aerobics. Furthermore, many of their lifeguards are high school and college-age residents.

[1] To better serve all residents in 2023, Swimming Swan enacted a new rule that limited participants to one swim lesson per season. In 2022, users could sign-up for as many lessons as they wanted, shutting out some families who didn't register right away. Although the change in policy increased equitability, it did result in a decrease in the overall number of lesson sign-ups.

Challenges

There are limitations to operating the Christopher High School Aquatics Center. The pools are only widely available during the summer months, hindering a management company's ability to make it a profitable operation, which is why the City offers a management fee. Even though the pool is more readily available during the summer, there is still limited access at certain hours because of school-related sports teams' usage of the competition pool.

In addition to scheduling challenges, any given operator of this facility will be confronted with the following barriers:

- A national lifeguard shortage;
- Inexperienced staff since the operator is forced to restart with new personnel because swimming is not offered year-round;
- Developing a rapport with the community;
- And learning how to safely operate the waterslides, which reopened in 2023.

Despite these challenges, the provider wants to continue to serve Gilroy residents by allowing Swimming Swan to operate for a third year. Safety is Swimming Swan's top priority, and they have been responsive to feedback and have shown a willingness to correct any concerns that the City or the public have expressed.

ALTERNATIVES

Council may deny the proposed option for a third year. This option would result in the Aquatics Center being closed in 2024 since there would not be sufficient time to issue an RFP and select a provider. Staff does not recommend this option.

FISCAL IMPACT/FUNDING SOURCE

The third-year option requires a management fee paid to the operator of $188,348 for 2024. The amount is based on the management fee paid to the operator in 2022, which was in the amount of $183,575. The 2024 management fee will be the 2023 amount plus a 2.6% increase ($4,773) based on the percentage increase between December 2022 and December 2023 in the Consumer Price Index for all Urban Consumers, San Francisco – Oakland – San Jose Metropolitan Area, as published by the U.S. Department of Labor ("CPI"). In addition, the City is paying for the additional insurance coverage for the vendor to operate the waterslides, which will not exceed $62,000. The management fee and the additional insurance costs are included in the adopted FY24 Recreation Fund's budget (Fund 290).

Attachments:

1. Third Amendment to Agreement with Swimming Swan

Approve the Third Amendment to the Agreement with Swimming Swan LLC to Extend the Agreement by One Year for $250,348

2. Agreement - The Swimming Swan LLC - Second Amendment - Pool Operator Contract - Signed 2023-06-29

THIRD AMENDMENT TO THE AGREEMENT FOR SERVICES BETWEEN THE CITY OF GILROY AND SWIMMING SWAN LLC

THIS THIRD AMENDMENT TO THE AGREEMENT (this "Third Amendment"), by and among the CITY OF GILROY, a California municipal corporation ("CITY"), and Swimming Swan, LLC., a California Limited Liability Corporation ("CONTRACTOR"), is entered into as of January 8, 2024. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in that certain Agreement for Services, effective February 8, 2022 (the "Original Agreement"), by and between the CITY and CONTRACTOR, as amended by that certain First Amendment to the Agreement with the effective date of June 6, 2022 (the "First Amendment"), Second Amendment to the Agreement with the effective date of July 10, 2023 (the "Second Amendment"), and collectively referred to as the "Agreement."

RECITALS

WHEREAS, the CITY and CONTRACTOR entered into the Agreement, whereby the CONTRACTOR provides for the operation of the Christopher High School Aquatics Center, including administration and reporting; and

WHEREAS, the First Amendment removed the operation of the Activity Pool's play structure and its four waterslides in the Scope of Services Section B(1) due to the CONTRACTOR not having insurance for the operation of those features; and

WHEREAS, the Second Amendment opened the play structure and the water slides with the CITY reimbursing CONTRACTOR for the additional insurance coverage of the activity pool's play structure and four waterslides. The cost of the insurance was $64,813 for the 2023 pool season; and

WHEREAS, CITY and CONTRACTOR negotiated and desires to exercise the contract option extending the Agreement an additional year subject to the terms and conditions stated herein.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE TO AS FOLLOWS:

1. **Incorporation of Recitals**. The foregoing recitals are agreed to, accepted and incorporated herein by reference.

2. **Compensation**. Article 4A, entitled "Consideration", is hereby amended to read as follows:

> In consideration for the services to be performed by CONTRACTOR, CITY agrees to pay CONTRACTOR the amounts set forth in Exhibit "D" ("Payment Schedule"). In no event however shall the total compensation paid to CONTRACTOR exceed $675,348.

3. **Payment Schedule**. Exhibit "D", entitled "Payment Schedule" shall be amended to add the following section to the end of the exhibit:

2024 Season

Management Fee. CITY shall compensate CONTRACTOR based on formula noted in the Agreement. With the 2023 management fee of $183,575, the 2024 management fee will be the 2023 amount plus a 2.6% increase ($4,772.95) based on the percentage increase between December 2022 and December 2023 in the Consumer Price Index for all Urban Consumers, San Francisco – Oakland – San Jose Metropolitan Area, as published by the U.S. Department of Labor ("CPI"). The total management fee in 2024 will be $188,347.95.

Slide and Play Structure Insurance Payment. CITY shall reimburse CONTRACTOR for additional insurance coverage of the activity pool's play structure and four waterslides. The cost of the insurance is $61,580.09 for the 2024 pool season. CONTRACTOR shall invoice the CITY for its actual insurance premium costs for this insurance, and provide evidence of amount and payment by CONTRACTOR that is satisfactory to CITY in its sole and absolute discretion. Upon receipt of a sufficient invoice with evidence, CITY then shall then reimburse CONTRACTOR for the actual costs, up to an amount not to exceed $62,000.00 within thirty (30) days of such invoice being determined to be sufficient.

4. **Counterparts**. This Amendment may be executed in one or more facsimile or original counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

5. **Ratification**. Except as expressly modified herein, all of the provisions of the Agreement shall remain in full force and effect. In the case of any inconsistencies between the Agreement and this Third Amendment, the terms of this Third Amendment shall control.

6. **Authorization**. Each party executing this Amendment represents and warrants that it is duly authorized to cause this Amendment to be executed and delivered.

IN WITNESS WHEREOF, the parties execute this Amendment as of the date first written above.

CONTRACTOR:	CITY:
SWIMMING SWAN, LLC.	CITY OF GILROY a municipal corporation
By: _____ Melissa Swanson President	By: _____ Jimmy Forbis City Administrator
Approved as to Form	ATTEST:
By: _____ City Attorney	By: _____ City Clerk

City of Gilroy
Agreement/Contract Tracking

23AD1208-2*

Today's Date:	June 16, 2023	**Your Name:**	Bryce Atkins
Contract Type:	Services over $5k - Contractor - NO ENG OR DESIGN	**Phone Number:**	(408)846-0210

Contract Effective Date: *(Date contract goes into effect)*	2/28/2023
Contract Expiration Date:	2/29/2024
Contractor / Consultant Name: *(if an individual's name, format as last name, first name)*	Swimming Swan
Contract Subject: *(no more than 100 characters)*	Second Amendment - Pool Operator Contract
Contract Amount: *(Total Amount of contract. If no amount, leave blank)*	425000
By submitting this form, I confirm this information is complete:	➢ **Date of Contract** ➢ **Contractor/Consultant name and complete address** ➢ **Terms of the agreement (start date, completion date or "until project completion", cap of compensation to be paid)** ➢ **Scope of Services, Terms of Payment, Milestone Schedule and exhibit(s) attached** ➢ **Taxpayer ID or Social Security # and Contractors License # if applicable** ➢ **Contractor/Consultant signer's name and title** ➢ **City Administrator or Department Head Name**, **City Clerk** (Attest)**, City Attorney** (Approved as to Form)

Routing Steps for Electronic Signature	
Risk Manager	DocuSigned by: LeeAnn McPhillips 805AA27654AF40B...
City Attorney Approval As to Form	DocuSigned by: Andy Faber 1979C8EB3B08470...
City Administrator or Department Head	DocuSigned by: LeeAnn McPhillips 805AA27654AF40B...
City Clerk Attestation	DocuSigned by: 1E54AA19B46C4DB...

TYPE OF PROCURMENT	DOLLAR THRESHOLD / SIGNING AUTHORITY STAFF LEVEL DEPARTMENT HEAD CITY ADMINISTRATOR COUNCIL APPROVAL			
	$0-$999.99	**$1,000-$49,999.99**	**$50,000-$99,999.99**	**$100,000-Above**
EQUIPMENT /SUPPLIES/ MATERIALS **Furniture, hoses, parts, pipe manholes, office supplies, fuel, tools, PPE items, etc…**	• Vendor selection at discretion of staff <u>Payment Method</u> Purchase Card or Payment Request (if vendor does not accept credit cards)	• Informal bid/quotation – 3 quotes (verbal or written) • Purchasing Summary form w/ Purchasing Approval • Purchase Requisition <u>Payment Method</u> Purchase Order*	• Informal bid/quotation – 3 written quotes • Purchasing Summary form w/ City Administrator Approval • Purchase Requisition <u>Payment Method</u> Purchase Order	• Formal Bid • Advertisement • Council Approval • Purchase Requisition signed by City Administrator <u>Payment Method</u> Purchase Order
GENERAL SERVICES **Janitorial, landscape maintenance, equipment repair, installation, graffiti abatement, service inspections, uniform cleaning, etc…**	• Vendor selection at discretion of staff • May require insurance documents depending on scope/ nature of work <u>Payment Method</u> Purchase Card (if incorporated) Signed Payment Request (if sc proprietor or partner)	• Informal bid/quotation – 3 quotes (verbal or written) • Purchasing Summary form w/ Department Head Approval • Standard Agreement • Purchase Requisition <u>Payment Method</u> Purchase Order*	• Informal Bid/RFP quotation – 3 written quotes • Purchasing Summary form w/ City Administrator Approval • Standard Agreement • Purchase Requisition <u>Payment Method</u> Purchase Order	• Formal Bid/RFP/RFQ • Advertisement • Council Approval • Standard Agreement • Purchase Requisition <u>Payment Method</u> Purchase Order
PROFESSIONAL SERVICES **Consultants, architects, designers, auditors, etc...**	• Vendor selection at the discretion of staff • Purchase Summary Form w/ Purchasing Approval • Standard Agreement signed by Department Head • Purchase Requisition <u>Payment Method</u> Purchase Order	• RFP/RFQ to at least 3 consultants • Purchase Summary Form w/ Department Head Approval • Standard Agreement • Purchase Requisition <u>Payment Method</u> Purchase Order	• RFP/RFQ to a list of consultants • Evaluation Spreadsheet w/ City Administrator Approval • Standard Agreement • Purchase Requisition <u>Payment Method</u> Purchase Order	• Formal RFP/RFQ • Advertisement • Council Approval • Standard Agreement signed by City Administrator • Purchase Requisition <u>Payment Method</u> Purchase Order

SECOND AMENDMENT TO THE AGREEMENT FOR SERVICES BETWEEN THE CITY OF GILROY AND SWIMMING SWAN LLC

THIS SECOND AMENDMENT TO THE AGREEMENT (this "Second Amendment"), by and among the CITY OF GILROY, a California municipal corporation ("CITY"), and Swimming Swan, LLC., a California Limited Liability Corporation ("CONTRACTOR"), is entered into as of July 10, 2023. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in that certain Agreement for Services, effective February 8, 2022 (the "Original Agreement"), by and between the CITY and CONTRACTOR, as amended by that certain First Amendment to the Agreement with the effective date of June 6, 2022 (the "First Amendment"), and collectively referred to as the "Agreement".

RECITALS

WHEREAS, the CITY and CONTRACTOR entered into the Agreement, whereby the CONTRACTOR provides for the operation of the Christopher High School Aquatics Center, including administration and reporting; and

WHEREAS, the First Amendment removed the operation of the Activity Pool's play structure and its four waterslides in the Scope of Services Section B(1) due to the CONTRACTOR not having insurance for the operation of those features; and

WHEREAS, CITY and CONTRACTOR have negotiated and desires to open the play structure and the water slides, subject to the terms and conditions stated herein.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE TO AS FOLLOWS:

1. **Incorporation of Recitals**. The foregoing recitals are agreed to, accepted and incorporated herein by reference.

2. **Compensation**. Article 4A, entitled "Consideration", is hereby amended to correct through reduction the not-to-exceed compensation amount, which shall read as follows:

> In consideration for the services to be performed by CONTRACTOR, CITY agrees to pay CONTRACTOR the amounts set forth in Exhibit "D" ("Payment Schedule"). In no event however shall the total compensation paid to CONTRACTOR exceed Four Hundred Twenty-Five Thousand Dollars ($425,000.00).

3. **Scope of Work**. Exhibit "B", entitled "Scope of Work", Section B(1), as previously amended by the First Amendment, shall now be amended to read as follows:

> 1. Facility: The CONTRACTOR shall operate the facility commonly known as the Christopher High School Aquatics Center ("CHS Aquatics Center"), which consists of two pools: the activity pool with a play structure and four waterslides and a 50-meter competition pool with two diving boards (all diving boards are closed and not available for any use at any time as CONTRACTOR does not have insurance for this feature). The

facility also includes outdoor showers, a men's bathroom, a women's bathroom, lifeguard office, concrete pool decks with shade structures and picnic tables, bleachers, storage closet, storage shed, a triage room and an adjoining office with a ticket window. Pool maintenance is handled by Gilroy Unified School District staff ("GUSD") and they have sole access to the pump room.

4. **Payment Schedule**. Exhibit "D", entitled "Payment Schedule" shall be amended to add the following section to the end of the exhibit:

Slide and Play Structure Insurance Payment. CITY shall reimburse CONTRACTOR for additional insurance coverage of the activity pool's play structure and four waterslides. The cost of the insurance is $64,813 for the 2023 pool season. CONTRACTOR shall invoice the CITY for its actual insurance premium costs for this insurance, and provide evidence of amount and payment by CONTRACTOR that is satisfactory to CITY in its sole and absolute discretion. Upon receipt of a sufficient invoice with evidence, CITY then shall then reimburse CONTRACTOR for the actual costs, up to an amount not to exceed $64,813, within thirty (30) days of such invoice being determined to be sufficient.

5. **Counterparts**. This Amendment may be executed in one or more facsimile or original counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

6. **Ratification**. Except as expressly modified herein, all of the provisions of the Agreement shall remain in full force and effect. In the case of any inconsistencies between the Agreement and this Second Amendment, the terms of this Second Amendment shall control.

7. **Authorization**. Each party executing this Amendment represents and warrants that it is duly authorized to cause this Amendment to be executed and delivered.

IN WITNESS WHEREOF, the parties execute this Amendment as of the date first written above.

CONTRACTOR:

SWIMMING SWAN, LLC.

DocuSigned by:
By: Melissa Swanson
76A67BF54FA340A...
Melissa Swanson
President

CITY:

CITY OF GILROY
a municipal corporation

DocuSigned by:
By: LeeAnn McPhillips
805AA27654AF40B...
LeeAnn McPhillips
Acting City Administrator

Approved as to Form

DocuSigned by:
By: Andy Faber
1979C9EB5B68470...
City Attorney

ATTEST:

DocuSigned by:
By:
1E54AA19B46C4BB...
City Clerk

COMMERCIAL LINES POLICY

HOUSTON SPECIALTY INSURANCE COMPANY

A Subsidiary of Skyward Specialty Insurance

A Stock Company

800 Gessner Rd, Suite 600
Houston, TX 77024

Phone: 800-645-7707

IN WITNESS WHEREOF, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

Mark Haushill

Leslie K. Shaunty

IMPERIUM INSURANCE COMPANY
A Subsidiary of Skyward Specialty Insurance

GREAT MIDWEST INSURANCE COMPANY
A Subsidiary of Skyward Specialty Insurance

HOUSTON SPECIALTY INSURANCE COMPANY
A Subsidiary of Skyward Specialty Insurance

Your Privacy Rights

This booklet describes how Imperium Insurance Company (IIC), Houston Specialty Insurance Company (HSIC), Great Midwest Insurance Company (GMIC) use private information about our customers, the limits on our use, how we protect our customers' privacy, and how our customers can restrict the distribution of information about themselves.

Imperium Insurance Company
Houston Specialty Insurance Company
Great Midwest Insurance Company

DS PN Annual 02-22

To our customers:

Safeguarding the privacy of your financial and personal information has always been extremely important to us.

This pamphlet consists of five separate sections concerning our commitment to protecting your privacy:

1. **Customer Privacy Policy Statement –** Contains a description of IIC, HSIC, and GMIC general customer privacy policy
2. **Notice of Information Practices –** Provides disclosures required under federal laws
3. **Privacy Disclosure Statement –** Offers you the opportunity to notify us if you do not want IIC, HSIC, and GMIC to share basic information about you.
4. **Information We May Disclose To Others**
5. **Access to and Correction of Your Information**

Please let us know if you have any questions or comments.

Customer Privacy Policy Statement

IIC. HSIC, and GMIC recognize that a fundamental component of the insurer/insured relationship is a customer's trust that the insurer will respect the privacy and confidentiality of the customer's financial information and all aspects of the customer's insurance relationship.
IIC, HSIC, and GMIC have established the following policy to keep your information secure and confidential.

1. We shall recognize each customer's expectations of privacy by safeguarding information that you share with us. This commitment to privacy will be maintained regardless of whether information is received by mail, telephone, internet, or in person.

2. Information shall be collected and utilized only to the extent necessary to deliver insurance service to you and to offer products, services, and other opportunities that may be of interest to you.

3. We are dedicated to maintaining accurate customer records and shall strive to correct any inaccurate information in a timely manner. You may notify us at the toll-free telephone numbers and address listed at the end of this notice to correct any information.

4. IIC, HSIC, and GMIC limit access to your personal information to only those insurance company employees with a business reason for knowing such information. We educate all employees about the importance of confidentiality and customer privacy and have established policies on the proper use of customer information.

5. If we utilize other organizations to support our business, we will require them to abide by this privacy policy statement.

6. We do not sell customer lists or financial information about our customers to any third party vendors. We may, however, allow select customer information to be shared with an affiliated company, under controlled conditions for the purpose of designing and marketing our products or company sponsored products with a company that has adopted a similar privacy policy to safeguard any personal customer information.

7. IIC, HSIC, and GMIC will provide you a choice as to whether your personal customer information will be shared with other organizations even for the limited purposes described above before your information is released to another organization for marketing purposes.

8. In order to conduct the business of insurance, customer information in our records is referenced relating to the issuance and servicing of coverage settling claims. IIC, HSIC, and GMIC conduct these insurance operations in accordance with the Fair Credit Reporting Act and information privacy laws as explained in our Notice of Information Practices.

9. This privacy policy will apply to both current and former customers of IIC, HSIC, and GMIC.

IIC, HSIC, and GMIC reserve the right to update and modify this statement at any time and will provide notice to you of such updates and modifications. IIC, HSIC, and GMIC will continue to monitor itself for compliance of its procedures to protect customer privacy.

Notice of Information Practices

Pursuant to 15 U.S.C § 1681 et seq. (1982)

The information you provide to us is important. We review it in our evaluation of your request for coverage and in determining rates. It may not be the only information about you or persons to be insured under your policy that we consider. In accordance with the Federal Fair Credit Reporting Act, we would like to briefly describe our practices as they relate to information gathered in connection with insurance transactions.

We may need additional information from you or other individuals proposed for coverage. Motor vehicle records, court record or other public records might be reviewed. A photo of any property to be insured might be taken. We may also obtain information from third parties, such as other insurance companies or a consumer reporting agency. A consumer report from such agency may contain information such as credit worthiness, credit standing, credit capacity, character, general reputation, hobbies, occupation, personal characteristics, or mode of living. An investigative consumer report containing the same type of information may be obtained through personal interviews with neighbors, friends, associates, acquaintances, or others who may have knowledge concerning those items of information.

If coverage is declined or the charge for coverage is increased either wholly or partly because of information contained in a consumer report, we will tell you. We will also give you the name and address of the consumer reporting agency making the report.

It is possible that an investigative consumer report may be made. Within a reasonable time after receiving this notice of our information practices, you have the right to file a written request for and promptly receive a written disclosure as to the nature and scope of the investigation. You also will have the right to ask to be personally interviewed. Information you give during the interview will be included in the report sent to us. Upon written request and identification, you

have the right to receive a copy of your investigative consumer report. Information gathered about you by the agency in making a consumer report or investigative consumer report may be kept by the agency and provided to others to the extent allowed by law.

Information about you in our records may be kept and may be referred to for purposes relating to the issuance and servicing of coverage and settling claims. We will not disclose information about you to others without your written consent unless the disclosure is necessary to conduct our business. The law permits us to share information about you without your prior consent under circumstances.

Examples of these include disclosures to:

- Parties who perform a business, professional or insurance function for our company, including companies from which we purchase reinsurance coverage;
- Adjusters, appraisers, investigators and attorneys who need the information to investigate, defend or settle a claim involving you;
- Businesses that help us with data processing or marketing;
- Businesses that conduct scientific research, including actuarial or underwriting studies;
- Other insurance companies, agents, or consumer reporting agencies as reasonably necessary in connection with any application, policy, or claim involving you;
- Insurance support organizations which are established to collect information for the purpose of detecting and preventing insurance crimes or fraudulent claims;
- Medical care institutions or medical professionals to verify coverage or conduct an audit of services;
- State Insurance Departments in connection with the regulation of our business;
- Law enforcement or other governmental authorities to protect our legal interests or in cases of suspected fraud or illegal activities;

- Authorized persons as ordered by a subpoena, warrant, or other court order or as required by law;

- Certificate holders or policyholders for the purpose of providing information regarding the status of an insurance transaction; or

- Lien holders, mortgagees, assignees, lessors, or other persons shown on our records as having a legal or beneficial interest in your policy

You have the right to know what kind of information we keep about you in our files, the right to reasonable access to this information, and the right to receive a copy of this information. Write to us if you have questions about the information we may have on file about you. Tell us what information you would like to receive. Provide your complete name, address, date of birth, type of policy held or applied for, and all numbers of any policies issued to you by us. Certain types of information generally collected when evaluating claims or possible lawsuits needed may not be disclosed to you.

Within thirty (30) business days of receipt of your request, we will inform you in writing of the nature and substance of locatable and retrievable recorded personal information about you in our files. You may review this information in person or receive a copy for reasonable charge. We will also identify the persons or organizations to which we have disclosed your information to within the past two (2) years. In addition, you will be given the name and address of any consumer reporting agency which prepared a report about you so that you can contact them for a copy.

After you have reviewed your personal information about in our file, you can write to us if you believe it should be corrected, amended, or deleted. Tell us what you think is wrong and why. We will consider your request and within thirty (30) business days from the date of receipt of your written request, either change our files or tell you that we did not and the reason. If we do not make the changes, you will have the right to insert in our file a concise statement containing what you believe to be the correct, relevant or fair information and explaining why you believe the information on the file to be improper. We will notify persons designated by you to whom we have previously disclosed the information of the change on your statement. Subsequent disclosures we make will also be included in your statement.

Correspondence about this notice or requests for information in accordance with your rights under the law should be directed to the appropriate company in the Skyward Specialty Insurance at the address listed on the last page of the pamphlet.

Information We May Disclose To Third Parties. We do not sell customer information or medical information to anyone. Nor do we share it with companies or organizations outside of our group of affiliated companies that would use that information to contact you about their own products and services. Should that practice ever change, we would offer the ability to prohibit this type of information sharing and / or a reasonable time for the opportunity to opt out of this type of information sharing before the change in our practice took place.

We may, without authorization, but only as permitted or required by law, provide customer information to persons or organizations both inside and outside of IIC, HSIC, and GMIC in order to fulfill a transaction requested, service policies, market our products, investigate and/or handle claims, detect and/or prevent fraud, participate in insurance support organizations, or comply with lawful requests from regulatory and law enforcement authorities. These include, for example: affiliated companies, claims adjusters, medical providers, and program managers.

Access to and Correction of Your Information. You may write to us if you have any questions about the information that we may have in our records about you. If you wish, you may inspect this information in person or receive a copy at a reasonable charge by sending us a written request. You can notify us in writing if you believe any information should be corrected, amended, or deleted and we will review your request. We will either make the requested or explain why we did not do so. If we do not make the requested change, you may submit a short written statement identifying the disputed information, which will be included in all future disclosures of your information.

You may send your written request regarding IIC, HSIC, and GMIC to :

Skyward Specialty Insurance
Attn: Compliance Department
800 Gessner, Suite 600
Houston Texas 77024

All written requests must include your name, address, telephone number, and a photocopy of a picture ID for identification purposes.

You may contact IIC, HSIC, and GMIC at the following numbers:

	Local phone #	Toll free #	FAX #
GMIC	713-973-0226	800-829-8165	713-935-7424
HSIC	713-935-4820	855-935-HSIC (4742)	713-935-4821
IIC	713-935-4830	800-203-1179	713-935-4831

SKYWARD SPECIALTY INSURANCE | E & S Brokerage

HSIC IL ES PN 002 01 23

HOW TO REPORT A CLAIM

All claims should be reported as soon as practicable after the loss. Claims may be reported by any of the following options **24 hours a day, 7 days a week**.

PROPERTY & CASUALTY CLAIMS

To report any injury (non-work related), auto or trucking accident, or any type of property damage:

By Phone: (888)-321-0714

By Email: claims@skywardinsurance.com

INFORMATION TO INCLUDE WHEN SUBMITTING A CLAIM

- Policy Number and/or Claims Number in all communication with us.
- Policyholder contact Information – Name, Phone Number, Address, Email
- Agent contact information - Name, Phone Number, Address, Email
- Date of Loss
- Cause of Loss
- Detailed description of loss and damage(s)
- Provide us with a copy of any suit, demand for arbitration or mediation, claims letter or similar notice.
- Send copies of any internal reports related to the loss.
- Send copies of any police and/or fire department reports.

PRESERVE AND SAFEGUARD

- No unauthorized parties should be allowed access to the loss site.
- Temporary board up, if necessary.
- Temporary Perimeter fencing, if necessary.
- Retention of any and all evidence.
    - If it is necessary to make immediate repairs prior to inspection it is crucial that any and all parts (repaired or replaced) be retained and safeguarded along with a copy of the accompanying invoice.

IMPORTANT NOTICE:

1. **The insurance policy that you have purchased is being issued by an insurer that is not licensed by the State of California. These companies are called "nonadmitted" or "surplus line" insurers.**

2. **The insurer is not subject to the financial solvency regulation and enforcement that apply to California licensed insurers.**

3. **The insurer does not participate in any of the insurance guarantee funds created by California law. Therefore, these funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised.**

4. **The insurer should be licensed either as a foreign insurer in another state in the United States or as a non-United States (alien) insurer. You should ask questions of your insurance agent, broker, or "surplus lines" broker or contact the California Department of Insurance at the toll-free number: 1-800-927-4357 or internet website www.insurance.ca.gov. Ask whether or not the insurer is licensed as a foreign or non-United States (alien) insurer and for additional information about the insurer. You may also contact the NAIC's internet website at www.naic.org.**

   The NAIC—the National Association of Insurance Commissioners—is the regulatory support organization created and governed by the chief insurance regulators in the United States.

5. **Foreign insurers should be licensed by a state in the United States and you may contact that state's department of insurance to obtain more information about that insurer. You can find a link to each state from this NAIC internet website: https://naic.org/state_web_map.htm**

6. **For non-United States (alien) insurers, the insurer should be licensed by a country outside of the United States and should be on the NAIC's International Insurers Department (IID) listing of approved nonadmitted non-United States insurers. Ask your agent, broker, or "surplus lines" broker to obtain more information about that insurer.**

7. **California maintains a "List of Approved Surplus Lines Insurers (LASLI)." Ask your agent or broker if the insurer is on that list, or view that list at the internet website of the California department of insurance: www.insurance.ca.gov./01-consumers/120-company/07-lasli/lasli.cfm.**

8. **If you, as the applicant, required that the insurance policy you have purchased be effective immediately, either because existing coverage was going to lapse within two business days or because you were required to have coverage within two business days, and you did not receive this disclosure form and a request for your signature until after coverage became effective, you have the right to cancel this policy within five days of receiving this disclosure. If you cancel coverage, the premium will be prorated and any broker's fee charged for this insurance will be returned to you.**

CALIFORNIA SHORT RATE CANCELLATION PENALTY DISCLOSURE

This Notice is to advise you that you may incur a penalty if you cancel your policy prior to the expiration date.

If you cancel the policy for which you are applying prior to the expiration date, a 10% penalty will be applied to any remaining unearned premium, subject to any minimum earned premium endorsement that may be applicable to your policy.

POLICY NUMBER: ESB-HS-CX-0000172-00

COMMERCIAL EXCESS LIABILITY
HSIC EX DS 01 10 12

HSIC Houston Specialty Insurance Company

COMMERCIAL EXCESS LIABILITY DECLARATIONS

Company Name:	Houston Specialty Insurance Company 800 Gessner Drive, Suite 600 Houston, Texas 77024 Toll Free: 800-203-1179
Producer Name:	RT Specialty
Named Insured(s):	The Swimming Swan, LLC; Melissa Swanson
Mailing Address:	903 Paseo Del Lago Fallbrook, CA 92028
Policy Period:	**From:** 5/26/2023 **To:** 5/26/2024 At 12:01 AM (Standard Time at your mailing address shown above)

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE TO PROVIDE YOU WITH THE INSURANCE AS STATED IN THIS POLICY.

Excess Policy – Limits Of Insurance Each

Occurrence Limit	**$5,000,000**
Aggregate Limit	**$5,000,000**

Excess Policy – Premium	
Premium (including premium subject to audit)	**$17,000.00**

Surplus Lines Tax 510.00
Stamping Fee 30.60

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Endorsements Attached To The Excess Policy
See Schedule of Forms and Endorsements (FORMS-SCHED 08 12)

Underlying Coverages		
Coverage / Carrier	**Policy Period**	**Limits / Attachment**
COMMERCIAL GENERAL LIABILITY Houston Specialty Insurance Company ESB-HS-GL-0001096-00	05/26/23 - 05/26/24	$1,000,000 EACH OCCURRENCE $2,000,000 GENERAL AGGREGATE Included PRODUCTS OPS AGGREGATE $1,000,000 PERSONAL ADVERTISING INJURY

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Policy Number: ESB-HS-CX-0000172-00

SCHEDULE OF FORMS AND ENDORSEMENTS

Named Insured: The Swimming Swan, LLC; Melissa Swanson

Effective Date: 05/26/2023
12:01 A.M., Standard Time

Agency Name: HIIG E&S Brokerage

Form Number	Edition Date	Title
HSIC JACKET-POLICY A (07-2021)		HSIC JACKET-POLICY A (07-2021)
DS PN Annual (02-2022)		SKYWARD PRIVACY NOTICE
HSIC IL ES PN 002 01 23		HOW TO REPORT A CLAIM
PN SUR CA 001 05 22		CALIFORNIA POLICYHOLDER NOTICE
HSIC PN ES 00 01 10 20		CALIFORNIA SHORT RATE CANCELLATION PENALTY DISCLOSURE
HSIC EX DS 01 10 12		COMMERCIAL EXCESS LIABILITY DECLARATIONS
FORMS - SCHED 08 12		SCHEDULE OF FORMS AND ENDORSEMENTS
CX 00 01 04 13		COMMERCIAL EXCESS LIABILITY COVERAGE FORM
CX 21 01 09 08		NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)
CX 21 02 04 13		TOTAL POLLUTION EXCLUSION
CX 21 11 04 13		EXCLUSION - ABUSE OR MOLESTATION
CX 21 12 04 13		EXCLUSION - DESIGNATED ONGOING OPERATIONS
CX 21 13 04 13		EXCLUSION - FUNGI OR BACTERIA
CX 21 16 04 13		EXCLUSION - SILICA OR SILICA-RELATED DUST
CX 21 17 04 13		EXCLUSION - COMMUNICABLE DISEASE
CX 21 19 04 13		EXCLUSION - EMPLOYMENT-RELATED PRACTICES
CX 21 33 01 15		EXCLUSION OF CERTIFIED ACTS OF TERRORISM
CX 21 71 06 15		EXCLUSION - UNMANNED AIRCRAFT
SOS HSIC CW 09 13		CW SERVICE OF SUIT CLAUSE
HSIC CX ES 01 19 04 21		EXCLUSION - INJURY TO INDEPENDENT CONTRACTORS OR THEIR EMPLOYEES
HSIC CX ES 01 20 04 21		EXCLUSION - INTELLECTUAL PROPERTY
HSIC CX ES 01 23 04 21		EXCLUSION - PUNITIVE DAMAGES
HSIC CX ES 01 44 04 21		EXCLUSION - ASSAULT OR BATTERY
HSIC CX ES 01 55 04 21		CARE, CUSTODY OR CONTROL EXCLUSION
HSIC CX ES 01 61 04 21		ELECTRONIC DATA CYBER EXCLUSION
HSIC CX ES 01 67 04 21		EXCLUSION - PROFESSIONAL SERVICES
HSIC CX ES 01 68 04 21		EXCLUSION - RECORDING AND DISTRIBUTION OF MATERIAL OR INFORMATION IN VIOLATION OF LAW
HSIC CX ES 01 71 04 21		AUTO LIABILITY EXCLUSION
HSIC CX ES 01 80 04 21		EXCLUSION OF COVERAGE SUBJECT TO SUBLIMITS OR OTHER REDUCED LIMITS IN UNDERLYING INSURANCE
HSIC CX ES 01 88 04 21		UNIMPAIRED RETAINED LIMIT
HSIC CX ES 02 06 12 21		MINIMUM AND DEPOSIT PREMIUM ENDORSEMENT
HSIC CX ES 02 13 07 22		LIQUOR LIABILITY EXCLUSION
HSIC CX ES 02 14 08 22		EXCLUSION - PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES
HSIC CX ES 02 17 12 22		FIREARMS EXCLUSION

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under the "controlling underlying insurance".

Other words and phrases that appear in quotation marks in this Coverage Part have special meaning. Refer to Section **IV** – Definitions. Other words and phrases that are not defined under this Coverage Part but defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance".

The insurance provided under this Coverage Part will follow the same provisions, exclusions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this insurance. To the extent such provisions differ or conflict, the provisions of this Coverage Part will apply. However, the coverage provided under this Coverage Part will not be broader than that provided by the applicable "controlling underlying insurance".

There may be more than one "controlling underlying insurance" listed in the Declarations and provisions in those policies conflict, and which are not superseded by the provisions of this Coverage Part. In such a case, the provisions, exclusions and limitations of the "controlling underlying insurance" applicable to the particular "event" for which a claim is made or suit is brought will apply.

SECTION I – COVERAGES

1. Insuring Agreement

a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which insurance provided under this Coverage Part applies.

We will have the right and duty to defend the insured against any suit seeking damages for such "injury or damage" when the applicable limits of "controlling underlying insurance" have been exhausted in accordance with the provisions of such "controlling underlying insurance".

When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other suit seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any suit seeking damages for which insurance under this policy does not apply.

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or suit, for which we have the duty to defend.

But:

(1) The amount we will pay for "ultimate net loss" is limited as described in Section **II** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under this Coverage Part. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of defense expenses, judgments or settlements under this Coverage Part.

b. This insurance applies to "injury or damage" that is subject to an applicable "retained limit". If any other limit, such as, a sublimit, is specified in the "controlling underlying insurance", this insurance does not apply to "injury or damage" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "controlling underlying insurance".

c. If the "controlling underlying insurance" requires, for a particular claim, that the "injury or damage" occur during its policy period in order for that coverage to apply, then this insurance will only apply to that "injury or damage" if it occurs during the policy period of this Coverage Part. If the "controlling underlying insurance" requires that the "event" causing the particular "injury or damage" takes place during its policy period in order for that coverage to apply, then this insurance will apply to the claim only if the "event" causing that "injury or damage" takes place during the policy period of this Coverage Part.

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d. Any additional insured under any policy of "controlling underlying insurance" will automatically be an additional insured under this insurance. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance required by the contract, less any amounts payable by any "controlling underlying insurance".

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "controlling underlying insurance".

2. Exclusions

The following exclusions, and any other exclusions added by endorsement, apply to this Coverage Part. In addition, the exclusions applicable to any "controlling underlying insurance" apply to this insurance unless superseded by the following exclusions, or superseded by any other exclusions added by endorsement to this Coverage Part.

Insurance provided under this Coverage Part does not apply to:

a. Medical Payments

Medical payments coverage or expenses that are provided without regard to fault, whether or not provided by the applicable "controlling underlying insurance".

b. Auto

Any loss, cost or expense payable under or resulting from any of the following auto coverages:

(1) First-party physical damage coverage;

(2) No-fault coverage;

(3) Personal injury protection or auto medical payments coverage; or

(4) Uninsured or underinsured motorists coverage.

c. Pollution

(1) "Injury or damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.

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

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, pollutants.

This exclusion does not apply to the extent that valid "controlling underlying insurance" for the pollution liability risks described above exists or would have existed but for the exhaustion of underlying limits for "injury or damage".

d. Workers' Compensation And Similar Laws

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

SECTION II – LIMITS OF INSURANCE

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

a. Insureds;

b. Claims made or suits brought, or number of vehicles involved;

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

d. Limits available under any "controlling underlying insurance".

2. The Limits of Insurance of this Coverage Part will apply as follows:

a. This insurance only applies in excess of the "retained limit".

b. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss", for all "injury or damage" covered under this Coverage Part.

However, this Aggregate Limit only applies to "injury or damage" that is subject to an aggregate limit of insurance under the "controlling underlying insurance".

c. Subject to Paragraph **2.b.** above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this insurance because of all "injury or damage" arising out of any one "event".

d. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.

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3. If any "controlling underlying insurance" has a policy period that is different from the policy period of this Coverage Part then, for the purposes of this insurance, the "retained limit" will only be reduced or exhausted by payments made for "injury or damage" covered under this insurance.

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

SECTION III – CONDITIONS

The following conditions apply. In addition, the conditions applicable to any "controlling underlying insurance" are also applicable to the coverage provided under this insurance unless superseded by the following conditions.

1. **Appeals**

   If the "controlling underlying insurer" or insured elects not to appeal a judgment in excess of the amount of the "retained limit", we may do so at our own expense. We will also pay for taxable court costs, pre- and postjudgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in Section **II** – Limits Of Insurance.

2. **Bankruptcy**

   a. **Bankruptcy Of Insured**

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

   b. **Bankruptcy Of Controlling Underlying Insurer**

      Bankruptcy or insolvency of the "controlling underlying insurer" will not relieve us of our obligations under this Coverage Part.

   However, insurance provided under this Coverage Part will not replace any "controlling underlying insurance" in the event of bankruptcy or insolvency of the "controlling underlying insurer". The insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect and recoverable.

3. **Duties In The Event Of An Event, Claim Or Suit**

   a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this insurance. To the extent possible, notice should include:

      (1) How, when and where the "event" took place;

      (2) The names and addresses of any injured persons and witnesses; and

      (3) The nature and location of any "injury or damage" arising out of the "event".

   b. If a claim is made or suit is brought against any insured, you must:

      (1) Immediately record the specifics of the claim or suit and the date received; and

      (2) Notify us as soon as practicable.

      You must see to it that we receive written notice of the claim or suit as soon as practicable.

   c. You and any other insured involved must:

      (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit;

      (2) Authorize us to obtain records and other information;

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

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

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

4. **First Named Insured Duties**

   The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other Named Insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.

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At our request, the first Named Insured will furnish us, as soon as practicable, with a complete copy of any "controlling underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Coverage Part.

5. Cancellation

a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

(1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

e. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

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

6. Changes

This Coverage Part contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms of this Coverage Part with our consent. This Coverage Part's terms can be amended or waived only by endorsement.

7. Maintenance Of/Changes To Controlling Underlying Insurance

Any "controlling underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of aggregate limits in accordance with the provisions of such "controlling underlying insurance" that results from "injury or damage" to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "controlling underlying insurance". Failure to maintain "controlling underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect.

The first Named Insured must notify us in writing, as soon as practicable, if any "controlling underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "controlling underlying insurance" is changed.

8. Other Insurance

a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, if no other insurer defends, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

9. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. If this policy is auditable, the premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premium is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

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10. Loss Payable

Liability under this Coverage Part does not apply to a given claim unless and until:

a. The insured or insured's "controlling underlying insurer" has become obligated to pay the "retained limit"; and

b. The obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant, "controlling underlying insurer" (or a representative of one or more of these) and us.

11. Legal Action Against Us

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

a. To join us as a party or otherwise bring us into a suit asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

12. Transfer Of Defense

a. Defense Transferred To Us

When the limits of "controlling underlying insurance" have been exhausted, in accordance with the provisions of "controlling underlying insurance", we may elect to have the defense transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

b. Defense Transferred By Us

When our limits of insurance have been exhausted our duty to provide a defense will cease.

We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Coverage Part of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Coverage Part, we will cooperate in the transfer of control to the insured and its designated representative.

13. When We Do Not Renew

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

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

SECTION IV – DEFINITIONS

The definitions applicable to any "controlling underlying insurance" also apply to this insurance. In addition, the following definitions apply.

1. "Controlling underlying insurance" means any policy of insurance or self-insurance listed in the Declarations under the Schedule of "controlling underlying insurance".

2. "Controlling underlying insurer" means any insurer who provides any policy of insurance listed in the Declarations under the Schedule of "controlling underlying insurance".

3. "Event" means an occurrence, offense, accident, act, or other event, to which the applicable "controlling underlying insurance" applies.

4. "Injury or damage" means any injury or damage, covered in the applicable "controlling underlying insurance" arising from an "event".

5. "Retained limit" means the available limits of "controlling underlying insurance" applicable to the claim.

6. "Ultimate net loss" means the total sum, after reduction for recoveries, or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:

a. Settlements, judgments, binding arbitration; or

b. Other binding alternate dispute resolution proceeding entered into with our consent.

"Ultimate net loss" includes defense expenses if the "controlling underlying insurance" specifies that limits are reduced by defense expenses.

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COMMERCIAL EXCESS LIABILITY
CX 21 01 09 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(BROAD FORM)

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2., Exclusions:**

2. Exclusions

NUCLEAR ENERGY LIABILITY

a. Under any Liability Coverage, to "injury or damage":

(1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(b)** the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

b. Under any Liability Coverage, to "injury or damage" resulting from "hazardous properties" of "nuclear material", if:

(1) The "nuclear material" **(a)** is at any "nuclear facility" owned by, or operated by or on behalf of, an insured or **(b)** has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an insured; or

(3) The "injury or damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion **(3)** applies only to property damage to such "nuclear facility" and any property thereat.

c. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

(a) Any "nuclear reactor";

(b) Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

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(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Injury or damage" includes all forms of radioactive contamination of property.

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COMMERCIAL EXCESS LIABILITY
CX 21 02 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

Exclusion **c.** under Paragraph **2. Exclusions** of **Section I – Coverages** is replaced by the following:

Insurance provided under this Coverage Part does not apply to:

2. Exclusions

c. Pollution

(1) "Injury or damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time; or

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

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, pollutants.

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COMMERCIAL EXCESS LIABILITY
CX 21 11 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ABUSE OR MOLESTATION

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to "injury or damage" arising out of:

a. The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured; or

b. The negligent:

(1) Employment;

(2) Investigation;

(3) Supervision;

(4) Reporting to the proper authorities, or failure to so report; or

(5) Retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph **a.** above.

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POLICY NUMBER: ESB-HS-CX-0000172-00

COMMERCIAL EXCESS LIABILITY
CX 21 12 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – DESIGNATED ONGOING OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

SCHEDULE

Description Of Designated Ongoing Operation(s): ANY AND ALL OPERATIONS OTHER THAN LIFEGUARD SERVICES AT THE CHRISTOPHER HIGH SCHOOL AQUATICS CENTER AT 850 DAY ROAD, GILROY, CA 95020.
Specified Location (If Applicable):
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to "injury or damage" arising out of the ongoing operations described in the Schedule of this endorsement, regardless of whether such operations are conducted by you or on your behalf or whether the operations are conducted for yourself or for others.

Unless a "location" is specified in the Schedule, this exclusion applies regardless of where such operations are conducted by you or on your behalf. If a specific "location" is designated in the Schedule of this endorsement, this exclusion applies only to the described ongoing operations conducted at that "location".

For the purpose of this endorsement, "location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

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EXCLUSION – FUNGI OR BACTERIA

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Fungi Or Bacteria

a. "Injury or damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such "injury or damage".

b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. The following definition is added to the **Definitions** section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.

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EXCLUSION – SILICA OR SILICA-RELATED DUST

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Silica Or Silica-related Dust

a. "Injury or damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".

b. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

B. The following definitions are added to the **Definitions** section:

1. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

2. "Silica-related dust" means a mixture or combination of silica and other dust or particles.

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EXCLUSION – COMMUNICABLE DISEASE

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Communicable Disease

"Injury or damage" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;

b. Testing for a communicable disease;

c. Failure to prevent the spread of the disease; or

d. Failure to report the disease to authorities.

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EXCLUSION – EMPLOYMENT-RELATED PRACTICES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to "injury or damage" to:

a. A person arising out of any:

(1) Refusal to employ that person;

(2) Termination of that person's employment; or

(3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

b. The spouse, child, parent, brother or sister of that person as a consequence of "injury or damage" to that person at whom any of the employment-related practices described in Paragraph **(1), (2)** or **(3)** above is directed.

This exclusion applies whether the injury-causing event described in Paragraph **(1), (2)** or **(3)** above occurs before employment, during employment or after employment of that person.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

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EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

Any endorsement addressing acts of terrorism (however defined) in any "controlling underlying insurance" does not apply to this excess insurance. The following provisions addressing acts of terrorism apply with respect to this excess insurance:

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

B. The following definition is added:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

a. The act resulted in insured losses in excess of $5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

C. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for "injury or damage" that is otherwise excluded under this Coverage Part.

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COMMERCIAL EXCESS LIABILITY
CX 21 71 06 15

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EXCLUSION – UNMANNED AIRCRAFT

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Unmanned Aircraft

"Injury or damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and loading or unloading.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "event" which caused the "injury or damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

As used in this exclusion, loading or unloading means the handling of property:

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

b. While it is in or on an "unmanned aircraft"; or

c. While it is being moved from an "unmanned aircraft" to the place where it is finally delivered;

but loading or unloading does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the "unmanned aircraft".

B. The following definition is added to the **Definitions** section:

"Unmanned aircraft" means an aircraft that is not:

1. Designed;

2. Manufactured; or

3. Modified after manufacture;

to be controlled directly by a person from within or on the aircraft.

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SERVICE OF SUIT

As used in this endorsement, “we”, “us”, and “our”, refer to Houston Specialty Insurance Company (HSIC).

This applies in jurisdictions where we are not an admitted insurer.

It is agreed that in the event of our failure to pay the amount claimed to be due hereunder, we, at the request of the insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court.

It is further agreed that, pursuant to any statute of any state, territory or district of the United States which make provision therefor, we hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out to this policy of insurance and hereby designate

Houston Specialty Insurance Company
General Counsel
800 Gessner Road, Suite 600
Houston, Texas 77024-4538

HSIC CX ES 01 19 04 21

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - INJURY TO INDEPENDENT CONTRACTORS OR THEIR EMPLOYEES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to **SECTION I - COVERAGES,** Paragraph **2. Exclusions**:

Insurance provided under this Coverage Part does not apply to:

Injury To Independent Contractors Or Their Employees

Claims, costs or expenses due to "injury or damage" sustained by the owner, partner or "employee" of an independent contractor working for you or on your behalf.

B. The following are added to **SECTION IV – DEFINITIONS**:

“Employee” includes a “leased worker”. “Employee” does not include a “temporary worker”.

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

“Temporary worker” means a person who is furnished to you to substitute for a permanent “employee” on leave or to meet seasonal or short-term workload conditions.

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EXCLUSION - INTELLECTUAL PROPERTY

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to **SECTION I - COVERAGES**, Paragraph **2. Exclusions**:

Insurance provided under this Coverage Part does not apply to:

Intellectual Property

"Injury or damage" arising out of the actual or alleged infringement, misappropriation or violation of intellectual property rights or laws, including but not limited to:

(1) Trademark,

(2) Trade dress,

(3) Slogan,

(4) Style of doing business,

(5) Copyright,

(6) Patent rights,

(7) Trade secret rights,

(8) Publicity rights,

(9) Moral rights,

(10) Rights against unfair competition, or

(11) Breach of contract.

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EXCLUSION - PUNITIVE DAMAGES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to **SECTION I - COVERAGES,** Paragraph **2. Exclusions**:

Insurance provided under this Coverage Part does not apply to:

Punitive Damages

Damages assessed for punitive damages, exemplary damages, multiplied damages, fines, penalties or liquidated damages. If a "suit" is brought against you for a claim falling within the coverage provided by this policy, seeking both compensatory and punitive damages, exemplary damages, multiplied damages, fines, penalties or liquidated damages, we will afford a defense to such action, but we shall not have an obligation to pay any cost, interest or damages attributed to punitive damages, exemplary damages, multiplied damages, fines, penalties or liquidated damages.

B. The following is added to **SECTION IV – DEFINITIONS**:

“Suit” means a civil proceeding in which damages because of “injury or damage” to which this insurance applies are alleged. “Suit” includes:

(1) An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

(2) Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

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EXCLUSION – ASSAULT OR BATTERY

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to **SECTION I** - **COVERAGES**, Paragraph **2. Exclusions**:

Insurance provided under this Coverage Part does not apply to, nor shall we have the duty to defend, any claim or "suit" for “injury or damage” arising out of or related to any of the following:

Assault and Battery

1. “Assault” and/or “battery” committed by any insured, any “employee” of any insured or any other person, whether or not caused by or at the direction of any insured, or arising because of the negligence of any insured; or
2. “Assault” and/or “battery” resulting from the negligent hiring, retention, training, supervision or control of any “employee” of the insured; or
3. The failure to prevent or suppress an “assault” and “battery” by any person; or
4. The failure to provide an environment safe from “assault” and “battery”, including but not limited to the failure to maintain security; or
5. The use of force to protect persons or property.

This exclusion supersedes any provision in the “controlling underlying insurance” that provides coverage for “injury or damage” arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the use of reasonable force to protect person(s) or property.

B. The following definitions are added to **SECTION IV – DEFINITIONS**:

“Assault” means the threat of or use of force on another that causes that person to have the apprehension of imminent harmful or offensive conduct, whether or not the threat or use of force is alleged to be negligent, intentional or criminal in nature.

“Battery” means negligent or intentional physical contact with another without consent that results in physical or emotional injury.

“Employee” includes a “leased worker”. “Employee” does not include a “temporary worker”.

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

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"Suit" means a civil proceeding in which damages because of "injury or damage" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

"Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

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CARE, CUSTODY OR CONTROL EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to **SECTION I - COVERAGES,** Paragraph **2. Exclusions**:

Insurance provided under this Coverage Part does not apply to:

Damage to Property in Care, Custody or Control:

1. "Injury or damage" arising out of personal property in the care, custody or control of the insured; and
2. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "injury or damage" arises out of those operations.

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ELECTRONIC DATA CYBER EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions of SECTION I - COVERAGES:**

Insurance provided under this Coverage Part does not apply to:

Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability:

"Injury or damage" 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".

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

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EXCLUSION - PROFESSIONAL SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following is added to **SECTION I – COVERAGES**, Paragraph **2. Exclusions**:

Insurance provided under this Coverage Part does not apply to:

Professional Services

“Injury or damage” arising out of the rendering of or failure to render professional services or advice by an insured or by any person for whose acts or omissions the insured is legally responsible, whether or not that service or advice is ordinary in your profession and regardless of whether a claim or “suit” is brought by a client or any other person or organization.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "event" which caused the "injury or damage" involved the rendering of or failure to render any professional service.

B. The following is added to **SECTION IV – DEFINITIONS**:

“Suit” means a civil proceeding in which damages because of “injury or damage” to which this insurance applies are alleged. “Suit” includes:

1. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

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EXCLUSION - RECORDING AND DISTRIBUTION OF MATERIAL OR INFORMATION IN VIOLATION OF LAW

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following is added to **SECTION I – COVERAGES**, Paragraph **2. Exclusions**:

Insurance provided under this Coverage Part does not apply to:

Recording And Distribution Of Material Or Information In Violation Of Law

"Injury" or damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

d. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

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AUTO LIABILITY EXCLUSION

This endorsement modifies Insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to **SECTION I - COVERAGES**, Paragraph **2. Exclusions:**

Insurance provided under this Coverage Part does not apply to:

Auto Liability

Any liability for “injury or damage” arising out of the ownership, maintenance, use or entrustment to others of any “auto” owned or operated by or rented or loaned to any insured. Use includes operation and “loading or unloading”.

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

We shall have no duty to defend any claim for “injury or damage” arising out of the foregoing.

B. The following are added to **SECTION IV – DEFINITIONS**

"Auto" means:

1. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

   However, "auto" does not include "mobile equipment".

"Loading or unloading" means the handling of property:

1. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
2. While it is in or on an aircraft, watercraft or "auto"; or
3. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

   but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

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"Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

2. Vehicles maintained for use solely on or next to premises you own or rent;

3. Vehicles that travel on crawler treads;

4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

a. Power cranes, shovels, loaders, diggers or drills; or

b. Road construction or resurfacing equipment such as graders, scrapers or rollers;

5. Vehicles not described in Paragraph **1., 2., 3.** or **4.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

b. Cherry pickers and similar devices used to raise or lower workers;

6. Vehicles not described in Paragraph **1., 2., 3.** or **4.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

a. Equipment designed primarily for:

(1) Snow removal;

(2) Road maintenance, but not construction or resurfacing; or

(3) Street cleaning;

b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

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EXCLUSION OF COVERAGE SUBJECT TO SUBLIMITS OR OTHER REDUCED LIMITS IN UNDERLYING INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

This policy does not apply to "**ultimate net loss"** insured by "controlling **underlying insurance"** if such "**ultimate net loss"** is subject under the "controlling **underlying insurance"** to any sublimit or any other limit less than the applicable limits for the "controlling **underlying insurance"** set forth in the Declarations under the Schedule of "controlling underlying insurance" herein, including any limits in the "controlling **underlying insurance"** that are reduced as a result of any insured's failure to comply with any requirements or conditions of coverage set forth in the "controlling **underlying insurance"**.

HSIC CX ES 01 88 04 21

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNIMPAIRED RETAINED LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following is added to **SECTION II – LIMITS OF INSURANCE**:

The “retained limits” on “controlling underlying insurance” shall be unimpaired as of the inception date of this policy.

The “retained limits” on the “controlling underlying insurance” will only be reduced and exhausted by payments for “injury or damage” arising out of an “event” that occurs during the policy period of the policy.

If any "controlling underlying insurance" is written on a claims made basis, the “retained limits” on that “controlling underlying insurance” will only be reduced or exhausted by payments for “injury or damage” arising out of an “event" for which claims are made during the policy period, or any Extended Reporting Period, of this policy.

HSIC CX ES 02 06 12 21

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM AND DEPOSIT PREMIUM ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. SECTION III – CONDITIONS, Paragraph **9. Premium Audit**, subparagraph **b.** is deleted and replaced with the following:

b. If this policy is auditable, the minimum and deposit premium shown on the Declarations page of this policy is the "advance premium" for the full policy term applicable to this policy.

At the close of each audit period, we will compute the "earned premium" for that period. The "audit premium" is due and payable to us on notice to the first Named Insured. If the "audit premium" is less than the minimum and deposit premium, the minimum and deposit premium will apply, with no return to you.

B. SECTION III – CONDITIONS, Paragraph **5. Cancellation**, subparagraph **e**. is deleted and replaced with the following:

5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund will reflect either a 25% "minimum earned premium" or a short-rate charge of 90% of the pro rata premium, whichever is greater. If the insured cancels after 12 months, the "advance premium" is fully earned. Any cancellation will be effective even if we have not made or offered a refund.

"Advance Premium" = $17,000.00

"Minimum Earned Premium" = 25.00% % of the "advance premium" or $

"Minimum Audit Premium" = 100% of the "advance premium" or

$17,000.00

C. For the purposes of this endorsement, the following terms are defined:

1. "Advance premium" means the premium that is stated in the policy declarations and payable in full by the first Named Insured at the inception of the policy.

2. "Audit premium" means the premium that is developed by calculating the difference between the "advance premium" and the "earned premium".

3. "Earned premium" means the premium that is developed by applying the rate(s) scheduled in the policy to the actual premium basis (determined by a final audit) for the policy period.

4. "Minimum audit premium" means the lowest premium for which insurance will be written for the full policy period or 12 months, whichever is less, and is developed as a percentage of the "advance premium".

5. "Minimum earned premium" means the absolute lowest premium for which insurance will be written for any portion of the policy period and is developed as a percentage of the "advance premium".

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LIQUOR LIABILITY EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

It is hereby understood and agreed that:

SECTION I – COVERAGES, Paragraph **2. Exclusions** of the Policy is amended to add the following additional exclusions:

Liquor Liability

The insurance provided under this Coverage Part does not apply to any claim, suit, "event", liability, damages, loss, cost or expense based upon or arising out of, directly or indirectly, in whole or in part:

"Injury or damage," including mental anguish and emotional distress whether or not resulting from physical injury, in connection with:

1. Causing or contributing to the intoxication of any person, including but not limited to causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises, for consumption on your premises;
2. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
3. Any act, error or omission in violation of any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

a. The supervision, hiring, employment, training or monitoring of others by that insured; or

b. Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol.

This exclusion applies only if you:

1. Manufacture, sell or distribute alcoholic beverages;
2. Serve or furnish alcoholic beverages for a charge, whether or not such activity:
   a. Requires a license;
   b. Is for the purpose of financial gain or livelihood;
3. Serve or furnish alcoholic beverages without a charge, if a license is required for such activity; or
4. Permit any person to bring any alcoholic beverages on your premises, for consumption on your premises.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE

The following is added to Paragraph **2. Exclusions** of **SECTION I – COVERAGES**:

This insurance does not apply to any and all products manufactured, imported, sold, handled, distributed or disposed of by any insured containing Perfluoroalkyl and polyfluoroalkyl substances (PFAS), perfluorooctanoic acid (PFOA) or Perfluorooctanesulfonic acid (PFOS).

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL FIREARMS EXCLUSION

This endorsement changes modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

This insurance does not apply to:

”Injury or damage” arising out of, resulting from or in any way connected to, in whole or in part, the use of or failure to use any firearm(s).

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INSURANCE POLICY

of

The Burlington Insurance Company

A Stock Company

Home Office, Administrative Office and Claim Office
City Place II, 185 Asylum Street, 7th Floor, Hartford, CT 06103
Tel. 860-723-4150 or
Toll Free 1-800-328-8719

IFG Companies

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representatives.

Secretary

President

IFG Companies

COMMERCIAL EXCESS LIABILITY DECLARATIONS

Policy Number: 263BE08231
Renewal of: New

THE BURLINGTON INSURANCE COMPANY

Home Office, Administrative Office and Claim Office
City Place II, 185 Asylum Street, 7th Floor, Hartford, CT 06103

ITEM 1. NAMED INSURED AND MAILING ADDRESS

The Swimming Swan, LLC

903 Pasel Del Lago
Fallbrook, CA 92028

ITEM 2. POLICY PERIOD

Effective Date: 05/26/2023 12:01 A.M. Expiration Date: 05/26/2024 12:01 A.M.
Standard Time at your mailing address shown above

Producing Broker

R-T Specialty Insurance Services, LLC
2601 Main St., Suite 450
Irvine, CA 92614
Producer Code: 0263
Co. Use: DMP
SL License: 0G97516

ITEM 3. In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy.

ITEM 4. EXCESS POLICY LIMITS OF INSURANCE

Each Occurrence Limit:	**$ 5,000,000**
Aggregate Limit:	**$ 5,000,000**
Which is Part Of:	

ITEM 5. PREMIUM

Excess Liability Premium	**$ 10,000**
Terrorism Risk Insurance Act Premium	**N/A**
Total Policy Premium or Deposit Premium	**$ 10,000**
Other Charges (if applicable)	
Total Other Charges	**N/A**
TOTAL AMOUNT DUE	**$ 10,000**

ITEM 6. PREMIUM AUDIT PERIOD (if applicable)
☐ Annual ☐ Other (specify)

Rating Basis:	**N/A**
Premium Basis:	**N/A**
Rate is:	**N/A**
Rate:	**N/A**

Premium is:	Policy Minimum Premium
Flat	**$ 10,000**

In the event you cancel this policy, we will retain a minimum premium. See BG-I-015

ITEM 7. Forms and Endorsements application to this policy: See "Listing or Forms and Endorsements" (IFG-I-0150)

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

This insurance is issued pursuant to the California Insurance Code, Sections 1760 through 1780, and is placed in an insurer or insurers not holding a Certificate of Authority from or regulated by the California Insurance Commissioner

Surplus Lines Tax 300.00
Stamping Fee 18.00

Countersigned Date: _____ **By:** _____
Issue Date: 06/07/2023 Authorized Representative

DocuSign Envelope ID: 5E940F8A-48C6-4D5D-BDB5-4058F0741BCB

SCHEDULE OF "CONTROLLING UNDERLYING INSURANCE"

COVERAGE: COMMERCIAL EXCESS LIABILITY

Insurance Company:	Houston Specialty Insurance Company
Policy Number:	ESB-HS-CX-0000172-00
Policy Period:	Effective: 05/26/2023 Expiration: 05/26/2024
Each Occurrence Limit:	**$5,000,000**
Aggregate Limit:	**$5,000,000**

POLICY NUMBER: 263BE08231

POLICY PERIOD: 05/26/2023 Effective Date — 05/26/2024 Expiration Date

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LISTING OF FORMS AND ENDORSEMENTS

This listing forms a part of the following:

Commercial Excess Liability Policy

NUMBER	TITLE
Cover Page	
IFG-I-0002 08 21	Policy Cover Page
Interline	
D-2 01 20	California Surplus Lines Notice
IFG-I-0408 01 17	California Service of Suit Amendment
BG-I-015 03 17	25% Minimum Earned Premium
IFG-I-1004 11 21	Exclusion - Cyber Incident
Commercial Excess Liability	
IFG-FB-000a 11 20	Commercial Excess Liability Declarations
IFG-FX-0001 07 17	Commercial Excess Liability Coverage Form
CX 21 10 04 13	Limitation Of Coverage To Designated Premises Or Project
IFG-FX-0230 01 21	Exclusion - Terrorism Outside USA
IFG-FX-0231 01 21	Auto - Excl. of Terrorism
CX 21 01 09 08	Nuclear Energy Liability Exclusion Endorsement
CX 21 11 04 13	Exclusion - Abuse Or Molestation
CX 21 17 04 13	Exclusion - Communicable Disease
CX 21 19 04 13	Exclusion - Employment-Related Practices
CX 21 20 04 13	Exclusion - Professional Services
IFG-FX-0012 07 17	Exclusion - Auto Liability
IFG-FX-0019 07 17	Exclusion - Employer's Liability
IFG-FX-0027 07 17	Exclusion - Aircraft Products And Grounding, Including Unmanned Aircraft Or Unmanned Aerial Vehicle
IFG-FX-0028 07 22	Excl-Damage To Property

POLICY NUMBER: 263BE08231

POLICY PERIOD: 05/26/2023 Effective Date — 05/26/2024 Expiration Date

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LISTING OF FORMS AND ENDORSEMENTS

This listing forms a part of the following:

Commercial Excess Liability Policy

NUMBER	TITLE
IFG-FX-0036 11 21	Exclusion - Lead Bearing Substance
IFG-FX-0039 07 17	Exclusion - ERISA
IFG-FX-0043 11 21	Exclusion - Assault, Battery Or Other Physical Altercation
IFG-FX-0044 07 17	Exclusion - Recall Of Products, Work or Impaired Property
IFG-FX-0063 07 17	Exclusion - Fungi or Bacteria
IFG-FX-0064 07 17	Exclusion - Punitive Damages
IFG-FX-0067 07 17	Exclusion - Intellectual Property
IFG-FX-0071 07 17	Exclusion - War
IFG-FX-0076 07 17	Exclusion - Aircraft Liability
IFG-FX-0077 07 17	Recording And Distribution Of Material Or Information In Violation Of Law Exclusion
IFG-FX-0078 11 21	Exclusion - Asbestos Or Asbestos-Related Dust
IFG-FX-0097 07 17	Exclusion - Injury To Independent Contractors/Subcontractors
IFG-FX-0099 07 17	Limitation - Independent Contractors/Subcontractors
IFG-FX-0103 05 16	Amendment of Premium Conditions
IFG-FX-0131 07 17	Exclusion - Discrimination
IFG-FX-0140 07 17	Exclusion - Breach Of Contract
IFG-FX-0145 03 21	Exclusion - Toxic Substances
IFG-FX-0163 04 15	Exclusion - Cross Suits - Named Insured Versus Named Insured
IFG-FX-0169 07 17	Total Pollution Exclusion
IFG-FX-0188 11 21	Exclusion - Silica Or Silica-Related Dust
IFG-FX-0221 03 22	Anti-Stacking Of Limits
IFG-FX-0225 03 21	NY-Excl -- Any Constr or Contr

NOTICE:

1. **THE INSURANCE POLICY THAT YOU HAVE PURCHASED IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINE" INSURERS.**

2. **THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT THAT APPLY TO CALIFORNIA LICENSED INSURERS.**

3. **THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED**

4. **THE INSURER SHOULD BE LICENSED EITHER AS A FOREIGN INSURER IN ANOTHER STATE IN THE UNITED STATES OR AS A NON-UNITED STATES (ALIEN) INSURER. YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINE" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT THE TOLL-FREE NUMBER 1-800-927-4357 OR INTERNET WEBSITE WWW.INSURANCE.CA.GOV. ASK WHETHER OR NOT THE INSURER IS LICENSED AS A FOREIGN OR NON-UNITED STATES (ALIEN) INSURER AND FOR ADDITIONAL INFORMATION ABOUT THE INSURER. YOU MAY ALSO VISIT THE NAIC'S INTERNET**

WEBSITE AT WWW.NAIC.ORG. THE NAIC--THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS--IS THE REGULATORY SUPPORT ORGANIZATION CREATED AND GOVERNED BY THE CHIEF INSURANCE REGULATORS IN THE UNITED STATES.

5. **FOREIGN INSURERS SHOULD BE LICENSED BY A STATE IN THE UNITED STATES AND YOU MAY CONTACT THAT STATE'S DEPARTMENT OF INSURANCE TO OBTAIN MORE INFORMATION ABOUT THAT INSURER. YOU CAN FIND A LINK TO EACH STATE FROM THIS NAIC INTERNET WEBSITE:**

   HTTPS://NAIC.ORG/STATE_WEB_MAP.HTM.

6. **FOR NON-UNITED STATES (ALIEN) INSURERS, THE INSURER SHOULD BE LICENSED BY A COUNTRY OUTSIDE OF THE UNITED STATES AND SHOULD BE ON THE NAIC'S INTERNATIONAL INSURERS DEPARTMENT (IID) LISTING OF APPROVED NONADMITTED NON-UNITED STATES INSURERS. ASK YOUR AGENT, BROKER, OR "SURPLUS LINE" BROKER TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.**

7. **CALIFORNIA MAINTAINS A "LIST OF APPROVED SURPLUS LINE INSURERS (LASLI)." ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST AT THE INTERNET WEBSITE OF THE CALIFORNIA DEPARTMENT OF INSURANCE: WWW.INSURANCE.CA.GOV/01-CONSUMERS/120-COMPANY/07-LASLI/LASLI.CFM.**

8. IF YOU, AS THE APPLICANT, REQUIRED THAT THE INSURANCE POLICY YOU HAVE PURCHASED BE EFFECTIVE IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE WITHIN TWO BUSINESS DAYS, AND YOU DID NOT RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS POLICY WITHIN FIVE DAYS OF RECEIVING THIS DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM WILL BE PRORATED AND ANY BROKER'S FEE CHARGED FOR THIS INSURANCE WILL BE RETURNED TO YOU.

D-2 01 20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALIFORNIA
SERVICE OF SUIT AMENDMENT

The Company has designated the following resident agent to be its true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding in the State of California.

Ms. Karissa Lowry

Corporation Service Company Which Will Do Business in California as CSC-Lawyers Incorporating Service

2710 Gateway Oaks Drive

Suite 150N

Sacramento, CA 95833

All other terms and conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

25% MINIMUM EARNED PREMIUM

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
COMMERCIAL PROPERTY COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL EXCESS LIABILITY COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
GARAGE COVERAGE FORM
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

If the first Named Insured or anyone with his, her, its or their power of attorney cancels this policy, then the minimum earned premium shall be 25% of the annual premium or $100.00, whichever is greater.

All other terms and conditions of this Policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – CYBER INCIDENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE
PRODUCTS-COMPLETED OPERATIONS COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE
LIQUOR LIABILITY COVERAGE PART
COMMERCIAL EXCESS LIABILITY COVERAGE PART
AUTO DEALERS COVERAGE FORM
GARAGE COVERAGE FORM

A. The following exclusion is added to the **Exclusions** section of all coverages under all forms and endorsements that comprise this Coverage Part, Coverage Form, endorsement, or Policy and supersedes any contradictory exclusion in the Coverage Part, Coverage Form, endorsement, or Policy to which this coverage applies. This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the "injury or damage".

Exclusion – Cyber Incident:

We will not pay for any "injury or damage" because of, caused by, arising or resulting, directly or indirectly, in whole or in part from a "cyber incident".

1. As used in this exclusion "cyber incident" means:

(a) Unauthorized access to, acquisition, processing, storage, use, dissemination, publication, disclosure, or diversion of; or

(b) Exceeding authorized use, misuse, alteration, misappropriation, theft, loss, loss of use, corruption or impairment of, damage to, inability to access, failure to provide access to, failure to remove or rectify, failure to destroy, failure to protect or secure (including, but not limited to, failure to encrypt), or inability to manipulate;

any person's or organization's confidential information or personal information including, but not limited to, patents, trade secrets, processing methods, customer or customer related information (including, but not limited to, customer lists), business plans or records, financial information, personally identifiable information, payment card information (including, but not limited to, credit, debit, or stored value cards), medical or health information, or any other type or combination of types of personal data or nonpublic information, whether such data or information is "electronic data" or in any other form or media, or any "computer system"; or

2. Malicious code, virus, or any other harmful or unauthorized code that is directed at, enacted upon, or introduced into any "computer system" and is designed to access, alter, corrupt, damage, delete, destroy, disrupt, encrypt, exploit, use, prevent or restrict access to, or the use of "electronic data" or any part of any "computer system", or otherwise disrupt its normal functioning, use, or operation; or

3. Denial of service attack, denial of access to, denial or interruption of service, degradation, loss, loss of use, misappropriation, transmission, unauthorized use or access, misuse, delay, alteration, diversion, failure, destruction, corruption or impairment of, damage to, or inability to access, operate, host, use, manage, control or interface with, any "computer system", including any insured's, other person's, or organization's "computer system"; or

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4. Collection, sale, dissemination, publication, or disclosure of any person's or organization's confidential information, personal information, or personal data, including, but not limited to, patents, trade secrets, processing methods, customer or customer related information (including, but not limited to, customer lists), business plans or records, financial information, personally identifiable information, payment card information (including, but not limited to, credit, debit, or stored value cards), medical or health information, or any other type or combination of types of personal data or nonpublic information, whether such data or information is "electronic data" or in any other form or media, or any "computer system"; or

5. Loss, loss of use, corruption, or disruption of, damage to, or inability to access or alter "electronic data" or a "computer system"; or

6. Transfer, payment, or delivery of money or any form of currency, including virtual currency, in response to a fraudulent instruction or demand; or

7. Demand for ransom payments or other extortion made in connection with the actual or threatened perpetration of any of the events described in **A.1.** – **6.**

B. This exclusion applies even if "injury or damage" is claimed for any remediation measures (including, but not limited to, notification costs or credit monitoring), payment card replacement costs, business interruption, investigation, mitigation or restoration expenses, fines or penalties, public relations expenses, or any other damage, injury, cost, or expense because of, caused by, arising or resulting from, directly or indirectly, in whole or in part from a "cyber incident".

C. This exclusion applies to any liability or "injury or damage" because of, caused by, arising or resulting directly or indirectly, in whole or in part any failure (including, but not limited to, failure to timely or properly act) to notify of, disclose, prepare for, respond to, protect against, remediate, mitigate, or comply with any statutory, regulatory, contractual, common law, or other legal obligation relating to a "cyber incident".

D. This exclusion applies regardless of the cause or source of any "injury or damage" or the legal theory asserted, including, but not limited to, occurrences or offenses reported, claims made, or "suits" brought against any insured alleging breach of contract, misrepresentation, unfair or deceptive trade practices, defamation, violation of a person's right to privacy, violation of an intellectual property right (including, but not limited to, copyright, trademark or patent infringement), negligence, failure to comply with a legal obligation, or any other wrongdoing, including, but not limited to, the investigation, supervision, hiring, employment, training, or monitoring of others or the investigation, supervision, monitoring, or intervention with respect to "electronic data", "computer systems" or premises, by any insured or by any other person or organization acting for or on behalf of any insured.

E. We will have no duty to investigate or defend any claim or "suit" that alleges, or is because of, caused by, arises or results, directly or indirectly, in whole or in part from a "cyber incident" as defined in Paragraph **A.1. – 7.** of this endorsement.

F. For the purposes of this exclusion, the following are added to the **Definitions** section and supersede any contradictory definitions in the Coverage Part, Coverage Form, endorsement, or Policy:

"Electronic data" means:

Information, facts, files, or computer programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices, or any other repositories of computer software, including, but not limited to, those which are used with electronically controlled equipment or any other "computer systems".

"Computer systems" means:

(a) Computer software, firmware, hardware and associated input and output devices (including wireless, mobile, peripheral or component devices), data storage and data processing devices, networking equipment, and backup facilities, including cloud computing devices and facilities; and

(b) Any computer network, network interface, or network of devices or hardware, including, but not limited to, communication networks or devices, computer-controlled devices, operating and control systems; websites or domains; intranets, extranets, the internet or any other internal or external networks (including, but not limited to, cloud computing).

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"Injury or damage" means any injury, damages, loss, cost, or expense, including, but not limited to, "bodily injury", "property damage", "personal or advertising injury", "covered pollution cost or expenses", "damages", "injury", "loss", or "ultimate net loss" as defined or referenced in the Coverage Part, Coverage Form, endorsement, or Policy to which this exclusion applies.

All other terms and conditions of the Policy remain unchanged.

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COMMERCIAL EXCESS LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under the "controlling underlying insurance".

Other words and phrases that appear in quotation marks in this Coverage Part have special meaning. Refer to Section **IV** – Definitions. Other words and phrases that are not defined under this Coverage Part but are defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance".

The insurance provided under this Coverage Part will follow the same provisions, exclusions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this insurance. To the extent such provisions differ or conflict, the provisions of this Coverage Part will apply. However, the coverage provided under this Coverage Part will not be broader than that provided by the applicable "controlling underlying insurance".

There may be more than one "controlling underlying insurance" listed in the Declarations and provisions in those policies conflict, and which are not superseded by the provisions of this Coverage Part. In such a case, the provisions, exclusions and limitations of the "controlling underlying insurance" applicable to the particular "event" for which a claim is made or suit is brought will apply.

SECTION I – COVERAGES

1. Insuring Agreement

a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which insurance provided under this Coverage Part applies.

We will have the right and duty to defend the insured against any suit seeking damages for such "injury or damage" when the applicable "retained limits" of "controlling underlying insurance" have been exhausted solely by the payment of the "retained limit" by the "controlling underlying insurer" in accordance with the provisions of such "controlling underlying insurance". Such payments must be made in satisfaction of judgment or settlements under the "controlling underlying insurance" in the full amount of the "controlling underlying insurance".

When we have no duty to defend, we may exercise the right to defend at our own expense, or to participate in the defense of, the insured at the expense of the "controlling underlying insurer" against any suit seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any suit seeking damages for which insurance under this policy does not apply or when the "retained limit" of the "controlling underlying insurance" has not been exhausted by actual payment of the full amount of the "retained limit" by either the insured or the "controlling underlying insurer(s)".

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or suit, for which we have the duty to defend.

But:

(1) The amount we will pay for "ultimate net loss" is limited as described in Section **II** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under this Coverage Part. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of defense expenses, judgments or settlements under this Coverage Part.

b. This insurance applies to "injury or damage" that is subject to an applicable "retained limit". If any other limit, such as a sublimit, is specified in the "controlling underlying insurance", this insurance does not apply to "injury or damage" arising out of that exposure unless that specific sublimit is specified in the Declarations under the Schedule of "controlling underlying insurance".

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c. If the "controlling underlying insurance" requires, for a particular claim, that the "injury or damage" occur during its policy period in order for that coverage to apply, then this insurance will only apply to that "injury or damage" if it occurs during the policy period of this Coverage Part. If the "controlling underlying insurance" requires that the "event" causing the particular "injury or damage" takes place during its policy period in order for that coverage to apply, then this insurance will apply to the claim only if the "event" causing that "injury or damage" takes place during the policy period of this Coverage Part.

d. Any additional insured under any policy of "controlling underlying insurance" will automatically be an additional insured under this insurance. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance required by the contract, less any amounts payable by any "controlling underlying insurance".

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "controlling underlying insurance" and will be subject to the Other Insurance condition of this Coverage Part.

2. Exclusions

The following exclusions, and any other exclusions added by endorsement, apply to this Coverage Part. In addition, the exclusions applicable to any "controlling underlying insurance" apply to this insurance unless superseded by the following exclusions, or superseded by any other exclusions added by endorsement to this Coverage Part.

Insurance provided under this Coverage Part does not apply to:

a. Medical Payments

Medical payments coverage or expenses that are provided without regard to fault, whether or not provided by the applicable "controlling underlying insurance".

b. Auto

Any loss, cost or expense payable under or resulting from any of the following auto coverages:

(1) First-party physical damage coverage;

(2) No-fault coverage;

(3) Personal injury protection or auto medical payments coverage; or

(4) Uninsured or underinsured motorists' coverage.

c. Pollution

(1) "Injury or damage" caused by or arising, directly or indirectly, in whole or in part, out of the actual, alleged or threatened discharge, dispersal, disposal, seepage, migration, release or escape of "pollutants" at any time.

(2) Any loss, cost or expense caused by or arising, directly or indirectly, in whole or in part out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

This exclusion applies whether or not such "pollutants" have any function in your business, operations, premises, site or location or constitutes your product or is a component of your product or products you use.

This exclusion does not apply to the extent that valid "controlling underlying insurance" for the "pollution" liability risks described above exists or would have existed but for the exhaustion of underlying limits for "injury or damage" covered under this Coverage Part.

d. Workers' Compensation And Similar Laws

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

SECTION II – LIMITS OF INSURANCE

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

a. Insureds;

b. Claims made or suits brought, or number of vehicles involved;

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

d. Limits available under any "controlling underlying insurance".

2. The Limits of Insurance of this Coverage Part will apply as follows:

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a. This insurance only applies in excess of the "retained limit".

b. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss", for all "injury or damage" covered under this Coverage Part.

However, this Aggregate Limit only applies to "injury or damage":

(1) that is subject to an aggregate limit of insurance under the "controlling underlying insurance"; and

(2) to which insurance provided under this Coverage Part applies.

c. Subject to Paragraph **2.b.** above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this insurance because of all "injury or damage" arising out of any one "event" and to which insurance provided under this Coverage Part applies.

d. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.

3. If any "controlling underlying insurance" has a policy period that is different from the policy period of this Coverage Part then, for the purposes of this insurance, the "retained limit" will only be reduced or exhausted by payments made for "injury or damage" covered under this insurance.

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

SECTION III – CONDITIONS

The following conditions apply. In addition, the conditions applicable to any "controlling underlying insurance" are also applicable to the coverage provided under this insurance unless superseded by the following conditions.

1. Appeals

If the "controlling underlying insurer" or insured elects not to appeal a judgment in excess of the amount of the "retained limit", we may do so at our own expense. We will also pay for taxable court costs, pre- and postjudgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in Section **II** – Limits Of Insurance.

2. Bankruptcy

a. Bankruptcy Of Insured

Bankruptcy, insolvency, rehabilitation or liquidation of, or financial inability to pay by the insured or the insured's estate will not relieve us of our obligations under this Coverage Part provided the "retained limit" has been exhausted solely by the actual payment of the full amount of the "retained limit" by the "controlling underlying insurer(s)", the insured, or the insured's estate. Our obligation under this Coverage Part will only apply to the "ultimate net loss" in excess of the "retained limit".

b. Bankruptcy Of Controlling Underlying Insurer

Bankruptcy, insolvency, rehabilitation or liquidation of, or inability or refusal to pay by the "controlling underlying insurer" will not relieve us of our obligations under this Coverage Part provided the "retained limit" is exhausted as set forth in paragraph **2.c.** below.

c. No Drop Down/No Gap-Filling

Insurance provided under this Coverage Part will not drop down or replace any "controlling underlying insurance":

(1) in the event of bankruptcy, insolvency, rehabilitation or liquidation of, or inability or refusal to pay the "retained limit" by the "controlling underlying insurer(s)", the insured or the insured's estate; or

(2) if the "controlling underlying insurance" is exhausted by payment of losses not covered by insurance provided under this Coverage Part.

In the event of the bankruptcy, insolvency, rehabilitation or liquidation of, or inability or refusal of the "controlling underlying insurer(s)" to pay the "retained limit" or defense costs if outside the limit of liability of the "controlling underlying insurance", the insured will be obligated to pay that amount of the "retained limit" or defense costs not actually paid by the "controlling underlying insurer(s)".

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In no event will our obligations under this Coverage Part be expanded by the loss of or partial payment of the "retained limit" by the "controlling underlying insurer" or its successor or assigns or any state guarantee fund or liquidation bureau.

3. Duties In The Event Of An Event, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this insurance. To the extent possible, notice should include:

(1) How, when and where the "event" took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any "injury or damage" arising out of the "event".

b. If a claim is made or suit is brought against any insured, you must:

(1) Immediately record the specifics of the claim or suit and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or suit as soon as practicable.

c. You and any other insured involved must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit;

(2) Authorize us to obtain records and other information;

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

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

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

4. First Named Insured Duties

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other Named Insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.

At our request, the first Named Insured must furnish us, within 60 days, with a complete copy of any "controlling underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Coverage Part.

5. Cancellation

a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

(1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

e. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

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

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6. Changes

This Coverage Part contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms of this Coverage Part with our consent. If we exercise our right to request a complete copy of any "controlling underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Coverage Part, we reserve the right to make changes to the terms of this Coverage Part. This Coverage Part's terms can be amended or waived only by endorsement.

7. Maintenance Of/Changes To Controlling Underlying Insurance

Any "controlling underlying insurance", including any renewals or replacements, must be maintained in full effect without reduction of coverage or "retained limits" except for the reduction of aggregate limits in accordance with the provisions of such "controlling underlying insurance" that results from "injury or damage" to which this insurance under this Coverage Part applies.

Such exhaustion or reduction is not a failure to maintain "controlling underlying insurance". Failure to maintain "controlling underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect at the time the "event" took place and is subsequently exhausted solely by the payment of the "retained limit". Such "retained limit" will be equal to the full amount of "controlling underlying insurance" and such payment has been made to the claimant(s) or plaintiff(s).

The first Named Insured must notify us in writing, as soon as practicable, if any "controlling underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "controlling underlying insurance" is changed. These changes will not apply to our policy unless we agree to them in writing.

8. Other Insurance

a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent, or issued to an additional insured, or on any other basis. If the insured is named as or qualifies as an additional insured on any other policy, whether primary or excess, such other insurance is primary to this insurance and may not be applied to reduce or exhaust the "retained limit". The "retained limit" may be reduced or exhausted only by actual payment of the "retained limit" by the "controlling underlying insurer," the insured or the insured's estate.

This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, if no other insurer defends, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

9. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. If this policy is auditable, the premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premium is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

10. Loss Payable

Liability under this Coverage Part does not apply to a given claim unless and until:

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a. The insured or the "controlling underlying insurer" has become obligated to pay and has actually paid the full amount of the "retained limit";

b. All applicable other insurance has been exhausted; and

c. The obligation of the insured to pay "ultimate net loss" in excess of the "retained limit" has been determined by a final judgment or settlement by the insured with the written consent of us, such consent not to be unreasonably withheld.

11. Legal Action Against Us

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

a. To join us as a party or otherwise bring us into a suit asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

12. Transfer Of Defense

a. Defense Transferred To Us

When the limits of "controlling underlying insurance" have been exhausted, in accordance with the provisions of "controlling underlying insurance", we may elect to have the defense transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

b. Defense Transferred By Us

When our limits of insurance have been exhausted our duty to provide a defense will cease.

We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Coverage Part of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Coverage Part, we will cooperate in the transfer of control to the insured and its designated representative.

13. When We Do Not Renew

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

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

SECTION IV – DEFINITIONS

The definitions applicable to any "controlling underlying insurance" also apply to this insurance. In addition, the following definitions apply.

1. "Controlling underlying insurance" means any policy of insurance or self-insurance listed in the Declarations under the Schedule of "controlling underlying insurance".

2. "Controlling underlying insurer" means any insurer who provides any policy of insurance listed in the Declarations under the Schedule of "controlling underlying insurance".

3. "Event" means an occurrence, offense, accident, act, or other event, to which the applicable "controlling underlying insurance" applies.

4. "Injury or damage" means any injury or damage, covered in the applicable "controlling underlying insurance" arising from an "event".

5. "Pollutants" mean any solid, liquid, gaseous, bacterial, fungal, or thermal substance or material, that is harmful, toxic or hazardous to persons, plants, animals, wildlife or other living organisms or can cause contamination to property, air, land or water, which includes but is not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, mineral spirits, solvents, insecticides, pesticides, fungicides, motor fuels, gasoline, diesel fuel, motor oil or any other petroleum based product, brake fluid, transmission fluid, antifreeze, lead paint, or other lead containing substances, carbon monoxide fumes or other exhaust gases, welding fumes, paint fumes, adhesive or glue fumes, asbestos, silica, human or animal sewage and waste.

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Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed. A pollutant also includes any substance or material listed, identified or described in any municipal, state or federal environmental statute or regulation that applies to the production, shipping, handling, storage, use, processing, recycling or disposal of such substance or material.

6. "Retained limit" means the available limits of "controlling underlying insurance" applicable to the claim, excluding any deductible paid or self-insured retention under the "controlling underlying insurance" which must be satisfied in accordance with the provisions of that policy before any obligation to pay an "ultimate net loss". The "retained limit" does not include:

a. any losses excluded by this Coverage Part; or

b. any defense expenses unless the "controlling underlying insurance" specifies that limits are reduced by defense expenses.

7. "Ultimate net loss" means the total sum, of damages covered under this Coverage Part, after reduction for recoveries, or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:

a. Settlements, judgments, binding arbitration; or

b. Other binding alternate dispute resolution proceeding entered into with our consent.

"Ultimate net loss" includes defense expenses if the "controlling underlying insurance" specifies that limits are reduced by defense expenses.

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POLICY NUMBER: 263BE08231

COMMERCIAL EXCESS LIABILITY
CX 21 10 04 13

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LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

SCHEDULE

Premises: City of Gilroy Christopher High School Aquatics Center
Project:
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Insurance provided under this Coverage Part applies only to "injury or damage" arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or

2. The project shown in the Schedule.

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EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND EXCLUSION OF OTHER ACTS OF TERRORISM COMMITTED OUTSIDE THE UNITED STATES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

Any endorsement addressing acts of terrorism (however defined) in any "controlling underlying insurance" does not apply to this excess insurance. The following provisions addressing acts of terrorism apply with respect to this excess insurance:

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

TERRORISM

Any "injury or damage" caused by or arising, directly or indirectly, in whole or in part out of a "certified act of terrorism", or out of an "other act of terrorism" that is committed outside of the United States (including its territories and possessions and Puerto Rico), but within the coverage territory. However, with respect to an "other act of terrorism", this exclusion applies only when one or more of the following are attributed to such act:

1. The total of insured damage to all types of property exceeds $25,000,000 (valued in US dollars). In determining whether the $25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or

2. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:

a. Physical injury that involves a substantial risk of death; or

b. Protracted and obvious physical disfigurement; or

c. Protracted loss of or impairment of the function of a bodily member or organ; or

3. The terrorism involves the actual, alleged, threatened, or attempted use, release, escape, dispersal or application of nuclear materials or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or

4. Nuclear or radioactive materials are released and it is reasonably believed by us that one purpose of the terrorism was to release such materials; or

5. The terrorism is carried out by means of the actual, alleged, threatened, or attempted use, release, escape, dispersal or application of pathogenic or poisonous biological or chemical materials; or

6. Pathogenic or poisonous biological or chemical materials are released and it is reasonably believed by us that one purpose of the terrorism was to release such materials.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the providing or failure to provide warnings, protection, or safeguards against such acts.

With respect to this exclusion, Paragraphs **1.** and **2.** describe the thresholds used to measure the magnitude of an incident of an "other act of terrorism" and the circumstances in which the threshold will apply for the purpose of determining whether this exclusion will apply to that incident.

B. For the purposes of this endorsement, the following is added to the **Definitions** section:

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1. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

a. The act resulted in insured losses in excess of $5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act;

b. The act resulted in damage:

(1) Within the United States (including its territories and possessions and Puerto Rico); or

(2) Outside of the United States in the case of:

(a) An air carrier (as defined in Section 40102 of title 49, United States Code) or United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; or

(b) The premises of any United States mission; and

c. The act is a violent act or an act that is dangerous to human life, property, or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

2. "Other act of terrorism" means a violent act or an act that is dangerous to human life, property, or infrastructure that is committed by an individual or individuals and it is reasonably believed by us to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not a "certified act of terrorism".

Multiple incidents of an "other act of terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.

C. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for "injury or damage" that is otherwise excluded under this Coverage Part.

All other terms and conditions of this Policy remain unchanged.

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AUTO COVERAGE – EXCLUSION OF TERRORISM

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

Any endorsement addressing acts of terrorism (however defined) in any "controlling underlying insurance" does not apply to this excess insurance.

A. The provisions of this endorsement:

1. Apply only to any "injury or damage" caused by or arising, directly or indirectly, in whole or in part out of the ownership, maintenance, or use of any auto that is a covered auto under this Coverage Part; and

2. Supersede the provisions of any other endorsement addressing terrorism attached to this Coverage Part but only with respect to any "injury or damage" caused by or arising, directly or indirectly, in whole or in part out of the ownership, maintenance, or use of any auto that is a covered auto.

B. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

TERRORISM

We will not pay for any "injury or damage" caused by or arising, directly or indirectly, in whole or in part out of an act of "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". Any "injury or damage" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage. However, this exclusion applies only when one or more of the following are attributed to an act of "terrorism":

1. The "terrorism" involves the actual, alleged, threatened, or attempted use, release, escape, dispersal or application of nuclear materials or directly, or indirectly results in nuclear reaction, or radiation or radioactive contamination; or

2. Nuclear or radioactive materials are released and it is reasonably believed by us that one purpose of the "terrorism" was to release such materials; or

3. The "terrorism" is carried out by means of the actual, alleged, threatened, or attempted use, release, escape, dispersal or application of pathogenic or poisonous biological or chemical materials; or

4. Pathogenic or poisonous biological or chemical materials are released and it is reasonably believed by us that one purpose of the "terrorism" was to release such materials; or

5. The total of insured damage to all types of property exceeds $25,000,000 (valued in US dollars). In determining whether the $25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or

6. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:

a. Physical injury that involves a substantial risk of death; or

b. Protracted and obvious physical disfigurement; or

c. Protracted loss of or impairment of the function of a bodily member or organ.

Multiple incidents of "terrorism" which occur within a 72-hour period and it is reasonably believed by us to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the thresholds in Paragraph **B.5.** or **B.6.** are exceeded.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the providing or failure to provide warnings, protection, or safeguards against such acts.

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With respect to this exclusion, Paragraphs **B.5.** and **B.6.** describe the thresholds used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this exclusion will apply to that incident. When the exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Part.

In the event of any incident of "terrorism" that is not subject to this exclusion, coverage does not apply to any "injury or damage" that is otherwise excluded under this Coverage Part.

C. For the purposes of this endorsement, the following is added to the **Definitions** section:

1. "Terrorism" means acts against persons, organizations or property of any nature:

a. That involve the following or preparation for the following:

(1) Use or threat of force or violence; or

(2) Commission or threat of a dangerous act; or

(3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

b. When one or both of the following applies:

(1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or

(2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

All other terms and conditions of this Policy remain unchanged.

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NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(BROAD FORM)

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2., Exclusions:**

2. Exclusions

NUCLEAR ENERGY LIABILITY

a. Under any Liability Coverage, to "injury or damage":

(1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(b)** the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

b. Under any Liability Coverage, to "injury or damage" resulting from "hazardous properties" of "nuclear material", if:

(1) The "nuclear material" **(a)** is at any "nuclear facility" owned by, or operated by or on behalf of, an insured or **(b)** has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an insured; or

(3) The "injury or damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion **(3)** applies only to property damage to such "nuclear facility" and any property thereat.

c. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

(a) Any "nuclear reactor";

(b) Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

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(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Injury or damage" includes all forms of radioactive contamination of property.

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EXCLUSION – ABUSE OR MOLESTATION

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to "injury or damage" arising out of:

a. The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured; or

b. The negligent:

(1) Employment;

(2) Investigation;

(3) Supervision;

(4) Reporting to the proper authorities, or failure to so report; or

(5) Retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph **a.** above.

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EXCLUSION – COMMUNICABLE DISEASE

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Communicable Disease

"Injury or damage" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;

b. Testing for a communicable disease;

c. Failure to prevent the spread of the disease; or

d. Failure to report the disease to authorities.

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EXCLUSION – EMPLOYMENT-RELATED PRACTICES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to "injury or damage" to:

a. A person arising out of any:

(1) Refusal to employ that person;

(2) Termination of that person's employment; or

(3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

b. The spouse, child, parent, brother or sister of that person as a consequence of "injury or damage" to that person at whom any of the employment-related practices described in Paragraph **(1), (2)** or **(3)** above is directed.

This exclusion applies whether the injury-causing event described in Paragraph **(1), (2)** or **(3)** above occurs before employment, during employment or after employment of that person.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

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EXCLUSION – PROFESSIONAL SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to "injury or damage" due to the rendering of or failure to render any professional service. This includes but is not limited to:

a. Legal, accounting or advertising services;

b. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;

c. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;

d. Engineering services, including related supervisory or inspection services;

e. Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;

f. Any health or therapeutic service treatment, advice or instruction;

g. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;

h. Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;

i. Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

j. Body piercing services;

k. Services in the practice of pharmacy;

l. Law enforcement or firefighting services; and

m. Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "event" which caused the "injury or damage" involved the rendering of or failure to render any professional service.

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EXCLUSION – AUTO LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Auto Liability

Any "injury or damage" caused by or arising out of the ownership, maintenance, use, or entrustment to others of any auto. Use includes operation and loading or unloading.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured.

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EXCLUSION – EMPLOYER'S LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Employer's Liability

Any "injury or damage" to:

a. An "employee", "leased worker", "temporary worker", "volunteer worker", statutory "employee", casual worker, or seasonal worker of any insured, or a person hired to do work for or on behalf of any insured or tenant of any insured, arising out of and in the course of:

(1) Employment by any insured; or

(2) Directly or indirectly performing duties related to the conduct of any insured's business; or

b. The spouse, child, parent, brother or sister of that "employee", "leased worker", "temporary worker", "volunteer worker", statutory "employee", casual worker, or seasonal worker as a consequence of Paragraph **a.** above.

This exclusion applies:

a. Regardless of where the:

1. Services are performed; or

2. Bodily injury occurs;

b. Whether any insured may be liable as an employer or in any other capacity; and

c. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

B. The following are added to the **Definitions** Section:

"Employee" means a person working for salary or wages, or any substitute for salary or wages, as compensation in any manner by any insured, under any contract of hire, express or implied, oral or written, where the insured, as employer, has the power or right to control and direct the employee. "Employee" includes a person hired by the hour, day or any other irregular or intermittent period. "Employee" includes a "leased worker" or "temporary worker".

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

"Temporary worker" means a person who is furnished to any insured to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

"Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

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EXCLUSION - AIRCRAFT PRODUCTS AND GROUNDING, INCLUDING UNMANNED AIRCRAFT OR UNMANNED AERIAL VEHICLE

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Aircraft Products and Grounding, Including Unmanned Aircraft Or Unmanned Aerial Vehicle

Any "injury or damage" included within the products-completed operations hazard and caused by or arising out of any "aircraft product" or the "grounding" of any "manned aircraft or manned aerial vehicle" or any "unmanned aircraft or unmanned aerial vehicle".

B. The following are added to the **Definitions** Section:

1. "Aircraft Product" means:

a. Aircraft including "manned aircraft or manned aerial vehicle", "unmanned aircraft or unmanned aerial vehicle", and any ground support or control equipment used therewith; and

b. Any article furnished by the insured and installed in an aircraft (including "manned aircraft or manned aerial vehicle", or "unmanned aircraft or unmanned aerial vehicle"); or used in connection with an aircraft (including "manned aircraft or manned aerial vehicle", or "unmanned aircraft or unmanned aerial vehicle"); or for spare parts for an aircraft (including "manned aircraft or manned aerial vehicle", or "unmanned aircraft or unmanned aerial vehicle"), including ground handling tools and equipment; and

c. Any of "your products" used at an airport for the purpose of guidance, navigation or direction of aircraft (including "manned aircraft or manned aerial vehicle", or "unmanned aircraft or unmanned aerial vehicle"); and

d. Training aids, manuals, blueprints, engineering or other data or advice, and services and labor relating to such aircraft (including "manned aircraft or manned aerial vehicle", or "unmanned aircraft or unmanned aerial vehicle"), articles or products.

2. "Grounding" means the withdrawal of one or more aircraft (including "manned aircraft or manned aerial vehicle", or "unmanned aircraft or unmanned aerial vehicle"), from flight operations or the imposition of speed, passenger or load restrictions on such aircraft, by reason of the existence of or alleged or suspected existence of any defect, fault or condition in such aircraft or any part therefore sold, handled or distributed by the insured or manufactured, assembled or processed by any other person or organization according to specifications, plans, suggestions, orders, or drawings of the insured or with tools, machinery or other equipment furnished to such persons or organizations by the insured, whether such aircraft so withdrawn are owned or operated by the same or different persons, organizations or corporations.

3. "Manned aircraft or manned aerial vehicle" is an aircraft, including any missile or spacecraft whose flight is or can be controlled directly with a human operator on board the aircraft.

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4. "Unmanned aircraft or unmanned aerial vehicle" is an aircraft, including any missile or spacecraft without a human operator on board, whose flight can be controlled remotely or autonomously.

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EXCLUSION – DAMAGE TO PROPERTY

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following is added to Paragraph **2. Exclusions** of **Section I – Coverages**:

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Damage To Property

Property damage to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization, or entity for repair, replacement, enhancement, restoration, or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away, or abandon, if the property damage arises out of any part of those premises;

(3) Property loaned or leased to any insured;

(4) Personal property in the care, custody, or control of any insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the property damage arises out of those operations; or

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

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EXCLUSION – LEAD BEARING SUBSTANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Lead Bearing Substance

a. Any "injury or damage" caused by or arising, directly or indirectly, in whole or in part out of:

(1) The actual, alleged, threatened, or suspected inhalation, ingestion, absorption, consumption, existence, application, presence or use of, contact with, or exposure to lead in any form; or

(2) Any disease or ailment caused by plumbism (lead poisoning).

b. Any loss, cost, or expense arising out of any:

(1) Request, demand, order, or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, dispose of, or in any way respond to, or assess the effects of lead; or

(2) Claim or suit brought by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, disposing of, or in any way responding to, or assessing the effects of lead.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

a. The providing of instructions, warnings, or labeling;

b. The supervision, hiring, employment, training, or monitoring of others by that insured; or

c. The rendering of or failure to render aid, medical or otherwise, to any person.

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EXCLUSION - ERISA

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

ERISA

a. Any obligation of the insured under the Employers' Retirement Income Security Act of 1974 and any amendments thereto, and any similar state or local laws; or

b. Any "injury or damage" arising out of the Employers' Retirement Income Security Act of 1974 and any amendments thereto, and any similar state or local laws.

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EXCLUSION – ASSAULT, BATTERY OR OTHER PHYSICAL ALTERCATION

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Assault, Battery Or Other Physical Altercation

Any "injury or damage":

a. Expected or intended from the standpoint of any insured.

b. Caused by or arising, directly or indirectly, in whole or in part out of any "assault" or "battery" committed or attempted by any person.

c. Caused by or arising, directly or indirectly, in whole or in part out of any act, error, or omission in connection with avoiding, preventing, suppressing, or halting any actual, or threatened "assault" or "battery."

d. Caused by or arising, directly or indirectly, in whole or in part out of any actual, alleged, or threatened verbal or physical confrontation or altercation committed or any act, error, or omission in connection with avoiding, preventing, suppressing, or halting any actual, or threatened verbal or physical confrontation or altercation.

This exclusion applies to all acts, errors, or omissions even if the claims against any insured allege negligence or other wrongdoing, including, but not limited to:

1. All theories of liability (direct or vicarious) asserted against any insured, including, but not limited to, all theories of negligence, gross negligence, recklessness, or intentional tort and shall not be subject to any severability or separation of insureds provision in the policy;

2. The supervision, hiring, employment, training, or monitoring of others by that insured; or

3. The rendering of or failure to render aid, medical or otherwise, to any victim of the "assault" or "battery", or physical confrontation or altercation.

B. For the purposes of this endorsement, the following is added to the **Definitions** section:

"Assault" means any attempt or threat to inflict injury upon the person of another, or any display of force such as would give a person reason to fear or expect immediate bodily harm.

"Battery" means physical contact with a person without his or her consent that entails some injury or offensive touching.

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EXCLUSION – RECALL OF PRODUCTS, WORK OR IMPAIRED PROPERTY

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Recall Of Products, Work Or Impaired Property

Any "injury or damage" claimed for loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) Your product, including your product manufactured, sold, assembled, handled, distributed, or disposed of by:

(a) Any insured or by others on behalf of any insured;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired;

(2) Your work by:

(a) Any insured or by others on behalf of any insured;

(b) Others trading under your name; or

(c) A person or organization whose business assets you have acquired; or

(3) Impaired property by:

(a) Any insured or by others on behalf of any insured;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

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EXCLUSION – FUNGI OR BACTERIA

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Fungi or Bacteria

Any "injury or damage":

a. Which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to:

(i) Any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption; or

(ii) The extent that valid "controlling underlying insurance" for the fungi or bacteria risks described above exists or would have existed but for the exhaustion of underlying limits for "injury or damage".

B. The following is added to the **Definitions** Section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

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EXCLUSION – PUNITIVE DAMAGES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Punitive Damages

Any claim of or indemnification for punitive or exemplary damages. If a suit seeking both compensatory and punitive or exemplary damages has been brought against you for a claim covered by this policy, we will provide defense for such action. We will not have any obligation to pay for any fees, including but not limited to attorney fees, costs, interest or damages attributable to punitive or exemplary damages.

All other terms and conditions on this Policy remain unchanged.

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EXCLUSION – INTELLECTUAL PROPERTY

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Intellectual Property

Any "injury or damage" caused by or arising out of the actual or alleged infringement or violation of any intellectual property rights or laws, including but not limited to:

a. Copyright;

b. Patent;

c. Trade dress;

d. Trade name;

e. Trade secret; or

f. Trademark.

All other terms and conditions of this Policy remain unchanged.

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EXCLUSION - WAR

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

War

Any "injury or damage", however caused**,** arising**,** directly or indirectly**,** out of**:**

a. War, including undeclared or civil war;

b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

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EXCLUSION – AIRCRAFT LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Aircraft Liability

Any "injury or damage" caused by or arising out of any "manned aircraft or manned aerial vehicle", or "unmanned aircraft or unmanned aerial vehicle", including loading or unloading.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured.

B. The following is added to the **Definitions** Section:

"Manned aircraft or manned aerial vehicle" is an aircraft, including any missile or spacecraft whose flight is or can be controlled directly with a human operator on board the aircraft.

"Unmanned aircraft or unmanned aerial vehicle" is an aircraft, including any missile or spacecraft without a human operator on board, whose flight can be controlled remotely or autonomously.

All other terms and conditions of this Policy remain unchanged.

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RECORDING AND DISTRIBUTION OF MATERIAL OR INFORMATION IN VIOLATION OF LAW EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Recording And Distribution Of Material Or Information In Violation Of Law

Any "injury or damage" caused by or arising, directly or indirectly, out of any action or omission that violates or is alleged to violate:

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

(3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or

(4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

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EXCLUSION – ASBESTOS OR ASBESTOS–RELATED DUST

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Asbestos Or Asbestos-Related Dust

a. Any "injury or damage" caused by or arising, directly or indirectly, in whole or in part out of:

(1) The actual, alleged, threatened, or suspected inhalation, ingestion, absorption, consumption, existence, application, presence or use of, contact with, or exposure to asbestos or asbestos-related dust in any form;

(**2)** The handling, distribution, sale, processing, repackaging, testing, analyzing, marketing, production, manufacturing, storage, delivery, transport, warehousing, use, disposal, or removal of asbestos or asbestos-related dust, whether or not it is incorporated into your product or your work;

(3) Any vapor, gas, dust, fumes, or any substance in any form produced by or arising out of any process or procedure involving asbestos or asbestos-related dust; or

(4) Any goods, products, or materials to which asbestos or asbestos-related dust has been applied or incorporated into by any party, including, but not limited to, any manufacturer, processor, or distributor of such goods, products, or materials.

b. Any loss, cost, or expense arising out of any:

(1) Request, demand, order, or statutory or regulatory requirement that any insured or others abate, test for, monitor, clean up, remove, remediate, contain, treat, detoxify, neutralize, dispose of, or in any way respond to, or assess the existence or effects of asbestos or asbestos-related dust, by any insured or by any other person or entity.

(2) Claim or suit brought by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, disposing of, or in any way responding to or assessing the effects of asbestos or asbestos-related dust.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

a. The providing of instructions, warnings, or labeling;

b. The supervision, hiring, employment, training, or monitoring of others by that insured; or

c. The rendering of or failure to render aid, medical or otherwise, to any person.

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EXCLUSION - INJURY TO INDEPENDENT CONTRACTORS/SUBCONTRACTORS

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Injury To Independent Contractors/Subcontractors

a. Any bodily injury or personal and advertising injury to:

(1) Any "independent contractors/ subcontractors"; or

(2) Any "employee" of any "independent contractors/subcontractors"

hired to do work for or on behalf of any insured or any tenant of any insured that arises out of and in the course of:

(1) Employment by any insured; or

(2) Directly or indirectly performing duties related to the conduct of any insured's business; or

b. The spouse, child, parent, brother or sister of any "independent contractors/ subcontractors" or any "employee" of any "independent contractors/subcontractors" as a consequence of Paragraph **a.** above.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, even if the "event" which caused the bodily injury or personal and advertising injury involved the rendering of or failure to render any service.

B. The following are added to the **Definitions** Section**:**

"Employee" as used herein means a person working for salary or wages, or any substitute for salary or wages, as compensation in any manner by any "independent contractors/subcontractors", under any contract of hire, express or implied, oral or written, where the "independent contractors/subcontractors" have the power or right to control and direct the "employee". "Employee" includes a person hired by the hour, day or any other irregular or intermittent period. "Employee" includes a "leased worker" or "temporary worker".

"Independent contractors/subcontractors" as used herein means a person or entity that agrees (orally or in writing) to provide all or some portion of the work or service which you have agreed to perform, regardless of who exercises control over the means or methods used in doing the work or performing the service.

"Leased worker" as used herein means a person leased to any "independent contractors/ subcontractors" by a labor leasing firm under an agreement between any "independent contractors/subcontractors" and the labor leasing firm, to perform duties related to the conduct of any "independent contractors/subcontractors" business. "Leased worker" does not include a "temporary worker".

"Temporary worker" as used herein means a person who is furnished to any "independent contractors/subcontractors" to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

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LIMITATION - INDEPENDENT CONTRACTORS/SUBCONTRACTORS

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Independent Contractors/Subcontractors

Any "injury or damage" or "ultimate net loss" for any loss, cost or expense caused by, arising out of or resulting from, in whole or in part by the act(s) of any "independent contractors/subcontractors" unless all of the conditions in paragraph **B.** of this endorsement are met**.**

B. The following condition is added to **Section III – Conditions:**

Independent Contractors/Subcontractors Special Conditions

a. You will obtain a written agreement from all "independent contractors/subcontractors":

(1) Holding you harmless to the fullest extent of the law from all theories of liability (direct or vicarious) asserted against any insured, including but not limited to all theories of negligence, gross negligence, recklessness or intentional tort, alleged or actual, caused by or arising out of any wrongdoing related to the work or operations performed by the "independent contractors/subcontractors" on your behalf; and

(2) That states you are named as an additional insured for ongoing operations and products-completed operations hazard on their Commercial General Liability insurance policy.

b. Commercial General Liability coverage is purchased and maintained by the "independent contractors/subcontractors":

(1) That is equal to or broader than the coverage(s) provided by the Commercial General Liability policy listed in the Schedule Of "Controlling Underlying Insurance"; and

(2) That includes coverage stating that you are named as an additional insured for ongoing operations and products-completed operations hazard.

c. You will obtain certificates of insurance from all "independent contractors/subcontractors" providing evidence of valid and enforceable Commercial General Liability insurance coverage that includes but is not limited to:

(1) Products-completed operations hazard; and

(2) Contractual liability

on an occurrence basis with limits of at least $1,000,000 per occurrence limit.

C. The following is added to the **Definitions** Section:

"Independent contractors/subcontractors" as used herein means a person or entity that agrees (orally or in writing) to provide all or some portion of the work or service which you have agreed to perform, regardless of who exercises control over the means or methods used in doing the work or performing the service.

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AMENDMENT OF PREMIUM CONDITIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

Paragraph **9. Premium Audit** of **Section III – Conditions** is replaced by the following:

9. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. If this policy is auditable, the premium shown in this Coverage Part as Total Policy Premium Or Deposit premium is a minimum and deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the total earned premium for the policy period is less than the Total Policy Premium Or Deposit Premium, the Total Policy Premium Or Deposit Premium is the minimum premium and is not subject to further adjustment.

c. The first Named Insured must keep records of the information we need for premium computation and permit us to audit these records or, at our option, send us copies at such times as we may request.

d. Should you not cooperate with the terms of this condition, including failure to return any questionnaires or self-audit worksheets applying to this or a prior policy term, we may, at our discretion, nonrenew the policy due to our inability to establish a proper premium.

We reserve the right to accept coverage based upon the policy advance, or minimum and deposit premium, and we are not obligated to perform an audit.

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EXCLUSION - DISCRIMINATION

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Discrimination

Any "injury or damage" caused by or arising, in whole or in part, out of an actual, alleged, or threatened act or omission of discrimination, whether intentional or unintentional, based upon a person's gender, sexual preference, marital status, race, creed, religion, national origin, age, physical capabilities, characteristics or condition, mental capabilities or condition, or any other protected class under any federal, state, municipal or local statute, ordinance, rule, order or regulation.

All other terms and conditions of this Policy remain unchanged.

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ISO Properties, Inc., with its permission.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – BREACH OF CONTRACT

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Breach Of Contract

Any "injury or damage", cost or expense caused by or arising out of, resulting from, or contributed to in any way by, any breach of contract, including breach of an implied in law or implied in fact contract, whether express or oral.

All other terms and conditions of this Policy remain unchanged.

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EXCLUSION – TOXIC SUBSTANCES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following is added to Paragraph **2. Exclusions** of **Section I – Coverages**:

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Toxic Substances

Any "injury or damage" caused by or arising, directly or indirectly, in whole or in part out of:

a. Coal dust;

b. Polychlorinated biphenyls (PCBs);

c. "Benzene";

d. Talc;

e. Dioxin;

f. Pesticides, herbicides, fungicides;

g. "Toluene";

h. "Formaldehyde";

i. "Phthalates";

j. "Methanol"; or

k. Any substance, material, compound, chemical, resin, extract, or any other derivative, product, by-product, mixture, or combination that consists of or contains any of the foregoing listed in subparagraphs **a. - j.**, in any shape or form, or any derivative thereof, including, but not limited to, gels, powders, liquids, solids, or vapors.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

a. The providing of instructions, warnings, or labeling;

b. The supervision, hiring, employment, training, or monitoring of others by that insured; or

c. The rendering of or failure to render aid, medical or otherwise to any person.

B. For the purposes of this endorsement, the following is added to the **Definitions** section:

"Benzene" (CAS No. 71-43-2) means an aromatic hydrocarbon, also known as Benzol, Benzole, and Cyclohexatriene in any form, including any chemical compound, derivative, or by-product thereof.

"Toluene" (CAS No. 108-88-3) means a colorless liquid aromatic hydrocarbon, also known as methylbenzene, toluol, tolu-sol, or phenylmethane in any form, including any chemical compound, derivative, or by-product thereof.

"Formaldehyde" (CAS No. 50-00-0) means an organic compound, also known as Methanal, Methylene Oxide, Formalin (aqueous solution), and Formol in any form, including any chemical compound, derivative, or by-product thereof.

"Phthalates" means a salt of phthalic acid, an ester of phthalic acid, or an anion of phthalic acid in any form, including any chemical compound, derivative, or by-product thereof.

"Methanol" (CAS No. 67-56-1) means an organic compound, also known as Methyl Alcohol, Wood Alcohol, and Carbinol in any form, including any chemical compound, derivative, or by-product thereof.

All other terms and conditions of this Policy remain unchanged.

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EXCLUSION – CROSS SUITS – NAMED INSURED VERSUS NAMED INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following exclusion is added to **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage part does not apply to:

Cross Suits – Named Insured Versus Named Insured

Any claim for damages by any "Named Insured" against another "Named Insured" because of "injury or damage".

B. For the purposes of this endorsement, the following is added to the **Definitions** Section:

"Named Insured" means any party listed as a Named Insured on the Common Declaration Page of the policy and any party qualifying as an insured under **Section II – Who Is An Insured**, but excluding any party qualifying as such under any Additional Insured endorsement.

All other terms and conditions of this Policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

Exclusion **c.** under Paragraph **2. Exclusions** of **Section I – Coverages** is replaced by the following:

Insurance provided under this Coverage Part does not apply to:

2. Exclusions

c. Pollution

(1) "Injury or damage" caused by or arising, directly or indirectly, in whole or part out of the actual, alleged or threatened discharge, dispersal, disposal, seepage, migration, release or escape of "pollutants" at any time; or

(2) Any loss, cost or expense caused by or arising, directly or indirectly, in whole or in part out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

This exclusion applies whether or not such "pollutants" have any function in your business, operations, premises, site or location or constitutes your product or is a component of your product or products you use.

All other terms and conditions of this Policy remain unchanged.

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ISO Properties, Inc., with its permission.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – SILICA OR OTHER SIMILAR FIBROUS OR MINERAL SUBSTANCES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following is added to Paragraph **2. Exclusions** of **Section I – Coverages:**

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Silica Or Other Similar Fibrous Or Mineral Substances

a. Any "injury or damage" caused by or arising, directly or indirectly, in whole or in part out of:

(1) The actual, alleged, threatened, or suspected inhalation, ingestion, absorption, consumption, existence, application, presence or use of, contact with, or exposure to "silica", or any other similar fibrous or mineral substance in any form;

(2) The handling, distribution, sale, processing, repackaging, testing, analyzing, marketing, production, manufacturing, storage, delivery, transport, warehousing, use, or disposal of "silica", or any other similar fibrous or mineral substance in any form whether or not it is incorporated into your product or your work;

(3) Any vapor, gas, dust, fumes, or any substance in any form produced by or arising out of any process or procedure involving "silica", or any other similar fibrous or mineral substance in any form; or

(4) Any goods, products, or materials to which "silica", or any other similar fibrous or mineral substance in any form has been applied or incorporated into by any party, including, but not limited to, any manufacturer, processor, or distributor of such goods, products, or materials.

b. Any loss, cost, or expense arising out of any:

(1) Request, demand, order, or statutory or regulatory requirement that any insured or others abate, test for, monitor, clean up, remove, remediate, contain, treat, detoxify, neutralize, dispose of, or in any way respond to or assess the existence or effects of "silica", or any other similar fibrous or mineral substance in any form by any insured or by any other person or entity.

(2) Claim or suit brought by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, disposing of, or in any way responding to, or assessing the effects of "silica", or any other similar fibrous or mineral substance in any form.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

a. The providing of instructions, warnings, or labeling;

b. The supervision, hiring, employment, training, or monitoring of others by that insured; or

c. The rendering of or failure to render aid, medical or otherwise, to any person.

B. For the purposes of this endorsement, the following is added to the **Definitions** section:

"Silica" (CAS No. 7631-86-9) means a chemical compound of silicon and oxygen, also known as Silicon Dioxide, Quartz and Cristobalite in dust or any other form, including any chemical compound, derivative, or by-product thereof.

All other terms and conditions of this Policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ANTI-STACKING OF LIMITS

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

A. The following is added to **Section III – Conditions** of the Commercial Excess Liability Coverage Form:

Anti-Stacking Of Limits

If any "event" covered under this policy is also covered under any other Excess policy issued to you by us, or by any insurance company that has common ownership with us, then only the policy with the highest available limit of insurance will apply regardless of whether any "injury or damage":

1. Extends over more than one policy period; or

2. Is caused by or arises out of:

a. Substantially the same or related general harmful conditions or substances; or

b. Continuous or repeated exposure to substantially the same or related general harmful conditions, substances, or a series of wrongful acts.

If the policies described in Paragraph **A.** have more than one applicable limit of insurance, then only the policy with the highest available limit of insurance shall apply.

If more than one policy has the same limit of insurance, such policies will respond on an equal share basis.

If you, or any other insured covered under this policy, is included as an insured under more than one Excess policy issued by us, or any other insurance company that has common ownership with us covering the same "event", coverage provided to you by us will be limited to only the policy with the highest available Limit of Insurance. However, this condition does not apply if the insurance is specifically written to be excess of this policy.

B. For the purposes of this endorsement "event" in the **Definitions** section is deleted and replaced with the following:

"Event" means any occurrence, offense, accident, act, or other event which takes place in its entirety at a specific time and place or is related, in whole or in part, or traceable to the same or related single act, error, or omission, or series of acts, errors, or omissions.

This endorsement applies regardless of any other terms and conditions in this or any other Excess policy, including, but not limited to, the Conditions - Other Insurance section.

This endorsement does not apply to:

Any liability insurance policies issued to you by us, or by any insurance company that has common ownership with us, for which this policy is intended to be excess; or

Other Excess liability insurance policies issued to you by us, or by any other insurance company that has common ownership with us, as excess insurance to this policy.

In no event shall this endorsement be construed to increase the limits of insurance shown on this policy.

All other terms and conditions of this Policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEW YORK – EXCLUSION – ANY CONSTRUCTION OR CONTRACTING ACTIVITIES

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

The following is added to **2. Exclusions** of **Section I – Coverages** under the Commercial Excess Liability Coverage Form.

2. Exclusions

Insurance provided under this Coverage Part does not apply to:

Any Construction Or Contracting Activities

Any "injury or damage" caused by or arising, directly or indirectly, in whole or in part out of any construction or contracting activities that are performed or located in the state of New York.

This exclusion applies:

a. To any work performed by, or on behalf of, any insured as part of or in connection with such construction or contracting activities, including, but not limited to, the erection, demolition, repairing, altering, painting, cleaning, or pointing of a building or structure;

b. Regardless of whether the described operations are:

(1) Ongoing, completed, or in any other stage when the loss occurs; or

(2) Performed for any insured or for any other person or entity; and

c. Even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that insured.

All other terms and conditions of this Policy remain unchanged.

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COMMERCIAL LINES POLICY

HOUSTON SPECIALTY INSURANCE COMPANY

A Subsidiary of Skyward Specialty Insurance

A Stock Company

800 Gessner Rd, Suite 600
Houston, TX 77024

Phone: 800-645-7707

IN WITNESS WHEREOF, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

Mark Haushill

Leslie K. Shaunty

IMPERIUM INSURANCE COMPANY
A Subsidiary of Skyward Specialty Insurance

GREAT MIDWEST INSURANCE COMPANY
A Subsidiary of Skyward Specialty Insurance

HOUSTON SPECIALTY INSURANCE COMPANY
A Subsidiary of Skyward Specialty Insurance

Your Privacy Rights

This booklet describes how Imperium Insurance Company (IIC), Houston Specialty Insurance Company (HSIC), Great Midwest Insurance Company (GMIC) use private information about our customers, the limits on our use, how we protect our customers' privacy, and how our customers can restrict the distribution of information about themselves.

Imperium Insurance Company
Houston Specialty Insurance Company
Great Midwest Insurance Company

DS PN Annual 02-22

To our customers:

Safeguarding the privacy of your financial and personal information has always been extremely important to us.

This pamphlet consists of five separate sections concerning our commitment to protecting your privacy:

1. **Customer Privacy Policy Statement –** Contains a description of IIC, HSIC, and GMIC general customer privacy policy
2. **Notice of Information Practices –** Provides disclosures required under federal laws
3. **Privacy Disclosure Statement –** Offers you the opportunity to notify us if you do not want IIC, HSIC, and GMIC to share basic information about you.
4. **Information We May Disclose To Others**
5. **Access to and Correction of Your Information**

Please let us know if you have any questions or comments.

Customer Privacy Policy Statement

IIC. HSIC, and GMIC recognize that a fundamental component of the insurer/insured relationship is a customer's trust that the insurer will respect the privacy and confidentiality of the customer's financial information and all aspects of the customer's insurance relationship.
IIC, HSIC, and GMIC have established the following policy to keep your information secure and confidential.

1. We shall recognize each customer's expectations of privacy by safeguarding information that you share with us. This commitment to privacy will be maintained regardless of whether information is received by mail, telephone, internet, or in person.

2. Information shall be collected and utilized only to the extent necessary to deliver insurance service to you and to offer products, services, and other opportunities that may be of interest to you.

3. We are dedicated to maintaining accurate customer records and shall strive to correct any inaccurate information in a timely manner. You may notify us at the toll-free telephone numbers and address listed at the end of this notice to correct any information.

4. IIC, HSIC, and GMIC limit access to your personal information to only those insurance company employees with a business reason for knowing such information. We educate all employees about the importance of confidentiality and customer privacy and have established policies on the proper use of customer information.

5. If we utilize other organizations to support our business, we will require them to abide by this privacy policy statement.

6. We do not sell customer lists or financial information about our customers to any third party vendors. We may, however, allow select customer information to be shared with an affiliated company, under controlled conditions for the purpose of designing and marketing our products or company sponsored products with a company that has adopted a similar privacy policy to safeguard any personal customer information.

7. IIC, HSIC, and GMIC will provide you a choice as to whether your personal customer information will be shared with other organizations even for the limited purposes described above before your information is released to another organization for marketing purposes.

8. In order to conduct the business of insurance, customer information in our records is referenced relating to the issuance and servicing of coverage settling claims. IIC, HSIC, and GMIC conduct these insurance operations in accordance with the Fair Credit Reporting Act and information privacy laws as explained in our Notice of Information Practices.

9. This privacy policy will apply to both current and former customers of IIC, HSIC, and GMIC.

IIC, HSIC, and GMIC reserve the right to update and modify this statement at any time and will provide notice to you of such updates and modifications. IIC, HSIC, and GMIC will continue to monitor itself for compliance of its procedures to protect customer privacy.

Notice of Information Practices

Pursuant to 15 U.S.C § 1681 et seq. (1982)

The information you provide to us is important. We review it in our evaluation of your request for coverage and in determining rates. It may not be the only information about you or persons to be insured under your policy that we consider. In accordance with the Federal Fair Credit Reporting Act, we would like to briefly describe our practices as they relate to information gathered in connection with insurance transactions.

We may need additional information from you or other individuals proposed for coverage. Motor vehicle records, court record or other public records might be reviewed. A photo of any property to be insured might be taken. We may also obtain information from third parties, such as other insurance companies or a consumer reporting agency. A consumer report from such agency may contain information such as credit worthiness, credit standing, credit capacity, character, general reputation, hobbies, occupation, personal characteristics, or mode of living. An investigative consumer report containing the same type of information may be obtained through personal interviews with neighbors, friends, associates, acquaintances, or others who may have knowledge concerning those items of information.

If coverage is declined or the charge for coverage is increased either wholly or partly because of information contained in a consumer report, we will tell you. We will also give you the name and address of the consumer reporting agency making the report.

It is possible that an investigative consumer report may be made. Within a reasonable time after receiving this notice of our information practices, you have the right to file a written request for and promptly receive a written disclosure as to the nature and scope of the investigation. You also will have the right to ask to be personally interviewed. Information you give during the interview will be included in the report sent to us. Upon written request and identification, you

have the right to receive a copy of your investigative consumer report. Information gathered about you by the agency in making a consumer report or investigative consumer report may be kept by the agency and provided to others to the extent allowed by law.

Information about you in our records may be kept and may be referred to for purposes relating to the issuance and servicing of coverage and settling claims. We will not disclose information about you to others without your written consent unless the disclosure is necessary to conduct our business. The law permits us to share information about you without your prior consent under circumstances.

Examples of these include disclosures to:

- Parties who perform a business, professional or insurance function for our company, including companies from which we purchase reinsurance coverage;
- Adjusters, appraisers, investigators and attorneys who need the information to investigate, defend or settle a claim involving you;
- Businesses that help us with data processing or marketing;
- Businesses that conduct scientific research, including actuarial or underwriting studies;
- Other insurance companies, agents, or consumer reporting agencies as reasonably necessary in connection with any application, policy, or claim involving you;
- Insurance support organizations which are established to collect information for the purpose of detecting and preventing insurance crimes or fraudulent claims;
- Medical care institutions or medical professionals to verify coverage or conduct an audit of services;
- State Insurance Departments in connection with the regulation of our business;
- Law enforcement or other governmental authorities to protect our legal interests or in cases of suspected fraud or illegal activities;

- Authorized persons as ordered by a subpoena, warrant, or other court order or as required by law;

- Certificate holders or policyholders for the purpose of providing information regarding the status of an insurance transaction; or

- Lien holders, mortgagees, assignees, lessors, or other persons shown on our records as having a legal or beneficial interest in your policy

You have the right to know what kind of information we keep about you in our files, the right to reasonable access to this information, and the right to receive a copy of this information. Write to us if you have questions about the information we may have on file about you. Tell us what information you would like to receive. Provide your complete name, address, date of birth, type of policy held or applied for, and all numbers of any policies issued to you by us. Certain types of information generally collected when evaluating claims or possible lawsuits needed may not be disclosed to you.

Within thirty (30) business days of receipt of your request, we will inform you in writing of the nature and substance of locatable and retrievable recorded personal information about you in our files. You may review this information in person or receive a copy for reasonable charge. We will also identify the persons or organizations to which we have disclosed your information to within the past two (2) years. In addition, you will be given the name and address of any consumer reporting agency which prepared a report about you so that you can contact them for a copy.

After you have reviewed your personal information about in our file, you can write to us if you believe it should be corrected, amended, or deleted. Tell us what you think is wrong and why. We will consider your request and within thirty (30) business days from the date of receipt of your written request, either change our files or tell you that we did not and the reason. If we do not make the changes, you will have the right to insert in our file a concise statement containing what you believe to be the correct, relevant or fair information and explaining why you believe the information on the file to be improper. We will notify persons designated by you to whom we have previously disclosed the information of the change on your statement. Subsequent disclosures we make will also be included in your statement.

Correspondence about this notice or requests for information in accordance with your rights under the law should be directed to the appropriate company in the Skyward Specialty Insurance at the address listed on the last page of the pamphlet.

Information We May Disclose To Third Parties. We do not sell customer information or medical information to anyone. Nor do we share it with companies or organizations outside of our group of affiliated companies that would use that information to contact you about their own products and services. Should that practice ever change, we would offer the ability to prohibit this type of information sharing and / or a reasonable time for the opportunity to opt out of this type of information sharing before the change in our practice took place.

We may, without authorization, but only as permitted or required by law, provide customer information to persons or organizations both inside and outside of IIC, HSIC, and GMIC in order to fulfill a transaction requested, service policies, market our products, investigate and/or handle claims, detect and/or prevent fraud, participate in insurance support organizations, or comply with lawful requests from regulatory and law enforcement authorities. These include, for example: affiliated companies, claims adjusters, medical providers, and program managers.

Access to and Correction of Your Information. You may write to us if you have any questions about the information that we may have in our records about you. If you wish, you may inspect this information in person or receive a copy at a reasonable charge by sending us a written request. You can notify us in writing if you believe any information should be corrected, amended, or deleted and we will review your request. We will either make the requested or explain why we did not do so. If we do not make the requested change, you may submit a short written statement identifying the disputed information, which will be included in all future disclosures of your information.

You may send your written request regarding IIC, HSIC, and GMIC to :

Skyward Specialty Insurance
Attn: Compliance Department
800 Gessner, Suite 600
Houston Texas 77024

All written requests must include your name, address, telephone number, and a photocopy of a picture ID for identification purposes.

You may contact IIC, HSIC, and GMIC at the following numbers:

	Local phone #	Toll free #	FAX #
GMIC	713-973-0226	800-829-8165	713-935-7424
HSIC	713-935-4820	855-935-HSIC (4742)	713-935-4821
IIC	713-935-4830	800-203-1179	713-935-4831

CALIFORNIA SHORT RATE CANCELLATION PENALTY DISCLOSURE

This Notice is to advise you that you may incur a penalty if you cancel your policy prior to the expiration date.

If you cancel the policy for which you are applying prior to the expiration date, a 10% penalty will be applied to any remaining unearned premium, subject to any minimum earned premium endorsement that may be applicable to your policy.

SKYWARD SPECIALTY INSURANCE | E & S Brokerage

HSIC IL ES PN 002 01 23

HOW TO REPORT A CLAIM

All claims should be reported as soon as practicable after the loss. Claims may be reported by any of the following options **24 hours a day, 7 days a week**.

PROPERTY & CASUALTY CLAIMS

To report any injury (non-work related), auto or trucking accident, or any type of property damage:

By Phone: (888)-321-0714

By Email: claims@skywardinsurance.com

INFORMATION TO INCLUDE WHEN SUBMITTING A CLAIM

- Policy Number and/or Claims Number in all communication with us.
- Policyholder contact Information – Name, Phone Number, Address, Email
- Agent contact information - Name, Phone Number, Address, Email
- Date of Loss
- Cause of Loss
- Detailed description of loss and damage(s)
- Provide us with a copy of any suit, demand for arbitration or mediation, claims letter or similar notice.
- Send copies of any internal reports related to the loss.
- Send copies of any police and/or fire department reports.

PRESERVE AND SAFEGUARD

- No unauthorized parties should be allowed access to the loss site.
- Temporary board up, if necessary.
- Temporary Perimeter fencing, if necessary.
- Retention of any and all evidence.
    - If it is necessary to make immediate repairs prior to inspection it is crucial that any and all parts (repaired or replaced) be retained and safeguarded along with a copy of the accompanying invoice.

IMPORTANT NOTICE:

1. **The insurance policy that you have purchased is being issued by an insurer that is not licensed by the State of California. These companies are called "nonadmitted" or "surplus line" insurers.**

2. **The insurer is not subject to the financial solvency regulation and enforcement that apply to California licensed insurers.**

3. **The insurer does not participate in any of the insurance guarantee funds created by California law. Therefore, these funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised.**

4. **The insurer should be licensed either as a foreign insurer in another state in the United States or as a non-United States (alien) insurer. You should ask questions of your insurance agent, broker, or "surplus lines" broker or contact the California Department of Insurance at the toll-free number: 1-800-927-4357 or internet website www.insurance.ca.gov. Ask whether or not the insurer is licensed as a foreign or non-United States (alien) insurer and for additional information about the insurer. You may also contact the NAIC's internet website at www.naic.org.**

   The NAIC—the National Association of Insurance Commissioners—is the regulatory support organization created and governed by the chief insurance regulators in the United States.

5. **Foreign insurers should be licensed by a state in the United States and you may contact that state's department of insurance to obtain more information about that insurer. You can find a link to each state from this NAIC internet website: https://naic.org/state_web_map.htm**

6. **For non-United States (alien) insurers, the insurer should be licensed by a country outside of the United States and should be on the NAIC's International Insurers Department (IID) listing of approved nonadmitted non-United States insurers. Ask your agent, broker, or "surplus lines" broker to obtain more information about that insurer.**

7. **California maintains a "List of Approved Surplus Lines Insurers (LASLI)." Ask your agent or broker if the insurer is on that list, or view that list at the internet website of the California department of insurance: www.insurance.ca.gov./01-consumers/120-company/07-lasli/lasli.cfm.**

8. **If you, as the applicant, required that the insurance policy you have purchased be effective immediately, either because existing coverage was going to lapse within two business days or because you were required to have coverage within two business days, and you did not receive this disclosure form and a request for your signature until after coverage became effective, you have the right to cancel this policy within five days of receiving this disclosure. If you cancel coverage, the premium will be prorated and any broker's fee charged for this insurance will be returned to you.**

IL P 001 01 04

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – http//www.treas.gov/ofac.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

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HSIC Houston Specialty Insurance Company

POLICY NUMBER: ESB-HS-GL-0001096-00

HSIC IL DS 00 09 08 11 12

COMMON POLICY DECLARATIONS

Houston Specialty Insurance Company 800 Gessner, Suite 600 Houston, TX 77024 Toll Free - 800-203-1179	HIIG E&S Brokerage 800 Gessner Rd. Suite 600 Houston, TX 77024

NAMED INSURED: The Swimming Swan, LLC; Melissa Swanson

MAILING ADDRESS: 903 Paseo Del Lago
Fallbrook, CA 92028

POLICY PERIOD: FROM 05/26/2023 TO 05/26/2024 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

BUSINESS DESCRIPTION	Lifeguard Services for the City of Gilroy, CA

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

		PREMIUM
COMMERCIAL PROPERTY COVERAGE PART	$	
COMMERCIAL GENERAL LIABILITY COVERAGE PART	$	25,000.00
LIQUOR LIABILITY COVERAGE PART	$	
COMMERCIAL INLAND MARINE COVERAGE PART	$	
CRIME AND FIDELITY COVERAGE PART	$	
TERRORISM PREMIUM	$	
	$	
	$	
	$	
	$	
	$	
	$	
	$	
Inspection Service Fee	$	300.00
TOTAL:	$	25,300.00

Premium shown is payable: $ 25,300.00 at inception.

Surplus Lines Tax 759.00
Stamping Fee 45.54

FORMS APPLICABLE TO ALL COVERAGE PARTS (SHOW NUMBERS):
SEE SCHEDULE OF FORMS AND ENDORSEMENTS
(FORMS - SCHED 08 12)

Countersigned: 06/06/2023	By:
(Date)	(Authorized Representative)

HSIC Houston Specialty Insurance Company

POLICY NUMBER: ESB-HS-GL-0001096-00

COMMERCIAL GENERAL LIABILITY
HSIC CG DS 01 10 01

COMMERCIAL GENERAL LIABILITY DECLARATIONS

Houston Specialty Insurance Company 800 Gessner, Suite 600 Houston, TX 77024	HIIG E&S Brokerage 800 Gessner Rd. Suite 600 Houston, TX 77024

NAMED INSURED: The Swimming Swan, LLC; Melissa Swanson
MAILING ADDRESS: 903 Paseo Del Lago
Fallbrook, CA 92028
POLICY PERIOD: FROM 05/26/2023 TO 05/26/2024 AT 12:01 A.M. TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

IN RETURN FOR THE PAYMENT OF PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	$ 1,000,000	
DAMAGE TO PREMISES RENTED TO YOU LIMIT	$ 100,000	Any one premises
MEDICAL EXPENSE LIMIT	$ NOT COVERED	Any one person
PERSONAL & ADVERTISING INJURY LIMIT	$ 1,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT	$ 2,000,000	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	$ Included	

RETROACTIVE DATE(CG 00 02 ONLY)

THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.
RETROACTIVE DATE: NONE
(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

DESCRIPTION OF BUSINESS

FORM OF BUSINESS:

☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ TRUST

☑ LIMITED LIABILITY COMPANY ☐ ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY)

BUSINESS DESCRIPTION: Lifeguard Services for the City of Gilroy, CA

ALL PREMISES YOU OWN, RENT OR OCCUPY	
LOCATION NUMBER	ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY
1	850 Day Rd., Gilroy, CA 95020

CLASSIFICATION AND PREMIUM							
LOCATION NUMBER	CLASSIFICATION	CODE NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/ Ops	Prod/Comp Ops	Prem/ Ops	Prod/Comp Ops
1	Lifeguard Services	48924	Sales $300,000	60.000	Included	$25,000 MP	Included

PREMIUM FOR ENDORSEMENTS $ _____

TOTAL PREMIUM (SUBJECT TO AUDIT) $ 25,000.00

PREMIUM SHOWN IS PAYABLE: $ _____ AT INCEPTION $ 25,000.00

AT EACH ANNIVERSARY $ _____

(IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS)

AUDIT PERIOD (IF APPLICABLE)	☑ ANNUALLY	☐ SEMI-ANNUALLY	☐ QUARTERLY	☐ MONTHLY

ENDORSEMENTS
ENDORSEMENTS ATTACHED TO THIS POLICY: SEE SCHEDULE OF FORMS AND ENDORSEMENTS FORMS - SCHED 08/12

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Policy Number: ESB-HS-GL-0001096-00

SCHEDULE OF FORMS AND ENDORSEMENTS

Named Insured: The Swimming Swan, LLC; Melissa Swanson

Effective Date: 05/26/2023
12:01 A.M., Standard Time

Agency Name: HIIG E&S Brokerage

Form Number	Edition Date	Title
HSIC JACKET-POLICY A (07-2021)		HSIC JACKET-POLICY A (07-2021)
DS PN Annual (02-2022)		SKYWARD PRIVACY NOTICE
HSIC PN ES 00 01 10 20		CALIFORNIA SHORT RATE CANCELLATION PENALTY DISCLOSURE
HSIC IL ES PN 002 01 23		HOW TO REPORT A CLAIM
PN SUR CA 001 05 22		CALIFORNIA POLICYHOLDER NOTICE
IL P 001 01 04		OFAC - U S TREASURY DEPARTMENT OFFICE OF FOREIGN ASSETS CONTROL
HSIC IL DS 00 09 08 11 12		COMMON POLICY DECLARATIONS
HSIC CG DS 01 10 01		COMMERCIAL GENERAL LIABILITY DECLARATIONS
FORMS - SCHED 08 12		SCHEDULE OF FORMS AND ENDORSEMENTS
CG 00 01 04 13		COMMERCIAL GENERAL LIABILITY COVERAGE FORM (OCCURRENCE)
LOC-SCHED 08-12		SCHEDULE OF LOCATIONS
CG 21 06 05 14		EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY - WITH LIMITED BODILY INJURY EXCEPTION
CG 21 16 04 13		EXCLUSION - DESIGNATED PROFESSIONAL SERVICES
CG 21 32 05 09		COMMUNICABLE DISEASE EXCLUSION
CG 21 35 10 01		EXCLUSION - COVERAGE C - MEDICAL PAYMENTS
CG 21 44 04 17		LIMITATION OF COVERAGE TO DESIGNATED PREMISES, PROJECT OR OPERATION
CG 21 47 12 07		EMPLOYMENT-RELATED PRACTICES EXCLUSION
CG 21 49 09 99		TOTAL POLLUTION EXCLUSION
CG 21 53 01 96		EXCLUSION - DESIGNATED ONGOING OPERATIONS
CG 21 67 12 04		FUNGI EXCLUSION
CG 21 75 01 15		EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND EXCLUSION OF OTHER ACTS OF TERRORISM COMMITTED OUTSIDE THE UNITED STATES
CG 21 96 03 05		SILICA OR SILICA-RELATED DUST EXCLUSION
CG 24 01 12 04		NON-BINDING ARBITRATION
CG 24 26 04 13		AMENDMENT OF INSURED CONTRACT DEFINITION
CG 40 10 12 19		EXCLUSION - CROSS SUITS LIABILITY
CG 40 28 09 22		BROAD ABUSE OR MOLESTATION EXCLUSION
IL 00 03 09 08		CALCULATION OF PREMIUM
IL 00 17 11 98		COMMON POLICY CONDITIONS
IL 00 21 09 08		NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)
SOS HSIC CW 09 13		CW SERVICE OF SUIT CLAUSE
HSIC CG ES 01 03 10 20		AMENDMENT - DEFINITION OF EMPLOYEE
HSIC CG ES 01 18 10 20		CLASSIFICATION LIMITATION ENDORSEMENT
HSIC CG ES 01 27 10 20		EXCLUSION - BREACH OF CONTRACT
HSIC CG ES 01 45 10 20		EXCLUSION - INJURY TO INDEPENDENT CONTRACTORS OR THEIR EMPLOYEES
HSIC CG ES 01 47 10 20		EXCLUSION - INTELLECTUAL PROPERTY
HSIC CG ES 01 52 10 20		EXCLUSION - PUNITIVE DAMAGES
HSIC CG ES 01 62 10 20		EXCLUSION - DISCRIMINATION
HSIC CG ES 01 70 10 20		ASBESTOS EXCLUSION
HSIC CG ES 01 69 12 22		FIREARMS EXCLUSION - GENERAL LIABILITY
HSIC CG ES 01 76 10 20		INTERIM PREMIUM AUDIT CONDITION

HSIC CG ES 01 77 10 20	LEAD EXCLUSION
HSIC CG ES 01 91 10 20	TOTAL AUTO EXCLUSION
HSIC CG ES 01 95 10 20	MINIMUM AND DEPOSIT PREMIUM ENDORSEMENT
HSIC CG ES 01 96 10 20	EXCLUSION - ASSAULT OR BATTERY
HSIC CG ES 02 05 10 20	EXCLUSION - LIQUOR LIABILITY
HSIC CG ES 02 10 10 20	LIABILITY INSURANCE DEDUCTIBLE ENDORSEMENT
HSIC CG ES 02 29 01 21	DEFINITION OF PREMIUM BASIS ENDORSEMENT

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

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

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

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C.**

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

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

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

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

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

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph **1.** of Section **II** – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

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

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

(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

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2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

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

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or

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

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

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

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

(a) The supervision, hiring, employment, training or monitoring of others by that insured; or

(b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph **(1), (2)** or **(3)** above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

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

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

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

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

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

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

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f. Pollution

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

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

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

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

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

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

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

g. Aircraft, Auto Or Watercraft

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

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

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

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

(a) Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

(a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

h. Mobile Equipment

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

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

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

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

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

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(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

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

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

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

Paragraphs **(3), (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".

k. Damage To Your Product

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

l. Damage To Your Work

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

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

m. Damage To Impaired Property Or Property Not Physically Injured

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

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

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

n. Recall Of Products, Work Or Impaired Property

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

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

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

o. Personal And Advertising Injury

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

p. Electronic Data

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

However, this exclusion does not apply to liability for damages because of "bodily injury".

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

q. Recording And Distribution Of Material Or Information In Violation Of Law

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

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

(3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

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(4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III** – Limits Of Insurance.

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C.**

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

b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" 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".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

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

d. Criminal Acts

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

e. Contractual Liability

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

f. Breach Of Contract

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

g. Quality Or Performance Of Goods – Failure To Conform To Statements

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

h. Wrong Description Of Prices

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

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i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

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

(1) Advertising, broadcasting, publishing or telecasting;

(2) Designing or determining content of web sites for others; or

(3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a., b.** and **c.** of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

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

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

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

n. Pollution-related

Any loss, cost or expense arising out of any:

(1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

(3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

(4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

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COVERAGE C – MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(a) The accident takes place in the "coverage territory" and during the policy period;

(b) The expenses are incurred and reported to us within one year of the date of the accident; and

(c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

(1) First aid administered at the time of an accident;

(2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

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

c. Injury On Normally Occupied Premises

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

d. Workers' Compensation And Similar Laws

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

e. Athletics Activities

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

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage **A.**

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

a. All expenses we incur.

b. Up to $250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $250 a day because of time off from work.

e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

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g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

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

a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

b. This insurance applies to such liability assumed by the insured;

c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

(1) Agrees in writing to:

(a) Cooperate with us in the investigation, settlement or defense of the "suit";

(b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(c) Notify any other insurer whose coverage is available to the indemnitee; and

(d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

(a) Obtain records and other information related to the "suit"; and

(b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

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

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

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

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

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

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2. Each of the following is also an insured:

a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

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

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

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

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

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

(2) "Property damage" to property:

(a) Owned, occupied or used by;

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

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

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

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

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

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

SECTION III – LIMITS OF INSURANCE

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

a. Insureds;

b. Claims made or "suits" brought; or

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

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

a. Medical expenses under Coverage **C;**

b. Damages under Coverage **A,** except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

c. Damages under Coverage **B.**

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3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph **2.** above, the Personal And Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
   a. Damages under Coverage **A;** and
   b. Medical expenses under Coverage **C**

   because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

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

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. **Bankruptcy**

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

2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit**
   a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
      (1) How, when and where the "occurrence" or offense took place;
      (2) The names and addresses of any injured persons and witnesses; and
      (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
   b. If a claim is made or "suit" is brought against any insured, you must:
      (1) Immediately record the specifics of the claim or "suit" and the date received; and
      (2) Notify us as soon as practicable.

      You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
   c. You and any other involved insured must:
      (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
      (2) Authorize us to obtain records and other information;
      (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
      (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
   d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. **Legal Action Against Us**

   No person or organization has a right under this Coverage Part:
   a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
   b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

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4. Other Insurance

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

a. Primary Insurance

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

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

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

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

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

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

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

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

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

(b) The total of all deductible and self-insured amounts under all that other insurance.

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

c. Method Of Sharing

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

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

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

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b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

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

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

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

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

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

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

4. "Coverage territory" means:

a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph **a.** above; or

c. All other parts of the world if the injury or damage arises out of:

(1) Goods or products made or sold by you in the territory described in Paragraph **a.** above;

(2) The activities of a person whose home is in the territory described in Paragraph **a.** above, but is away for a short time on your business; or

(3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph **a.** above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

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9. "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 you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. A sidetrack agreement;

c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. 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 a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

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

(a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(3) 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 **(2)** above and supervisory, inspection, architectural or engineering activities.

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

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

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

b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in Paragraph **a., b., c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in Paragraph **a., b., c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

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However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

f. The use of another's advertising idea in your "advertisement"; or

g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

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

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As used in this definition, 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.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

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

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

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

b. Includes:

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

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

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

22. "Your work":

a. Means:

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

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

b. Includes:

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

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

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Policy Number: ESB-HS-GL-0001096-00

SCHEDULE OF LOCATIONS

Named Insured: The Swimming Swan, LLC; Melissa Swanson

Effective Date: 05/26/2023
12:01 A.M., Standard Time

Agency Name: HIIG E&S Brokerage

Loc No.	Bldg. No.	Designated Locations (Address, City , State, Zip Code)	Occupancy
1		850 DAY RD., GILROY, CA, 95020	

COMMERCIAL GENERAL LIABILITY
CG 21 06 05 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY – WITH LIMITED BODILY INJURY EXCEPTION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Exclusion **2.p.** of **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

2. Exclusions

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.

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

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

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

B. The following is added to Paragraph **2. Exclusions** of **Section I – Coverage B – Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of 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.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

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POLICY NUMBER: ESB-HS-GL-0001096-00

COMMERCIAL GENERAL LIABILITY
CG 21 16 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – DESIGNATED PROFESSIONAL SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description Of Professional Services
1. ANY AND ALL PROFESSIONAL SERVICES.
2.
3.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

With respect to any professional services shown in the Schedule, the following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability** and Paragraph **2. Exclusions** of **Section I – Coverage B – Personal And Advertising Injury Liability:**

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" due to the rendering of or failure to render any professional service.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional service.

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COMMERCIAL GENERAL LIABILITY
CG 21 32 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMUNICABLE DISEASE EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of Section **I – Coverage A – Bodily Injury And Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

Communicable Disease

"Bodily injury" or "property damage" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;

b. Testing for a communicable disease;

c. Failure to prevent the spread of the disease; or

d. Failure to report the disease to authorities.

B. The following exclusion is added to Paragraph **2. Exclusions** of Section **I – Coverage B – Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

Communicable Disease

"Personal and advertising injury" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;

b. Testing for a communicable disease;

c. Failure to prevent the spread of the disease; or

d. Failure to report the disease to authorities.

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POLICY NUMBER: ESB-HS-GL-0001096-00

COMMERCIAL GENERAL LIABILITY
CG 21 35 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – COVERAGE C – MEDICAL PAYMENTS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description And Location Of Premises Or Classification:
ALL LOCATIONS

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to any premises or classification shown in the Schedule:

1. Section **I** – Coverage **C** – Medical Payments does not apply and none of the references to it in the Coverage Part apply: and

2. The following is added to Section **I** – Supplementary Payments:

h. Expenses incurred by the insured for first aid administered to others at the time of an accident for "bodily injury" to which this insurance applies.

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POLICY NUMBER: ESB-HS-GL-0001096-00

COMMERCIAL GENERAL LIABILITY
CG 21 44 04 17

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO DESIGNATED PREMISES, PROJECT OR OPERATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Premises:	Designated Locations shown on the SCHEDULE OF LOCATIONS attached to and forming part of this policy
Project Or Operation:	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. If this endorsement is attached to Commercial General Liability Coverage Form **CG 00 01,** the provisions under this Paragraph **A.** apply:

1. Paragraph **1.b.** under **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

b. This insurance applies to "bodily injury" and "property damage" caused by an "occurrence" that takes place in the "coverage territory" only if:

(1) The "bodily injury" or "property damage":

(a) Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or

(b) Arises out of the project or operation shown in the Schedule;

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

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

2. Paragraph **1.b.** under **Section I – Coverage B – Personal And Advertising Injury Liability** is replaced by the following:

b. This insurance applies to "personal and advertising injury" caused by an offense committed in the "coverage territory" but only if:

(1) The offense arises out of your business:

(a) Performed on the premises shown in the Schedule; or

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(b) In connection with the project or operation shown in the Schedule; and

(2) The offense was committed during the policy period.

However, with respect to Paragraph **1.b.(1)(a)** of this Insuring Agreement, if the "personal and advertising injury" is caused by:

(1) False arrest, detention or imprisonment; or

(2) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

then such offense must arise out of your business performed on the premises shown in the Schedule and the offense must have been committed on the premises shown in the Schedule or the grounds and structures appurtenant to those premises.

3. Paragraph **1.a.** under **Section I – Coverage C – Medical Payments** is replaced by the following:

a. We will pay medical expenses as described below for "bodily injury" caused by an accident that takes place in the "coverage territory" if the "bodily injury":

(1) Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or

(2) Arises out of the project or operation shown in the Schedule;

provided that:

(a) The accident takes place during the policy period;

(b) The expenses are incurred and reported to us within one year of the date of the accident; and

(c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

B. If this endorsement is attached to Commercial General Liability Coverage Form **CG 00 02,** the provisions under this Paragraph **B.** apply:

1. Paragraph **1.b.** under **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

b. This insurance applies to "bodily injury" and "property damage" caused by an "occurrence" that takes place in the "coverage territory" only if:

(1) The "bodily injury" or "property damage":

(a) Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or

(b) Arises out of the project or operation shown in the Schedule;

(2) The "bodily injury" or "property damage" did not occur before the Retroactive Date, if any, shown in the Declarations or after the end of the policy period; and

(3) A claim for damages because of the "bodily injury" or "property damage" is first made against any insured, in accordance with Paragraph **1.c.** of this Insuring Agreement, during the policy period or any Extended Reporting Period we provide under Section **V** – Extended Reporting Periods.

2. Paragraph **1.b.** under **Section I – Coverage B – Personal And Advertising Injury Liability** is replaced by the following:

b. This insurance applies to "personal and advertising injury" caused by an offense committed in the "coverage territory" but only if:

(1) The offense arises out of your business:

(a) Performed on the premises shown in the Schedule; or

(b) In connection with the project or operation shown in the Schedule;

(2) The offense was not committed before the Retroactive Date, if any, shown in the Declarations or after the end of the policy period; and

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(3) A claim for damages because of the "personal and advertising injury" is first made against any insured, in accordance with Paragraph **1.c.** of this Insuring Agreement, during the policy period or any Extended Reporting Period we provide under Section **V –** Extended Reporting Periods.

However, with respect to Paragraph **1.b.(1)(a)** of this Insuring Agreement, if the "personal and advertising injury" is caused by:

(1) False arrest, detention or imprisonment; or

(2) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

then such offense must arise out of your business performed on the premises shown in the Schedule and the offense must have been committed on the premises shown in the Schedule or the grounds and structures appurtenant to those premises.

3. Paragraph **1.a.** under **Section I – Coverage C – Medical Payments** is replaced by the following:

a. We will pay medical expenses as described below for "bodily injury" caused by an accident that takes place in the "coverage territory" if the "bodily injury":

(1) Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or

(2) Arises out of the project or operation shown in the Schedule;

provided that:

(a) The accident takes place during the policy period;

(b) The expenses are incurred and reported to us within one year of the date of the accident; and

(c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

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COMMERCIAL GENERAL LIABILITY
CG 21 47 12 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2., Exclusions** of Section **I – Coverage A – Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

"Bodily injury" to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs **(a), (b),** or **(c)** above is directed.

This exclusion applies:

(1) Whether the injury-causing event described in Paragraphs **(a), (b)** or **(c)** above occurs before employment, during employment or after employment of that person;

(2) Whether the insured may be liable as an employer or in any other capacity; and

(3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

B. The following exclusion is added to Paragraph **2., Exclusions** of Section **I – Coverage B – Personal And Advertising Injury Liability:**

This insurance does not apply to:

"Personal and advertising injury" to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs **(a), (b),** or **(c)** above is directed.

This exclusion applies:

(1) Whether the injury-causing event described in Paragraphs **(a), (b)** or **(c)** above occurs before employment, during employment or after employment of that person;

(2) Whether the insured may be liable as an employer or in any other capacity; and

(3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

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COMMERCIAL GENERAL LIABILITY
CG 21 49 09 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion **f.** under Paragraph **2., Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

This insurance does not apply to:

f. Pollution

(1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

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

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

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POLICY NUMBER: ESB-HS-GL-0001096-00

COMMERCIAL GENERAL LIABILITY
CG 21 53 01 96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – DESIGNATED ONGOING OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description of Designated Ongoing Operation(s):

ANY AND ALL OPERATIONS OTHER THAN LIFEGUARD SERVICES AT THE CHRISTOPHER HIGH SCHOOL AQUATICS CENTER AT 850 DAY ROAD, GILROY, CA 95020.

Specified Location (If Applicable):

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The following exclusion is added to paragraph **2.,** Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section **I** – Coverages):

This insurance does not apply to "bodily injury" or "property damage" arising out of the ongoing operations described in the Schedule of this endorsement, regardless of whether such operations are conducted by you or on your behalf or whether the operations are conducted for yourself or for others.

Unless a "location" is specified in the Schedule, this exclusion applies regardless of where such operations are conducted by you or on your behalf. If a specific "location" is designated in the Schedule of this endorsement, this exclusion applies only to the described ongoing operations conducted at that "location".

For the purpose of this endorsement, "location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

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COMMERCIAL GENERAL LIABILITY
CG 21 67 12 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverage B – Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

a. "Personal and advertising injury" which would not have taken place, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.

b. Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

C. The following definition is added to the **Definitions** Section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

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COMMERCIAL GENERAL LIABILITY
CG 21 75 01 15

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND EXCLUSION OF OTHER ACTS OF TERRORISM COMMITTED OUTSIDE THE UNITED STATES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism", or out of an "other act of terrorism" that is committed outside of the United States (including its territories and possessions and Puerto Rico), but within the "coverage territory". However, with respect to an "other act of terrorism", this exclusion applies only when one or more of the following are attributed to such act:

1. The total of insured damage to all types of property exceeds $25,000,000 (valued in US dollars). In determining whether the $25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or

2. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:

a. Physical injury that involves a substantial risk of death; or

b. Protracted and obvious physical disfigurement; or

c. Protracted loss of or impairment of the function of a bodily member or organ; or

3. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or

4. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or

5. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

With respect to this exclusion, Paragraphs **1.** and **2.** describe the thresholds used to measure the magnitude of an incident of an "other act of terrorism" and the circumstances in which the threshold will apply for the purpose of determining whether this exclusion will apply to that incident.

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.

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2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

a. The act resulted in insured losses in excess of $5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act;

b. The act resulted in damage:

(1) Within the United States (including its territories and possessions and Puerto Rico); or

(2) Outside of the United States in the case of:

(a) An air carrier (as defined in Section 40102 of title 49, United States Code) or United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; or

(b) The premises of any United States mission; and

c. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

3. "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not a "certified act of terrorism".

Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.

C. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.

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COMMERCIAL GENERAL LIABILITY
CG 21 96 03 05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SILICA OR SILICA-RELATED DUST EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2., Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

Silica Or Silica-Related Dust

a. "Bodily injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, "silica" or "silica-related dust".

b. "Property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".

c. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

B. The following exclusion is added to Paragraph **2., Exclusions** of **Section I – Coverage B – Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

Silica Or Silica-Related Dust

a. "Personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".

b. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

C. The following definitions are added to the **Definitions** Section:

1. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

2. "Silica-related dust" means a mixture or combination of silica and other dust or particles.

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COMMERCIAL GENERAL LIABILITY
CG 24 01 12 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NON-BINDING ARBITRATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PRODUCT WITHDRAWAL COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

If we and the insured do not agree whether coverage is provided under this Coverage Part for a claim made against the insured, then either party may make a written demand for arbitration.

When this demand is made, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will:

1. Pay the expenses it incurs; and
2. Bear the expenses of the third arbitrator equally.

Unless both parties agree otherwise, arbitration will take place in the county or parish in which the address shown in the Declarations is located. Local rules of law as to procedure and evidence will apply. Any decision agreed to by the arbitrators may be appealed to a court of competent jurisdictions.

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COMMERCIAL GENERAL LIABILITY
CG 24 26 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the **Definitions** section 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 you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. A sidetrack agreement;

c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. 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 a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

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

(a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(3) 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 **(2)** above and supervisory, inspection, architectural or engineering activities.

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COMMERCIAL GENERAL LIABILITY
CG 40 10 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – CROSS SUITS LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverages – Coverage A – Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

Cross Suits

Any claim made or "suit" brought by any Named Insured under this Policy against another Named Insured under this Policy for damages because of "bodily injury" or "property damage".

B. The following is added to Paragraph **2. Exclusions** of **Section I – Coverages – Coverage B – Personal And Advertising Injury Liability:**

This insurance does not apply to:

Cross Suits

Any claim made or "suit" brought by any Named Insured under this Policy against another Named Insured under this Policy for damages because of "personal and advertising injury".

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COMMERCIAL GENERAL LIABILITY
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BROAD ABUSE OR MOLESTATION EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph **2. Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability** and **Section I – Coverage B – Personal And Advertising Injury Liability:**

This insurance does not apply to damages arising out of:

1. The actual, alleged or threatened abuse or molestation, including but not limited to sexual abuse or sexual molestation, of any person committed by anyone; or

2. The negligent:

a. Employment;

b. Investigation;

c. Supervision;

d. Reporting to the proper authorities, or failure to so report; or

e. Retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph **1.** above.

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CALCULATION OF PREMIUM

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
EQUIPMENT BREAKDOWN COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

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COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
   a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
   b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
   a. Make inspections and surveys at any time;
   b. Give you reports on the conditions we find; and
   c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
   a. Are safe or healthful; or
   b. Comply with laws, regulations, codes or standards.
3. Paragraphs **1.** and **2.** of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph **2.** of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

(1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(b)** the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

(1) The "nuclear material" **(a)** is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or **(b)** has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or

(3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion **(3)** applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

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"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

(a) Any "nuclear reactor";

(b) Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

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SERVICE OF SUIT

As used in this endorsement, “we”, “us”, and “our”, refer to Houston Specialty Insurance Company (HSIC).

This applies in jurisdictions where we are not an admitted insurer.

It is agreed that in the event of our failure to pay the amount claimed to be due hereunder, we, at the request of the insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court.

It is further agreed that, pursuant to any statute of any state, territory or district of the United States which make provision therefor, we hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out to this policy of insurance and hereby designate

Houston Specialty Insurance Company
General Counsel
800 Gessner Road, Suite 600
Houston, Texas 77024-4538

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ THIS CAREFULLY.

AMENDMENT - DEFINITION OF EMPLOYEE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION V - DEFINITIONS, **5.** "Employee" is replaced by the following:

5. "Employee" includes a "leased worker", a "temporary worker" or a "loaned employee".

B. For the purpose of this endorsement only, the following definition is added to **SECTION V - DEFINITIONS**:

"Loaned employee" means a worker provided to you, other than by a labor union or a labor leasing firm, who acts at the direction of and within the scope of duties determined by any insured, but for whom you do not withhold any income tax or any unemployment tax.

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CLASSIFICATION LIMITATION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART

Coverage under this policy applies only to those operations described in the Schedule of Insurance, Coverage Parts, Declarations and or endorsements made a part of this policy.

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EXCLUSION - BREACH OF CONTRACT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to **SECTION I - COVERAGES**, **COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph **2. Exclusions**:

Breach of Contract

Any claim for "bodily injury" or "property damage" arising from, directly or indirectly, breach of an express contract, including breach of an implied in law or implied in fact contract. This exclusion does not apply to liability for damages that an insured would have in the absence of the contract.

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EXCLUSION
INJURY TO INDEPENDENT CONTRACTORS OR THEIR EMPLOYEES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to **SECTION I - COVERAGES, COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph **2. Exclusions**, and **SECTION I - COVERAGES**, **COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY**, Paragraph **2. Exclusions**:

This insurance does not apply to claims, costs or expenses due to "bodily injury", "property damage" or "personal and advertising injury" sustained by the owner, partner or "employee" of an independent contractor working for you or on your behalf.

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EXCLUSION - INTELLECTUAL PROPERTY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to **SECTION I - COVERAGES**, **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph **2. Exclusions** and **SECTION I – COVERAGES** and **SECTION I – COVERAGES, COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY**, Paragraph **2. Exclusions**:

Intellectual Property

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual or alleged infringement, misappropriation or violation of intellectual property rights or laws, including but not limited to:

(1) Trademark,

(2) Trade dress,

(3) Slogan,

(4) Style of doing business,

(5) Copyright,

(6) Patent rights,

(7) Trade secret rights,

(8) Publicity rights,

(9) Moral rights, or

(10) Rights against unfair competition.

B. **SECTION I - COVERAGES**, **COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY**, Paragraph **2. Exclusions**, subparagraph **f. Breach Of Contract** is replaced by the following:

f. Breach Of Contract

This insurance does not apply to "personal and advertising injury" caused by or arising out of a breach of contract.

C. **SECTION I - COVERAGES**, **COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY**, Paragraph **2. Exclusions**, subparagraph **i. Infringement Of Copyright, Patent, Trademark Or Trade Secret** is deleted.

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EXCLUSION - PUNITIVE DAMAGES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to **SECTION I - COVERAGES, COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph **2. Exclusions**, **SECTION I - COVERAGES, COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY**, Paragraph **2. Exclusions** and **SECTION I - COVERAGES**, **COVERAGE C - MEDICAL PAYMENTS**, Paragraph **2. Exclusions**:

This insurance does not apply to damages assessed for punitive damages, exemplary damages, multiplied damages, fines, penalties or liquidated damages. If a "suit" is brought against you for a claim falling within the coverage provided by this policy, seeking both compensatory and punitive damages, exemplary damages, multiplied damages, fines, penalties or liquidated damages, we will afford a defense to such action, but we shall not have an obligation to pay any cost, interest or damages attributed to punitive damages, exemplary damages, multiplied damages, fines, penalties or liquidated damages.

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EXCLUSION - DISCRIMINATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to **SECTION I - COVERAGES**, **COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph **2. Exclusions** and **SECTION I - COVERAGES**, **COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY**, Paragraph **2. Exclusions**:

Discrimination

This insurance does not apply to any liability or damages based upon, arising out of, resulting from or in consequence of, or in any way involving, directly or indirectly, any actual or alleged violation of any federal, state, or local governmental law or regulation prohibiting discrimination.

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ASBESTOS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to Paragraph **2. Exclusions** of **SECTION I – COVERAGES**, **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** and Paragraph **2. Exclusions** of **SECTION I – COVERAGES**, **COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**:

This insurance does not apply to:

Asbestos

1. "Bodily injury", "property damage", "personal and advertising injury" or "reduction in value" related, in whole or in part, to the actual, alleged, or threatened presence of, or exposure to "asbestos" in any form, or to harmful substances emanating from "asbestos". This includes ingestion of, inhalation of, absorption of, contact with, existence of, presence of, or exposure to, "asbestos". Such injury from or exposure to "asbestos" also includes, but is not limited to:

a. The existence, installation, storage, handling or transportation of "asbestos";

b. The removal, abatement or containment of "asbestos" from any structures, materials, goods, products or manufacturing process;

c. The disposal of "asbestos";

d. Any structures, manufacturing processes, or products containing "asbestos";

e. Any obligation to share damages with or repay someone else who must pay damages because of such injury or damage; or

f. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with the above.

Such injury or damage is excluded regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

2. Any loss, cost or expense, including, but not limited to payment for investigation or defense, fines, penalties and other costs or expenses, arising, in whole or in part, out of:

a. Any claim, "suit", demand, judgment, obligation, order, request, settlement, or statutory or regulatory requirement that any insured or any other person or entity test for, monitor, clean up, remove, contain, mitigate, treat, neutralize, remediate, or dispose of, or in any way respond to, or assess the actual or alleged effects of "asbestos"; or

b. The testing for, monitoring, cleaning up, removing, containing, mitigating, treating, neutralizing, remediating, or disposing of, or in any way responding to or assessing the actual or alleged effects of, "asbestos" by any insured or by any other person or entity; or

c. Any claim, "suit", demand, judgment, obligation, or request to investigate which would not have occurred, in whole or in part, but for the actual or alleged presence of or exposure to "asbestos".

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B. The following exclusion is added to Paragraph **2. Exclusions**, of **COVERAGE C. MEDICAL PAYMENTS**:

We will not pay expenses for "bodily injury":

Asbestos

Due to the actual, alleged or threatened ingestions of, inhalation of, absorption of, contact with, existence of, presence of, or exposure to, "asbestos" in any form.

C. The following definitions are added to the **SECTION V - DEFINITIONS**:

1. "Asbestos" means any type or form of asbestos, asbestos fibers, asbestos products, or asbestos materials, including any products, goods, or materials containing asbestos or asbestos fibers, products or materials and any gases, vapors, scents or by-products produced or released by asbestos.

2. "Reduction in value" means any claim, demand or "suit" that alleges diminution, impairment or devaluation of property.

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TOTAL FIREARMS EXCLUSION

This endorsement changes modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to:

”Bodily injury”, “property damage”, or “personal and advertising injury” arising out of, resulting from or in any way connected to, in whole or in part, the use of or failure to use any firearm(s).

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INTERIM PREMIUM AUDIT CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph **5. Premium Audit** of the COMMERCIAL GENERAL LIABILITY COVERAGE PART and to **SECTION IV – PRODUCTS/COMPLETED OPERATIONS LIABILITY CONDITIONS**, **Paragraph 5. Premium Audit** of the PRODUCTS/COMPLETED OPERATIONS COVERATE PART:

We reserve the right to conduct a complete audit of your records during the policy term to determine the adequacy of the advance premium deposit. If the earned premium computed for the interim audit period exceeds the prorated advance premium by an amount 10% or more we shall reserve the right to amend the premium base(s) in the Declarations to reflect the data produced by the interim audit and to revise the advance premium accordingly. Any additional premium will be due and payable upon notice to the first Named Insured. This provision shall not serve to amend the minimum premium as shown in the Declarations or our right to conduct further audits as per Paragraph **b.** above.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LEAD EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of both **SECTION I – COVERAGES**, **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** and **SECTION I – COVERAGES**, **COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**:

This insurance does not apply to:

Lead

1. "Bodily injury", "property damage", "personal and advertising injury" or "reduction in value" arising out of the actual, alleged, or threatened presence of, or exposure to "lead", or to harmful substances emanating from "lead". This includes ingestion of, inhalation of, absorption of, contact with, existence of, presence of, or exposure to, "lead". Such injury from or exposure to "lead" also includes, but is not limited to:

a. The existence, installation, storage, handling or transportation of "lead";

b. The removal, abatement or containment of "lead" from any structures, materials, goods, products or manufacturing processes;

c. The disposal of "lead";

d. Any structures, manufacturing processes, or products containing "lead";

e. Any obligation to share damages with or repay someone else who must pay damages because of such injury or damage; or

f. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with any of the above.

2. Any loss, cost or expense, including, but not limited to payment for investigation or defense, fines, penalties and other costs or expenses, arising out of any:

a. Demand, judgment, obligation, order, request, settlement, or statutory or regulatory requirement that any insured or any other person or entity test for, monitor, clean up, remove, contain, mitigate, treat, neutralize, remediate, or dispose of, or in any way respond to, or assess the actual or alleged effects of "lead"; or

b. Testing for, monitoring, cleaning up, removing, containing, mitigating, or disposing of, or in any way responding to or assessing the actual, alleged or threatened effects of, "lead" by any insured or by any other person or entity; or

c. Claim, "suit", demand, judgment, obligation, order or request to investigate which would not have occurred, in whole or in part, but for the actual, alleged or threatened presence of or exposure to "lead".

This exclusion applies regardless of who manufactured, produced, installed, used, owned, sold, distributed, handled, stored or controlled the "lead".

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B. Additional Definitions:

As used in this endorsement:

1. "Lead" means lead in any type or form; paint containing lead; other products, goods or materials containing lead or lead products; and any harmful substances, scents, vapors, gases or by-products produced by, emanating from, or released by lead.

2. "Reduction in value" means any claim, demand or "suit" that alleges diminution, impairment or devaluation of property.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL AUTO EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

g. Aircraft Or Watercraft

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

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

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

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

(a) Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge;

(3) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(4) "Bodily injury" or "property damage" arising out of:

(a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph **f. (2)** or **f. (3)** of the definition of "mobile equipment".

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B. The following is added to **SECTION I - COVERAGES**, **COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE,** Paragraph **2. Exclusions**:

Auto

Any liability arising out of the ownership, maintenance, operation, use, "loading or unloading" of any "auto", whether owned, maintained, operated, used, loaded or unloaded by you or by others acting on your behalf. Further, we shall have no duty to defend any insured against any loss, claim, "suit", or other proceedings alleging damages arising out of or related to "bodily injury" or "property damage" to which this endorsement applies.

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

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HSIC CG ES 01 95 10 20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM AND DEPOSIT PREMIUM ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph **5. Premium Audit**, subparagraph **b.** is deleted and replaced with the following:

b. The minimum and deposit premium shown on the Declarations page of this policy is the "advance premium" for the full policy term applicable to this policy.

At the close of each audit period, we will compute the "earned premium" for that period. The "audit premium" is due and payable to us on notice to the first Named Insured. If the "audit premium" is less than the minimum and deposit premium, the minimum and deposit premium will apply, with no return to you.

B. COMMON POLICY CONDITIONS, **A. Cancellation**, Paragraph **5.** is deleted and replaced with the following:

5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund will reflect either a 25% "minimum earned premium" or a short-rate charge of 90% of the pro rata premium, whichever is greater. If the insured cancels after 12 months, the "advance premium" is fully earned. Any cancellation will be effective even if we have not made or offered a refund.

"Advance Premium" = $25,000.00

"Minimum Earned Premium" = 25% of the "advance premium" or $_____

"Minimum Audit Premium" = 100% of the "advance premium" or $25,000.00

C. For the purposes of this endorsement, the following terms are defined:

1. "Advance premium" means the premium that is stated in the policy declarations and payable in full by the first Named Insured at the inception of the policy.

2. "Audit premium" means the premium that is developed by calculating the difference between the "advance premium" and the "earned premium".

3. "Earned premium" means the premium that is developed by applying the rate(s) scheduled in the policy to the actual premium basis (determined by a final audit) for the policy period.

4. "Minimum audit premium" means the lowest premium for which insurance will be written for the full policy period or 12 months, whichever is less, and is developed as a percentage of the "advance premium".

5. "Minimum earned premium" means the absolute lowest premium for which insurance will be written for any portion of the policy period and is developed as a percentage of the "advance premium".

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ASSAULT OR BATTERY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART

A. The following exclusion is added to **SECTION I** - **COVERAGES**, **COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph **2. Exclusions** and **SECTION I – COVERAGES**, **COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**, Paragraph **2. Exclusions** of the COMMERCIAL GENERAL LIABILITY COVERAGE PART and **SECTION I – LIQUOR LIABILITY COVERAGE**, Paragraph **2. Exclusions** of the LIQUOR LIABILITY COVERAGE PART:

This insurance does not apply to, nor shall we have the duty to defend, any claim or "suit" for “bodily injury”, “property damage”, “personal and advertising injury”, or “injury” arising out of or related to any of the following:

1. “Assault” and/or “battery” committed by any insured, any employee of any insured or any other person, whether or not caused by or at the direction of any insured, or arising because of the negligence of any insured; or

2. “Assault” and/or “battery” resulting from the negligent hiring, retention, training, supervision or control of any employee of the insured; or

3. The failure to prevent or suppress an “assault” and “battery” by any person; or

4. The failure to provide an environment safe from “assault” and “battery”, including but not limited to the failure to maintain security; or

5. The use of force to protect persons or property.

This exclusion supersedes any provision in the attached policy that provides coverage for “bodily injury” arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the use of reasonable force to protect person(s) or property.

B. The following definitions are added to **SECTION V – DEFINITIONS**:

“Assault” means the threat of, or use of force on another that causes that person to have the apprehension of imminent harmful or offensive conduct, whether or not the threat or use of force is alleged to be negligent, intentional or criminal in nature.

“Battery” means negligent or intentional physical contact with another without consent that results in physical or emotional injury.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - LIQUOR LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I - COVERAGES, COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Paragraph **2. Exclusions**, subparagraph **c. Liquor Liability** is replaced by the following:

c. Liquor Liability

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

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies to an insured, or anyone the insured may be held liable for, who:

(1) Manufactures, sells or distributes alcoholic beverages; or

(2) Serves or furnishes alcoholic beverages with or without a charge; or

(3) Permits others to bring alcoholic beverages on your premises, for consumption on your premises.

This exclusion applies even if the claims against any insured, or anyone the insured may be held liable for, allege negligence or other wrongdoing in:

(1) The supervision, hiring, employment, training or monitoring of others by that insured; or

(2) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

LIABILITY INSURANCE DEDUCTIBLE ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Coverage	**Amount and Basis of Deductible**	
	Per Claim	**Per Occurrence**
Bodily Injury Liability, or;		
Property Damage Liability, or,		
Bodily Injury Liability and/or Property Damage Liability Combined	$5,000	

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as *applicable to this endorsement.)*

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused).
THE DEDUCTIBLE AMOUNT SHALL ALSO INCLUDE ALL ALLOCATED EXPENSES, INCLUDING LEGAL EXPENSES, INCURRED BY THE COMPANY IN THE INVESTIGATION, NEGOTIATION, SETTLEMENT AND DEFENSE OF ANY CLAIM OR SUIT SEEKING DAMAGES.

A. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the **SCHEDULE** above as applicable to such coverages.

B. You may select a deductible amount on either a per claim or a per "occurrence" basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the **SCHEDULE** above. The deductible amount stated in the **SCHEDULE** above applies as follows:

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1. Per Claim Basis

If the deductible amount indicated in the **SCHEDULE** above is on a per claim basis, that deductible applies as follows:

a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";

b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage"; or

c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages sustained by any one person because of:

(1) "Bodily injury";

(2) "Property damage"; or

(3) "Bodily injury" and "property damage" combined

as the result of any one "occurrence".

If damages are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.

With respect to "property damage", person includes an organization.

2. Per Occurrence Basis

If the deductible amount indicated in the **SCHEDULE** above is on a "per occurrence" basis, that deductible amount applies as follows:

a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";

b. Under Property Damage Liability Coverage, to all damages because of "property damage"; or

c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages because of:

(1) "Bodily injury";

(2) "Property damage"; or

(3) "Bodily injury" and "property damage" combined

as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".

C. The terms of this insurance, including those with respect to:

1. Our right and duty to defend the insured against any "suits" seeking those damages; and

2. Your duties in the event of an "occurrence", claim, or “suit”

apply irrespective of the application of the deductible amount.

D. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEFINITION OF PREMIUM BASIS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

Premiums are computed in accordance with the rates and premium basis shown in the Policy Declarations. The first Named Insured is responsible for keeping records of the information we need for the premium computation. Refer to Premium Audit Conditions in the Coverage form and the Common Policy Conditions.

Definitions:

A. Admissions

The total number of persons, other than employees of the named insured, admitted to the event insured or to events conducted on the premises whether on paid admission, tickets, complimentary tickets or passes.

B. Area

The total number of square feet of floor space at the insured premises, computed as follows:

1. For entire buildings, by multiplying the product of the horizontal dimensions of the outside of the outer building walls by the number of floors, including basements but do not use the area of the following:
   - **a.** Courts and mezzanine types of floor openings.
   - **b.** Portions of basements or floors where 50% or more of the area is used for shop or storage for building maintenance, dwelling by building maintenance employees, heating units, power plants or air conditioning equipment.
2. For tenants, determine the area they occupy in the same manner as for the entire buildings.

C. Each

This basis of premium involves units of exposure, and the quantity comprising each unit of exposure is indicated in the classification rates, such as "per person".

D. Gross Sales

1. Definition

The gross amount charged by the named insured, concessionaires of the named insured or by others trading under the insured's named for:

- **a.** All goods or products, sold or distributed;
- **b.** Operations performed during the policy period;
- **c.** Rentals.

2. Inclusions

The following items shall not be deducted from gross sales:

- **a.** Foreign exchange discounts;
- **b.** Freight allowance to customers;
- **c.** Total sales of consigned goods and warehouse receipts
- **d.** Trade or cash discounts;
- **e.** Bad debts;
- **f.** Repossession of items sold on installments (amount actually collect);
- **g.** Membership dues or fees;
- **h.** Ticket sales or admission charges

3. Exclusions

The following items shall be deducted from gross sales:

- **a.** Sales or excise taxes which are collected and submitted to a governmental division;
- **b.** Credits for repossessed merchandise and products returned. Allowances for damaged and spoiled goods;
- **c.** Finance charges for items sold on installments;
- **d.** Freight charges on sales if freight is charged as a separate item on customers invoice; and
- **e.** Royalty income from patent rights or copyrights which are not product sales.

E. Payroll

1. Definition

- **a.** Payroll means remuneration;
- **b.** Remuneration means money or substitutes for money;

2. Payroll includes the following items:

a. Commissions;

b. Bonuses;

c. Extra pay for overtime work, except as proved in **E.4**.;

d. Pay for holidays, vacations or periods of sickness;

e. Payment by an employer of amounts otherwise required by law to be paid by employees to statutory insurance or pension plans, such as the Federal Social Security Act;

f. Payment to employees on any basis other than time worked, such as piece work, profit sharing of incentive plans;

g. Payment or allowance for hand tools or power tools used by hand provided by employees and used in their work or operations for the insured;

h. The rental value of an apartment or a house provided for an employee based on comparable accommodations;

i. The value of lodging, other than an apartment or house, received by employees as part of their pay, to the extent shown in the insured's records;

j. The value of meals received by employees as part of their pay to the extent shown in the insured 's records;

k. The value of store certificates, merchandise, credits or any other substitute for money received by employees as part of their pay;

l. The payroll of mobile equipment operators and their helpers, whether or not the operators are designated or licensed to operate automobiles. If the operators and their helpers are provided to the insured along with equipment hired under contract and their actual payroll is not known, use 1/3 of the total amount paid out by the insured for the hire of the equipment;

m. The payroll of executive officers and individual insureds and co-partners. Individual states may have their own limitations of this payroll category;

The executive officers of a corporation are the president, any vice-president, secretary, treasurer, and any other officers selected or appointed according to the charter, constitution or by-laws of the corporation.

Exception: The payroll of all executive officers and individual insured or co-partners engaged principally in clerical operations or as salesmen shall not be included for premium purposes.

Part-Time or Seasonal Businesses

The payroll amounts may be reduced by 2 percent for each full calendar week in excess of twelve during which the risk performs no operations.

n. Fees paid to employment agencies for temporary personnel provided to the insured;

3. Payroll does not include:

a. Tips and other gratuities received by employees;

b. Payments by an employer to group insurance or group pension plans for employees , other than payments covered by **E.2.e**;

c. The value of special rewards for individual invention or discovery;

d. Dismissal or severance payments except for time worked or accrued vacation;

e. The payroll of clerical office employees;

Clerical office employees are those employees who work in an area which is physically separated by walls, floors or partitions from all other work areas of the insured and whose duties are strictly limited to keeping the insured's books or records or conducting correspondence, including any other employees engaged in clerical work in the same area.

f. The payroll of salesmen, collectors or messengers who work principally away from the insured's premises. Salesmen, collectors or messengers are those employees engaged principally in any such duties away from the premises of the employer;

Exception: This term does not apply to any employee whose duties include the delivery of any merchandise handled, treated or sold.

g. The payroll of drivers and their helpers if their principal duties are to work on or in connection with automobiles;

h. The payroll of aircraft pilots or co-pilots if their principal duties are to work on or in connection with aircraft in either capacity;

i. The payroll of draftsmen if their duties are limited to office work only and who are engaged strictly as draftsmen in such a manner that they are not exposed to the operative hazards of the business. The payroll of these draftsmen shall be assigned to the classification "Draftsmen".

4. Overtime

a. Definition

Overtime means those hours worked for which there is an increase in the rate of pay:

(1) For work in any day or in any week in excess of the number of hours normally worked, or

(2) For hours worked in excess of 8 hours in any day or 40 hours in any week, or

(3) For work on Saturdays, Sundays or Holidays.

In the case of guaranteed wage agreements, overtime means only those hours worked in excess of the number specified in such agreement.

b. Exclusion of Overtime Payroll

The extra pay for overtime shall be excluded from the payroll on which premium is computed as indicated in **(1)** or **(2)** below, provided the insured's books and records are maintained to show overtime pay separately by employee and in summary by classification.

(1) If the records show separately the extra pay earned for overtime, the entire extra pay shall be excluded.

(2) If the records show the total pay earned for overtime, (regular pay plus overtime pay) in one combined amount, 1/3 of this total pay shall be excluded. If double time is paid for overtime and the total pay for such overtime is recorded separately, 1/2 of the total pay for double time shall be excluded.

Exception to b. above: Exclusion of overtime pay does not apply to payroll assigned to the "Stevedoring" classifications.

F. Total Cost

The total Cost of all work let or sublet in connection with each specific project including:

1. The cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work;

2. All fees, bonuses or commissions made, paid or due.

G. Units

A single room or group of rooms intended for occupancy as separate living quarters by a family, by a group of unrelated persons living together, or by a person living alone.

Lloyd's Certificate

This Insurance is effected with certain Underwriters at Lloyd's, London.

This Certificate is issued in accordance with the limited authorization granted to the Correspondent by certain Underwriters at Lloyd's, London whose syndicate numbers and the proportions underwritten by them can be ascertained from the office of the said Correspondent (such Underwriters being hereinafter called "Underwriters") and in consideration of the premium specified herein, Underwriters hereby bind themselves severally and not jointly, each for his own part and not one for another, their Executors and Administrators.

The Assured is requested to read this Certificate, and if it is not correct, return it immediately to the Correspondent for appropriate alteration.

All inquiries regarding this Certificate should be addressed to the following Correspondent:

Tysers
71 Fenchurch Street
London EC3M 4BS
England

SLC-3 (USA) NMA 2868 (24/08/2000) - amended
Form approved by Lloyd's Underwriters' Non-Marine Association Limited

CERTIFICATE PROVISIONS

1. **Signature Required.** This Certificate shall not be valid unless signed by the Correspondent on the attached Declaration Page.

2. **Correspondent Not Insurer.** The Correspondent is not an Insurer hereunder and neither is nor shall be liable for any loss or claim whatsoever. The Insurers hereunder are those Underwriters at Lloyd's, London whose syndicate numbers can be ascertained as hereinbefore set forth. As used in this Certificate "Underwriters" shall be deemed to include incorporated as well as unincorporated persons or entities that are Underwriters at Lloyd's, London.

3. **Cancellation.** If this Certificate provides for cancellation and this Certificate is cancelled after the inception date, earned premium must be paid for the time the insurance has been in force.

4. **Service of Suit.** It is agreed that in the event of the failure of Underwriters to pay any amount claimed to be due hereunder, Underwriters, at the request of the Assured, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon the firm or person named in the attached Declaration Page, and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.
   The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon request of the Assured to give a written undertaking to the Assured that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.
   Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, Underwriters hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Assured or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above-mentioned as the person to whom the said officer is authorized to mail such process or a true copy thereof.

5. **Assignment.** This Certificate shall not be assigned either in whole or in part without the written consent of the Correspondent endorsed hereon.

6. **Attached Conditions Incorporated.** This Certificate is made and accepted subject to all the provisions, conditions and warranties set forth herein, attached or endorsed, all of which are to be considered as incorporated herein.

7. **Short Rate Cancellation.** If the attached provisions provide for cancellation, the table below will be used to calculate the short rate proportion of the premium when applicable under the terms of cancellation.

Short Rate Cancellation Table For Term of One Year.

Days Insurance in Force	Per Cent of one year Premium	Days Insurance in Force	Per Cent of one year Premium	Days Insurance in Force	Per Cent of one year Premium	Days Insurance in Force	Per Cent of one year Premium
1	5%	66 - 69	29%	154 - 156	53%	256 - 260	77%
2	6	70 - 73	30	157 - 160	54	261 - 264	78
3 - 4	7	74 - 76	31	161 - 164	55	265 - 269	79
5 - 6	8	77 - 80	32	165 - 167	56	270 - 273 (9 mos)	80
7 - 8	9	81 - 83	33	168 - 171	57	274 - 278	81
9 - 10	10	84 - 87	34	172 - 175	58	279 - 282	82
11 - 12	11	88 - 91 (3 mos)	35	176 - 178	59	283 - 287	83
13 - 14	12	92 - 94	36	179 - 182 (6 mos)	60	288 - 291	84
15 - 16	13	95 - 98	37	183 - 187	61	292 - 296	85
17 - 18	14	99 - 102	38	188 - 191	62	297 - 301	86
19 - 20	15	103 - 105	39	192 - 196	63	302 - 305 (10 mos)	87
21 - 22	16	106 - 109	40	197 - 200	64	306 - 310	88
23 - 25	17	110 - 113	41	201 - 205	65	311 - 314	89
26 - 29	18	114 - 116	42	206 - 209	66	315 - 319	90
30 - 32 (1 mos)	19	117 - 120	43	210 - 214 (7 mos)	67	320 - 323	91
33 - 36	20	121 - 124 (4 mos)	44	215 - 218	68	324 - 328	92
37 - 40	21	125 - 127	45	219 - 223	69	329 - 332	93
41 - 43	22	128 - 131	46	224 - 228	70	333 - 337 (11 mos)	94
44 - 47	23	132 - 135	47	229 - 232	71	338 - 342	95
48 - 51	24	136 - 138	48	233 - 237	72	343 - 346	96
52 - 54	25	139 - 142	49	238 - 241	73	347 - 351	97
55 - 58	26	143 - 146	50	242 - 246 (8 mos)	74	352 - 355	98
59 - 62 (2 mos)	27	147 - 149	51	247 - 250	75	356 - 360	99
63 - 65	28	150 - 153 (5 mos)	52	251 - 255	76	361 - 365 (12 mos)	100

Rules applicable to insurance with terms less than or more than one year:

A. If insurance has been in force for one year or less, apply the short rate table for annual insurance to the full annual premium determined as for insurance written for a term of one year.

B. If insurance has been in force for more than one year:
   1. Determine full annual premium as for insurance written for a term of one year.
   2. Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the policy was originally written.
   3. Add premium produced in accordance with items (1) and (2) to obtain earned premium during full period insurance has been in force.

8. This insurance is issued pursuant to the California Insurance Code, Sections 1760 through 1780, and is placed in an insurer or insurers not holding a Certificate of Authority from or regulated by the California Insurance Commissioner.

CALIFORNIA SURPLUS LINES NOTICE 1 (POST BIND)

NOTICE:

1. THE INSURANCE POLICY THAT YOU HAVE PURCHASED IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINE" INSURERS.

2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT THAT APPLY TO CALIFORNIA LICENSED INSURERS.

3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

4. THE INSURER SHOULD BE LICENSED EITHER AS A FOREIGN INSURER IN ANOTHER STATE IN THE UNITED STATES OR AS A NON-UNITED STATES (ALIEN) INSURER. YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINE" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER 1-800-927-4357 OR INTERNET WEB SITE WWW.INSURANCE.CA.GOV . ASK WHETHER OR NOT THE INSURER IS LICENSED AS A FOREIGN OR NON-UNITED STATES (ALIEN) INSURER AND FOR ADDITIONAL INFORMATION ABOUT THE INSURER. YOU MAY ALSO CONTACT THE NAIC'S INTERNET WEBSITE AT WWW.NAIC.ORG .

5. FOREIGN INSURERS SHOULD BE LICENSED BY A STATE IN THE UNITED STATES AND YOU MAY CONTACT THAT STATE'S DEPARTMENT OF INSURANCE TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.

6. FOR NON-UNITED STATES (ALIEN) INSURERS, THE INSURER SHOULD BE LICENSED BY A COUNTRY OUTSIDE OF THE UNITED STATES AND SHOULD BE ON THE NAIC'S INTERNATIONAL INSURERS DEPARTMENT (IID) LISTING OF APPROVED NONADMITTED NON-UNITED STATES INSURERS. ASK YOUR AGENT, BROKER, OR "SURPLUS LINE" BROKER TO OBTAIN MORE INFORMATION ABOUT THAT INSURER.

7. CALIFORNIA MAINTAINS A LIST OF APPROVED SURPLUS LINE INSURERS. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST AT THE INTERNET WEB SITE OF THE CALIFORNIA DEPARTMENT OF INSURANCE: WWW.INSURANCE.CA.GOV .

8. IF YOU, AS THE APPLICANT, REQUIRED THAT THE INSURANCE POLICY YOU HAVE PURCHASED BE BOUND IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE WITHIN TWO BUSINESS DAYS, AND YOU DID NOT RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS POLICY WITHIN FIVE DAYS OF RECEIVING THIS DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM WILL BE PRORATED AND ANY BROKER'S FEE CHARGED FOR THIS INSURANCE WILL BE RETURNED TO YOU.

LMA9098A
04 May 2017

CALIFORNIA COMPLAINTS NOTICE

To request assistance or make an initial complaint, you should contact:

Tysers
71 Fenchurch Street
London EC3M 4BS
Email: complaints@tysers.com
Tel: +44 (0)20 7398 4350

In the alternative, or if you are dissatisfied with the resolution of your complaint by the above party, you may wish to contact the Lloyd's Complaints Department at:

Lloyd's Complaints Department
c/o Lloyd's America Inc.
280 Park Avenue,
East Tower, 25th Floor,
New York, NY 10017,
USA

Phone: 1-844-849-7828
Email: complaints@lloyds.com

The California Department of Insurance should be contacted only after discussions with the insurer, its agent, or representative, have failed to produce a satisfactory resolution. You may contact the California Department of Insurance to obtain information on your rights or make a complaint at:

Consumer Hotline
1-800-927-4357 (HELP)

TDD Number
1-800-482-4833 (TTY)

California Department of Insurance
Consumer Services Division
300 South Spring Street, South Tower
Los Angeles, CA 90013

LMA9136A
18 August 2020

Safeguard Policy

TYSERS

Beazley | Safeguard



beazley

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Insurance Company, Claims and Circumstance Notification and Complaints Information

Thank you for choosing to insure with us. Please read your policy documentation carefully to ensure that the cover meets your requirements. If anything is not correct please contact your broker as soon as possible.

A. Insurance Company

Syndicate 2623/623 at Lloyd's

B. Claims and Circumstances Notification – Where to notify a claim or circumstance

Beazley Group
Attn: Claims Group
30 Batterson Park Road
Farmington, CT 06032
claims@beazley.com

To report a **circumstance** under the Safeguard Additional Coverage, call +1 844 285 4700 where a service representative will be available 24 hours a day, seven days a week

C. Complaints Information – How to make a complaint

Every effort is made to ensure that a high standard of service is provided. However, if the **insured** is not satisfied with the service it has received or it has any questions or concerns about this Policy the **insured** should contact:

Beazley USA Services, Inc. (on behalf of one or more Beazley Group insurers)
To get information or file a complaint with your **insurance company**:

Online:	www.beazley.com
Email:	us.complaints@beazley.com
Mail:	30 Batterson Park Road Farmington, CT 06032

All correspondence should be addressed to Beazley Complaints.

Declarations

NOTICE: THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY AND APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURANCE COMPANY IN ACCORDANCE WITH THE TERMS OF THIS POLICY. AMOUNTS INCURRED AS DEFENSE COSTS WILL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTION. PLEASE REVIEW THE COVERAGE PROVIDED UNDER THIS POLICY CAREFULLY AND DISCUSS WITH YOUR INSURANCE AGENT OR BROKER.

These Declarations along with the application, and the Policy with endorsements shall constitute the contract between the insured and the insurance company.

Policy Number: MR23A671

Unique Market Reference: B0572MR23A671

Renewal of: N/A

Named Insured: Name: The Swimming Swan LLC

Address: 903 Paseo Del Lago, Fallbrook, CA 92028

Policy Period: From: 26th May 2023 To: 26th May 2024
Both days at 12:01 a.m. Local Time at the Address specified above

Limit of Liability:

a) USD 500,000 in the aggregate during the **policy period** for all **claims** brought by or on behalf of each **victim**, and

b) USD 500,000 in the aggregate during the **policy period** for all **claims** brought by or on behalf of all **victims**

and separately:

c) USD 75,000 in the aggregate during the **policy period** for all **safeguard costs** resulting from all **circumstances**

Such Limit of Liability shall be in addition to the overall Limit of Liability stated in a) and b) above.

Retention:

USD 25,000 any one **Victim**

Optional Extension Period:	12 months	Additional premium of 100% of the annual premium plus applicable taxes, provided no **claims** and/or **circumstances** have been reported to the **insurance company.** In the event any **claims** and/or **circumstances** have been reported to the **insurance company**, the additional premium for the 12 month **optional extension period** will be determined by the **insurance company** at the time this Policy is not renewed or replaced by the **insurance company**

Premium:

USD 5,000 + USD 250 policy processing fee (annual) plus applicable taxes

Notification pursuant to Clause IX. Shall be given to:

Beazley Group
Attn: Claims Group
30 Batterson Park Road
Farmington, CT 06032
claims@beazley.com

Brokerage Fee $500.00
Policy Fee - Carrier $250.00
Surplus Lines Tax $157.50
Stamping Office Fee $9.45

or

Other Notices:

To report a **circumstance** under the Safeguard Additional Coverage,
Call +1 844 285 4700 where a service representative will be available 24 hours a day, seven days a week

Retroactive Date:

26th May 2023

Pending or Prior Litigation Date:

26th May 2023

Service of Suit:

Service of process in any suit shall be made upon:
Lloyd's America, Inc. Attention: Legal Department 280 Park Avenue, East Tower, 25th Floor
New York, NY 10017

Governing Law:

New York

This contract is subject to US state surplus lines requirements. It is the responsibility of the surplus lines broker to affix a surplus lines notice to the contract document before it is provided to the insured. In the event that the surplus lines notice is not affixed to the contract document the insured should contact the surplus lines broker.

Dated in London: 12th June 2023

Alex Tufano

Authorised Signature
Tysers (Correspondent)

NOTICE: THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY AND APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURANCE COMPANY IN ACCORDANCE WITH THE TERMS OF THIS POLICY. AMOUNTS INCURRED AS DEFENSE COSTS WILL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTION. PLEASE REVIEW THE COVERAGE PROVIDED UNDER THIS POLICY CAREFULLY AND DISCUSS WITH YOUR INSURANCE AGENT OR BROKER.

The **insurance company** agrees with the **named insured** in consideration of the payment of, or agreement to pay, the premium and subject to all the provisions of this Policy:

Coverage

Sexual Abuse and Misconduct Liability

To pay **loss** resulting from any **claim** first made against any **insured** during the **policy period** for a **wrongful act** and reported in accordance with the Claim Requirements and Information section.

Additional Coverage

Safeguard Coverage

To pay, at the **insurance company's** sole discretion, any **safeguard costs** resulting from any **circumstance** which the **insureds** first become aware of during the **policy period**, provided that, as a condition to coverage:

(a) such **circumstance** is reported to the **insurance company** in accordance with the Claim Requirements and Information section, but in no event later than 72 hours after a **responsible person** becomes aware of such **circumstance**; and

(b) the **insured organization** enters into a formal written agreement with the **safeguard service provider** within 24 hours of the **insurance company** appointing such **safeguard service provider**.

Exclusions from Cover

The **insurance company** will not be liable for any **loss** in connection with or resulting from:

Assumed Liability

any **claim** or **circumstance** arising out of, based upon, attributable to or in any way involving any liability of others assumed by the **insured** under any contract or agreement, either oral or written, including any hold harmless or indemnity agreements.

This Exclusion will not apply to the extent the **insured** would have been liable in the absence of such contract or agreement.

Employment-Related Practices

that part of any **claim** or **circumstance** arising out of, based upon, attributable to or in any way involving any employment-related practice, policy, act or omission which does not otherwise constitute a **wrongful act**.

Indemnity to Perpetrator

any **claim** against any **insured person** who personally committed, participated in or assisted in any act of **sexual abuse and misconduct**.

This Exclusion will not apply to any **defense costs** incurred by such **insured person** until such time as:

(a) such **insured person** is judicially determined to have committed, participated in or assisted in any act of **sexual abuse and misconduct**; or

(b) such **insured person** admits in any context to having committed, participated in or assisted in any act of **sexual abuse and misconduct**.

Insured against Insured

any **claim** brought by or on behalf of any **insured**.

Prior and Pending

any **claim** arising out of, based upon, attributable to or in any way involving any **circumstance**, written demand for monetary damages, litigation, arbitration, administrative or other proceeding which was alleged or brought against an **insured** prior to the **prior and pending date**, or any **wrongful act** or fact or circumstance underlying or alleged therein.

Prior Knowledge of Acts of Sexual Abuse and Misconduct

any **claim** or **circumstance** if, prior to the date of the **wrongful act** giving rise to such **claim** or **circumstance**, any **insured** was aware of any allegation or complaint of any act of **sexual abuse and misconduct** being made against the same **insured person** as accused in such **claim** or **circumstance**.

Prior Notice

any **claim** or **circumstance** arising out of, based upon, attributable to or in any way involving:

(a) any act of **sexual abuse and misconduct**, fact, circumstance, transaction or situation which has been the subject of any **claim** or **circumstance**, whenever made, of which notice has been provided prior to the **policy period** under any other policy, or

(b) any act of **sexual abuse and misconduct** which is considered **related acts of sexual abuse and misconduct** of which notice of the earlier such act of **sexual abuse and misconduct** has been provided prior to the **policy period** under any other policy.

Limit of Liability

The Limit of Liability specified in Declarations under part (a) is the maximum amount payable by the **insurance company** for all **loss** under this Policy in respect of all **claims** against the **insureds** brought by or on behalf of each **victim**.

The Limit of Liability specified in Declarations under part (b) is the maximum amount payable by the **insurance company** for all **loss** under this Policy in respect of all **claims** against the **insureds** brought by all **victims**.

The Limit of Liability specified in Declarations under part (c) is the maximum amount payable by the **insurance company** for all **safeguard costs** under this Policy in respect of all **circumstances**. Such Limit of Liability will be in addition to the Limit of Liability specified in Declarations under parts (a) and (b).

Any **loss** paid by the **insurance company** under this Policy will reduce all applicable Limits of Liability.

The **insurance company** will not be obligated to pay any **loss**, or defend any **claim**, after the applicable Limits of Liability have been exhausted, or after deposit of the Limit of Liability in a court of competent jurisdiction.

Retention

The Retention specified in the Declarations will apply separately for **claims** brought by or on behalf of each **victim**, and the **insurance company** will be liable only for **loss** in excess of that amount.

The Retention for each **victim** will be satisfied by monetary payments of **loss** by the **insured**.

No Retention will apply to **safeguard costs**.

Claim Requirements and Information

Notification of Claims

As a condition to coverage under this Policy, the **insured** must give notice to the **insurance company** of any **claim** as soon as practicable but in no event later than 30 days after any **responsible person** first becomes aware of such **claim** or 30 days after the end of the **policy period** (whichever date is earlier).

Notification of Circumstances

The **insured** may during the **policy period** notify the **insurance company** of any **circumstance**.

Any notice must include:

(a) the reasons why the **insured** reasonably anticipates that such **circumstance** could give rise to a **claim**, and

(b) full particulars of the dates, acts and persons involved (where available).

If a **claim** is made after the end of the **policy period** and arises from a **circumstance** reported in accordance with this provision, then such **claim** will be deemed to have been made at the same time as the **circumstance** was reported to the **insurance company**.

Related Claims

All **related claims**:

(a) are deemed a single **claim** for the purposes of this Policy, irrespective of the number of **insureds** involved in the **claim**, and

(b) are deemed to have been made at the time of the first such **claim**, and

(c) will be treated by the **insurance company** as having been reported when the first of such **claims** was reported or is deemed to have been reported to the **insurance company**, and

(d) will be subject to a single Retention.

Related Acts of Sexual Abuse and Misconduct

All **related acts of sexual abuse and misconduct**:

(a) are deemed a single act of **sexual abuse and misconduct** for the purposes of this Policy, irrespective of the number of **insured's** involved, and

(b) are deemed to have been first committed at the time of the first such act of **sexual abuse and misconduct**.

Notice to the Insurance Company

All notices to the **insurance company** must be sent either by e-mail to or by mail to the address specified in the Declarations.

Defense, Safeguard Costs and Settlement

(a) Duties

The **insurance company** has the right and duty to defend any **claim** against the **insured** seeking **loss** which is payable under the terms of this Policy, even if any part of such **claim** is groundless, false or fraudulent.

(b) Selection of defense counsel and consent to **defense costs** and **safeguard costs**

The **insurance company** has the right to select defense counsel and will not be obligated to pay **defense costs** or **safeguard costs** unless it has given prior written consent to such **defense costs** or **safeguard costs** being incurred.

(c) Repayment of **defense costs**

To the extent it is established that any **defense costs** paid by the **insurance company** are not covered in whole or in part under this Policy, the **named insured** shall repay such **defense costs** to the **insurance company**.

(d) Settlement of **claims**

The **insured** will not admit liability, make any payment, assume any obligation, incur any expense, make an offer to settle or agree to any settlement, stipulate to any judgment or dispose of any **claim** without the prior written consent of the **insurance company**.

If the **insured** refuses to consent to any settlement recommended by the **insurance company** and acceptable to the claimant, the **insurance company's** liability for **loss** will not exceed:

i. the amount for which the **claim** could have been settled, less the remaining Retention, plus the **defense costs** incurred up to the time of such refusal, plus

ii. 20% of any **loss** incurred after the date such settlement was recommended to the **insured**, with the remaining 80% of such **loss** to be borne by the **insured** at their own risk and uninsured.

Assistance and Cooperation

If any **claim** or **circumstance** is reported by the **insured** under this Policy, the **insured** will give all information and assistance to the **insurance company** as it may need to investigate such **claim** or **circumstance**. The **insured** will cooperate with the **insurance company** in responding to such **claim** or **circumstance**. The **insured** agrees not to take any action which in any way increases the **insurance company's** exposure under this Policy.

Any costs to provide such information or assistance to the **insurance company** will be at the **insured's** own cost.

Allocation

If a judgment, award and/or settlement constitutes both **loss** covered by this Policy and loss uncovered by this Policy either because the **claim** includes both covered and uncovered allegations or because it includes both insured and uninsured parties, then the **insured** and the **insurance company** will use their best efforts to determine a fair and appropriate allocation between that portion of **loss** that is covered under this Policy and that portion of loss that is not covered under this Policy. The **insurance company** and the **insured** agree that in determining a fair and appropriate allocation of **loss** and non-covered loss, such parties will take into account the relative legal and financial exposures of the settlement of the **claim** by the **insured** and others.

Other Insurance

The insurance under this Policy will apply in excess of any other valid and collectible insurance available to any **insured**, including any self-insured retention or deductible of such insurance. This provision will not apply where such other insurance is written only as specific excess insurance over this Policy.

Subrogation and Recoveries

If any payment is made under this Policy, the **insured** will transfer its rights of recovery against any third party to the **insurance company**. The **insured** will do whatever is reasonably necessary to secure and preserve such rights after a **claim** is first made against them or the date they become aware of a **circumstance**.

Any amounts recovered will be applied in the following order:

(a) to reimburse costs incurred by or on behalf of the **insurance company** in bringing proceedings against such other party;

(b) then to the **insured** for the amount of any **loss** which exceeds the Limit of Liability;

(c) then to the **insurance company** up to the amount of the **loss** paid by the **insurance company** and the Limit of Liability will be reinstated for such amounts;

(d) then to the **insured** to reimburse the Retention.

Action against the Insurance Company

No action will lie against the **insurance company** unless and until the **insured** has fully complied with all the terms of this Policy.

No person or organization will have the right under this Policy to join the **insurance company** as a party to an action against the **insured** to determine the **insured's** liability or implead the **insurance company** in any such action.

General Conditions

Change of Control or Subsidiary Acquired by Another Entity

In the event during the **policy period**:

(a) there is a **change of control**, or

(b) a **subsidiary** is acquired by another entity,

this Policy will not apply to that part of any **claim** or **circumstance** which arises from a **wrongful act** that was committed after such **change of control** or acquisition.

The **named insured** will, as soon as practicable, give the **insurance company** written notice of a **change of control**.

Mergers and Acquisitions

(a) In the event the **named insured** acquires another entity whose number of employees do not exceed 20% of the total number of **employees** of the **insured organization** as the time of acquisition, then such acquired entity will be considered part of the **insured organization**, and this Policy will apply, from the date of such acquisition, for any **claim** or **circumstance** in any way involving such entity; or

(b) In the event the **named insured**:

i. merges with another entity such that the **named insured** is the surviving entity; or

ii. acquires another entity whose number of employees exceeds the percentage threshold in (a) above,

then this Policy will only apply for a period of 60 days, from the date of such merger or acquisition, for any **claim** or **circumstance** in any way involving such merged or acquired entity.

After 60 days, coverage will only be available under this Policy if:

1. the **named insured** provides the **insurance company** with information in connection with such merger or acquisition as the **insurance company** requires; and
2. the **named insured** accepts any special terms, conditions, exclusions or additional premium charge as may be required by the **insurance company**.

(c) Coverage for such entity specified in (a) or (b) above:

i. will only apply if all employees of such entity specified in (a) or (b) above have successfully completed both a criminal background and abuse registry check prior to the time of such merger or acquisition; and

ii. will only apply to that part of any **claim** or **circumstance** for any **wrongful act** committed after the date of such merger or acquisition.

Optional Extension Period

If this Policy is not renewed or replaced by the **insurance company**, the **named insured** will be entitled to purchase an **optional extension period**.

The **optional extension period** will only be available if:

(a) the **named insured** gives written notice to the **insurance company** of its intent to purchase the **optional extension period** within 60 days after the end of the **policy period**; and

(b) the **named insured** pays the additional premium specified in the Declarations to the **insurance company** within 60 days after the end of the **policy period**.

The **optional extension period** will only apply to that part of any **claim** or **circumstance** for any **wrongful act** committed before the end of the **policy period**. In no event will the **optional extension period** apply to any **safeguard costs**.

The **optional extension period** cannot be cancelled, and the premium is deemed fully earned at the inception date of such **optional extension period**.

The **optional extension period** will not increase the Limit of Liability. Any payments with respect to **claims** made during the **optional extension period** will be part of the Limit of Liability.

The offer of renewal terms, conditions or premiums different from those in effect prior to renewal will not constitute non-renewal or replacement.

Cancellation

(a) By the **named insured**

If an **insured** has not reported any **claims** or **circumstances**, the **named insured** may cancel this Policy by giving the **insurance company** written notice stating when thereafter the cancellation will be effective. In such event the **insurance company** will give the **named insured** the customary short rate refund of the premium for the remaining portion of the **policy period**, subject always to a 5% minimum earned premium.

(b) By the **insurance company**

The **insurance company** will have the right to cancel this Policy only for non-payment of premium by providing in writing 20 days notice of cancellation to the **named insured**. If the premium is paid in full to the **insurance company** before the 20 day notice period expires, notice of cancellation will automatically be revoked. In the event of cancellation, the **insurance company** will be entitled to the pro-rata portion of the premium. If the foregoing notice provision is in conflict with any governing law or regulation, then such provision will be amended to afford the minimum requirements permitted thereunder.

Non-Renewal

The **insurance company** may non-renew this Policy by giving the **named insured** 60 days written notice before the end of the **policy period**. The mailing of such notice shall be sufficient notice. Delivery of such written notice by the **insurance company** will be equivalent to mailing. If the foregoing notice provision is in conflict with any governing law or regulation, then such provision will be amended to afford the minimum requirements permitted thereunder.

Authorization

The **named insured** will be considered the agent of all the **insureds**. This means that the **named insured**:

(a) will act on behalf of all the **insureds** with respect to the giving of or receipt of all notices pertaining to this Policy, and

(b) will accept any endorsements to this Policy, and

(c) will be responsible for the payment of all premiums and Retentions and for receiving any refunds of premium.

Assignment

The **insured** cannot assign this Policy or any right under it without the prior written consent of the **insurance company**.

Headings

The titles of provisions or endorsements in this Policy are intended solely for convenience and reference. They are not deemed in any way to limit, expand or otherwise affect the provisions to which they relate.

Single form of a Word

Whenever the singular form of a word is used in this Policy, the same word will include the plural when required by context.

Governing Law

This Policy will be governed by and construed in accordance with the laws of the state designated in the Declarations.

Service of Suit

It is agreed that in the event of the failure of the **insurance company** to pay any amount claimed to be due under this Policy, the **insurance company**, at the request of the **insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this General Condition constitutes or should be understood to constitute a waiver of the **insurance company's** rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United

States or of any state in the United States. It is further agreed that service of process in such suit may be made upon the **insurance company's** representative, specified in the Declarations, and that in any suit instituted against any one of them upon this contract, the **insurance company** will abide by the final decision of such court or of any appellate court in the event of an appeal.

The **insurance company's** representative specified in the Declarations is authorized and directed to accept service of process on behalf of the **insurance company** in any such suit and/or upon the request of the **insured** to give a written undertaking to the **insured** that they will enter a general appearance upon the **insurance company's** behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the **insurance company** hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **insured** or any beneficiary hereunder arising out of this Policy, and hereby designates the **insurance company's** representative, specified in the Declarations, as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Entire Agreement

By acceptance of the Policy, the **insured** agrees that this Policy embodies all agreements between the **insurance company** and the **insured** relating to this Policy. No change or modification to this Policy will be effective unless made by endorsement issued by the **insurance company**.

Representation by the Insured

The **insured** represents that the statements contained in the **application** are true, accurate and are not misleading. The **insured** also agrees that the **insurance company** issued this Policy, and assume the risks hereunder, in reliance upon the truth of such statements.

In the event that the **application** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by the **insurance company** under this Policy, this Policy will not afford any coverage with respect to:

(a) those **insureds** who made or had knowledge of such misrepresentations; and

(b) all **insureds** if the individuals who executed the **application** made or had knowledge of such misrepresentations.

Except as provided for in paragraph (b) above, no knowledge possessed by any **insured** will be imputed to any other **insured**.

None of the foregoing provisions in this General Condition will in any other way limit or void the **insurance company's** rights to rescind this Policy.

The Insurance Company's Consent

Where the **insured** is required under this Policy to seek the consent of the **insurance company**, the **insurance company** will not unreasonably withhold, delay or deny such consent.

Sanction Limitation

The **insurance company** will not be liable to provide any cover, benefit or pay any **loss** under this Policy to the extent that the provision of such cover, benefit or payment of such **loss** would expose the **insurance company** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the United States of America, Canada, European Union or United Kingdom.

Bankruptcy

Bankruptcy or insolvency of the **insureds** will not relieve the **insurance company** of its obligations, or deprive the **insurance company** of its rights or defenses under this Policy.

Territory

This Policy will apply to **claims** made against the **insureds** anywhere in the world.

Valuation and Currency

All premiums, limits, retentions, **loss** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **loss** under this Policy is stated in a currency other than United States dollars, payment under this Policy will be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **loss** is due.

Complaints

Every effort is made to ensure that a high standard of service is provided. However, if the **insured** is not satisfied with the service it has received or it has any questions or concerns about this Policy the **insured** should contact Beazley Complaints as indicated on the Insurance Company, Claim and Circumstance Notification and Complaints Information form.

Definitions

The following definitions are applicable to this Policy:

application means the completed and signed application for this Policy including any written materials submitted with the application, all of which will be deemed part of this Policy, as if physically attached.

change of control means:

(a) the acquisition by any person or entity of more than 50% of the outstanding securities or equity interest of the **named insured** representing the present right to vote for the election of directors; or

(b) the merger or consolidation of the **named insured** into another entity such that the **named insured** is not the surviving entity.

change of control will not be considered to have occurred in the event of **financial impairment**.

circumstance means a **wrongful act** or a reasonable suspicion thereof that has not yet given rise to a **claim**.

claim means:

(a) a written demand for monetary damages;

(b) a written document filed with a governmental authority as a prerequisite to filing a civil proceeding; or

(c) a civil or administrative proceeding.

claim will not include any criminal, investigative or regulatory proceeding.

defense costs means:

(a) reasonable fees, costs and expenses, including legal fees, costs and expenses, necessarily incurred by or on behalf of the **insured** in connection with the investigation, defense, settlement or appeal of a **claim**;

(b) all other fees, costs and expenses incurred by or on behalf of the **insured** with the **insurance company's** prior written consent; and

(c) premiums for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required for a **claim** against any **insured** for a **wrongful act**. However, the **insurance company** will have no obligation to appeal or to obtain such bonds.

defense costs will not include the salary and/or cost of time of any **insured person** (except expenses of **employees** where required to attend a court hearing or trial, subject to a cap of $500 travel per day and an aggregate of $10,000 for each **claim** regardless of the number of **employees**), overheads expenses of the **insured organization** or any **safeguard costs**.

employee means any natural person employed by the **insured organization** for wages or salary, which includes part time, seasonal, leased and temporary workers.

employee will include volunteers, substitute teachers, student teachers, coaches, counselors and clergy while performing activities on the **insured organization's** behalf that the **insured organization** has authorized and/or sponsored.

employee does not include individuals who are leased to another employer.

financial impairment means the appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **insured organization**.

independent contractor means any natural person who is self-employed and performs labor or service for the **insured organization** pursuant to a written contract or agreement, where only the result of such labor or service is under the exclusive direction of the **insured organization**. The status of an individual as an **independent contractor** shall be determined as of the date of an alleged **wrongful act**.

insured means the **insured organization** and the **insured persons**.

insured organization means:

(a) the **named insured**;

(b) any **subsidiary**; and

(c) the **named insured** or any **subsidiary** as a debtor in possession under the United States bankruptcy law or similar legal status under foreign law.

insured persons means any natural person who was, is or during the **policy period** becomes:

(a) a director or officer of the **insured organization**;

(b) a manager, managing member, member of the board of managers, managing partner, general partner of a limited partnership (including the board of directors of any such general partner that is a corporation) or equivalent executive of the **insured organization**;

(c) an **employee**; or

(d) an **independent contractor**

but only when and to the extent acting for and on behalf of the **insured organization** in such capacity.

insured persons will include:

i. the lawful spouse, civil or domestic partner of any natural person specified above:
   1. solely in their capacity as such, and
   2. only for the purposes of any **claim** seeking damages recoverable from:
      a. marital community property,
      b. property jointly held by any such person and the spouse, civil or domestic partner, or
      c. property transferred from any such person to the spouse, civil or domestic partner, and

ii. the estate, heirs, legal representatives, trusts, estate planning vehicles or assigns of any natural person specified above in the event of their death, incapacity or bankruptcy.

insurance company means Syndicate 2623/623 at Lloyd's.

loss means:

(a) judgments (including pre and post-judgment interest), awards, settlements and statutory attorney fees incurred by the **insured**;

(b) **defense costs**; and

(c) with respect to the Safeguard Additional Coverage, **safeguard costs**.

loss will not include:

i. fines, sanctions or penalties;

ii. punitive or exemplary damages or any damages which are a multiple of compensatory damages; and

iii. any amounts deemed uninsurable by law.

management control means:

(a) owning interest representing at least 50% of the voting, appointment or designation power for the selection of a majority of the board of directors of a corporation, the members of the management board of a limited liability corporation, the management committee members of a joint venture or with respect to entities operating or organized outside the United States of America, persons serving in a functionally equivalent role; or

(b) having the right, pursuant to written contract or the bylaws, charter, operating agreement or similar documents of the **insured organization** to elect, appoint or designate a majority of the board of directors of a corporation, the management board of a limited liability corporation, the management committee members of a joint venture or with respect to entities operating or organized outside of the United States of America, persons serving in a functionally equivalent role.

named insured means the entity specified in the Declarations.

optional extension period means the period specified in the Declarations after the end of the **policy period** in respect of **claims** first made against the **insured** and reported to the **insurance company** during such period specified in the Declarations.

policy period means the period specified in the Declarations.

prior and pending date means the date specified in the Declarations.

related claims means all **claims** made by or on behalf of each **victim** involving the same **wrongful act** or **related acts of sexual abuse and misconduct**.

related acts of sexual abuse and misconduct means any and all acts of **sexual abuse and misconduct** against any one **victim** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, transactions or causes.

responsible person means any member of the management committee, chairperson, chief executive officer, chief operating officer, president, chief financial officer, risk manager, human resources staff or an individual acting in a similar capacity with the **insured organization**.

retroactive date means the date specified in the Declarations.

safeguard costs means reasonable costs necessarily charged by a **safeguard service provider** on behalf of the **insured organization** in connection with providing **safeguard services**.

safeguard service provider means any service provider who is appointed at the sole decision of the **insurance company**.

safeguard services means any one or more of the following services that a **safeguard service provider** provides to the **insured organization** which at the sole decision of the **insurance company** are necessary to mitigate harm to the **insured organization's** reputation or potential covered damages, judgments or settlements by the Policy resulting from a **circumstance**:

1. crisis communications services;
2. crisis management services;
3. forensic and investigatory services;
4. legal services;
5. government relations services;
6. victim support service;
7. hotline services; or
8. any other services approved in advance by the **insurance company**.

sexual abuse and misconduct means any actual or alleged abuse, molestation, mistreatment or maltreatment of a sexual nature, including, but not limited to, any sexual involvement, sexual conduct or sexual contact, regardless of consent.

subsidiary means any entity, including any limited liability corporation and joint venture, in which the **named insured** either directly or indirectly has or had **management control** on or before the inception date of this Policy. Coverage for such entity will only apply for any **wrongful act** committed while the **named insured** had **management control** of such entity.

victim means any individual who alleges that he or she is the subject of an act of **sexual abuse and misconduct**.

wrongful act means:

(a) any act of **sexual abuse and misconduct** first committed by an **insured person** on or after the **retroactive date** against any one **victim** whilst performing duties in relation to the **insured organization's** business; or

(b) any negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities any person, including any minor, who first committed any act of **sexual abuse and misconduct** on or after the **retroactive date** against any one **victim** by any **insured** whilst performing duties in relation to the **insured organization's** business.

wrongful act will not include **related acts of sexual abuse and misconduct** where the first such act of **sexual abuse and misconduct** was committed prior to the **retroactive date**.

ADDITIONAL CLAUSES AND ENDORSEMENTS

ENDORSEMENT NUMBER 1

It is hereby understood and agreed that wherever the word "Policy" appears herein same shall be deemed to read "Certificate".

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

POLICY COMPLAINTS NOTICE

Should you have a dispute concerning your policy you should contact the agent first. If the dispute is not resolved, you may contact any of the following to make a complaint:

Policy Correspondent:
Tysers
71 Fenchurch Street
London EC3M 4BS
Email: complaints@tysers.com
Tel: +44 (0)20 7398 4350

Lloyds Complaints Department:
Lloyd's Market Services
G6/86
One Lime Street
London
EC3M 7HA
Email: complaints@lloyds.com
Tel: +44 (0)20 7327 5693

This notice is for information only and does not become a part or condition of the policy.

Beazley Safeguard

A comprehensive risk management and response solutions for organizations entrusted with the care of minors and vulnerable adults.

Prevention services

Beazley Safeguard clients have access to www.beazleysafeguard.com, a dedicated risk management website managed by Praesidium, a risk management firm with over two decades of experience helping organizations reduce the risk of sexual abuse of vulnerable populations.

Resources available to all policyholders:

- Model policies to assist organizations in the creation of abuse prevention policy documentation
- Discounted background screening services available with an additional contract*
- Screening and selection toolkit to assist in effective screening of employees and caregivers
- Crisis response toolkit that includes written resources and guidance to navigate crisis response before, during and after an allegation
- Foundational webinars covering abuse prevention guidance
- Online abuse prevention training
- Praesidium helpline for non-emergency discussion of high-level concerns (in addition to the incident reporting hotline)

Additional resources available to policyholders who meet a premium threshold:

- Offsite general consultation with Praesidium's Safety Analysts (two hours)
- Webinars for specific industries and issues (two per year)

Resources available to all policyholders, at an additional cost:

- Certified Praesidium Guardian workshop where participants learn best practices in organizational abuse prevention
- Creating a safe environment facilitator led video program
- Onsite training for abuse prevention, response and investigation
- Know your score online self-assessment
- A range of surveys, reviews and assessments resulting in Praesidium providing organizations with tailored advice and recommendations
- Praesidium accreditation which publicly demonstrates commitment to maintaining safer environments.

*Not available for policyholders based in Canada

Response services

Allegations and incidents of abuse are usually complex, highly sensitive and time-critical. Organizations, most of which will never have dealt with such situations, can feel unprepared and overwhelmed at the prospect of managing their response and the multitude of issues suddenly confronting them.

However, the onus is upon the organization to act quickly and decisively. The nature and speed of the response are everything. If handled well, the response can limit the distress caused, as well as the risk of serious reputational and financial damage.

If an organization experiences an incident, Beazley can deploy experts to support an insured through the initial crisis period.

- $75,000 limit available
- First dollar coverage (no self insured retention applicable).

Beazley has partnered with several firms, all highly experienced and expert in their respective fields, to address the many operational and reputational challenges that organizations might face in the event of a crisis situation.

While the service providers' fees and expenses will be met by Beazley up to the separate limited amount, the service providers will beengaged directly by the insured, to represent the insured's interests.

The service offering

Watch this video to learn about the services available through your Safeguard policy.

Our expert panel can offer the following services, which can be tailored to the demands of a particular situation:

- Crisis management and communication services
- Legal services
- Forensic and investigatory services
- Access to a range of other services such as victim support and government relations.

How to report an incident

An insured should call +1 844 285 4700, where a service representative will be available 24 hours a day, seven days a week. The service representative will take some initial details and connect the insured with an experienced member of the Beazley team.

For further details about the Beazley Safeguard product, please contact your broker directly.

The descriptions contained in this communication/brochure are for preliminary purposes only. Coverages are underwritten by Beazley syndicates at Lloyd's and will vary depending on individual country law requirements and may be unavailable in some countries. Coverages are available in the US only on a surplus lines basis through licensed surplus lines brokers. The exact coverage afforded by the product(s) described in this communication/brochure/factsheet is/are subject to and governed by the terms and

SMALL ADDITIONAL OR RETURN PREMIUMS CLAUSE (U.S.A.)

NOTWITHSTANDING anything to the contrary contained herein and in consideration of the premium for which this Insurance is written, it is understood and agreed that whenever an additional or return premium of US$2 or less becomes due from or to the Assured on account of the adjustment of a deposit premium or of an alteration in coverage or rate during the term or for any other reason, the collection of such premium from the Assured will be waived or the return of such premium to the Assured will not be made, as the case may be.

NMA1168

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD) (U.S.A.)

For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and the Canal Zone:

> Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability),

not being insurances of the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.

This Policy* does not apply:

I. Under any Liability Coverage, to injury, sickness, disease, death or destruction:

(a) with respect to which an insured under the Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:

(a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;

(b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or

(c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means:

(a) any nuclear reactor,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

* NOTE: As respects policies which afford liability coverages and other forms of coverage in addition, the words underlined should be amended to designate the liability coverage to which this clause is to apply.

17/3/60
NMA1256

RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE-LIABILITY-DIRECT (U.S.A.)

For attachment (in addition to the appropriate Nuclear Incident Exclusion Clause-Liability-Direct) to liability insurances affording worldwide coverage.

In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this Policy does not cover any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

13/2/64
NMA1477

WAR AND TERRORISM EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or

2. any act of terrorism.

   For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

08/10/01
NMA2918

U.S. TERRORISM RISK INSURANCE ACT OF 2002 AS AMENDED
NEW & RENEWAL BUSINESS ENDORSEMENT

This Endorsement is issued in accordance with the terms and conditions of the "U.S. Terrorism Risk Insurance Act of 2002" as amended, as summarized in the disclosure notice.

In consideration of an additional premium of USD NIL paid, it is hereby noted and agreed with effect from inception that the Terrorism exclusion to which this Insurance is subject, shall not apply to any “insured loss” directly resulting from any "act of terrorism" as defined in the "U.S. Terrorism Risk Insurance Act of 2002", as amended ("TRIA").

The coverage afforded by this Endorsement is only in respect of any “insured loss” of the type insured by this Insurance directly resulting from an "act of terrorism" as defined in TRIA. The coverage provided by this Endorsement shall expire at 12:00 midnight December 31, 2027, the date on which the TRIA Program is scheduled to terminate, or the expiry date of the policy whichever occurs first, and shall not cover any losses or events which arise after the earlier of these dates. The Terrorism exclusion, to which this Insurance is subject, applies in full force and effect to any other losses and any act or events that are not included in said definition of "act of terrorism".

This Endorsement only affects the Terrorism exclusion to which this Insurance is subject. All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged and apply in full force and effect to the coverage provided by this Insurance.

Furthermore the Underwriter(s) will not be liable for any amounts for which they are not responsible under the terms of TRIA (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on the Underwriter’s liability for payment for terrorism losses.

LMA5389

09 January 2020

SEVERAL LIABILITY CLAUSE
PLEASE NOTE – This notice contains important information. PLEASE READ CAREFULLY

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

LMA5096 (Combined Certificate)
7 March 2008

SANCTION LIMITATION AND EXCLUSION CLAUSE

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

15/09/10

LMA3100

CYBER ACTS CLARIFICATION ENDORSEMENT

This endorsement modifies insurance provided under the following:

SAFEGUARD

It is hereby understood and agreed that this Policy does not contain a specific exclusion for cyber acts or cyber incidents.

Subject to all the terms of this Policy, coverage shall be provided under this Policy for any **Claim** alleging a **Wrongful Act** in connection with a cyber act or cyber incident, whether involving malicious or non-malicious events.

Nothing in this Endorsement either a) reduces coverage otherwise provided under this Policy or b) creates coverage not otherwise provided under this Policy.

PREMIUM FULLY EARNED AT INCEPTION ENDORSEMENT

This endorsement modifies insurance provided under the following:

SAFEGUARD

In consideration of the premium charged for the Policy, it is hereby understood and agreed that, notwithstanding anything contained herein to the contrary, the premium will be deemed fully earned at the inception date of this Policy.

All other terms and conditions of this Policy remain unchanged.

COVERAGE LIMITED TO SPECIFIC CONTRACTS

This endorsement modifies insurance provided under the following:

SAFEGUARD

In consideration of the premium charged for the Policy, it is hereby understood and agreed that the **wrongful act** definition is deleted in its entirety and replaced with the following:

wrongful act means:

(a) any act of **sexual abuse and molestation** first committed by an **insured person** on or after the **retroactive date** against any one **victim** whilst performing duties in relation to the **insured organization's** business solely under the contracts scheduled below; or

(b) any negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities any person, including any minor, who first committed any act of **sexual abuse and molestation** on or after the **retroactive date** against any one **victim** by any **insured** whilst performing duties in relation to the **insured organization's** business solely under the contracts scheduled below.

wrongful act will not include **related acts of sexual abuse and molestation** where the first such act of **sexual abuse and molestation** was committed prior to the **retroactive date.**

Schedule of Contracts:

Gilroy

All other terms and conditions of this Policy remain unchanged.

SECURITY DETAILS

ATTACHING TO CERTIFICATE NUMBER: MR23A671
ATTACHING TO AUTHORITY REFERENCE NUMBER: B0572MR23TY15

HEREON: 100% BEAZLEY

SECURITY: CERTAIN UNDERWRITERS AT LLOYD'S

PROPORTION	SYNDICATE
17.79%	AFB 623
82.21%	AFB 2623

LLOYD'S

One Lime Street London EC3M 7HA

7.3. Tentative Map Time Extension Request No. 2, Without Any Changes to Project Approval, to Subdivide 8.36 Acres, Creating 14 Single-Family Residential Lots, Two Common Parcels, and One Public Park Parcel, Located at the Northerly End of Greenfield Drive, APN 808-20-008 (TM 16-02)

City of Gilroy

STAFF REPORT

Agenda Item Title:	**Tentative Map Time Extension Request No. 2, Without Any Changes to Project Approval, to Subdivide 8.36 Acres, Creating 14 Single-Family Residential Lots, Two Common Parcels, and One Public Park Parcel, Located at the Northerly End of Greenfield Drive, APN 808-20-008 (TM 16-02)**
Meeting Date:	February 5, 2024
From:	Jimmy Forbis, City Administrator
Department:	Community Development
Submitted By:	Sharon Goei, Community Development Director
Prepared By:	Cindy McCormick, Customer Service Manager

STRATEGIC PLAN GOALS Promote Safe Affordable Housing for All

RECOMMENDATION

Adopt a resolution approving a 12-month time extension of Tentative Map TM 16-02, without any changes to project approval, to subdivide 8.36 acres, creating 14 single-family residential lots, two common parcels, and one public park parcel located at the northerly end of Greenfield Drive, APN 808-20-008 (TM 16-02).

EXECUTIVE SUMMARY

On November 5, 2018, the City Council approved the Greenfield 14-lot subdivision for an initial period of two years through November 5, 2020. Legislative actions taken by the State and City further extended project approval through November 30, 2022. On February 27, 2023, the City Council approved a request for a 12-month time extension of the approval through November 30, 2023.

The applicant has filed a second extension request in compliance with the State Subdivision Map Act. Pursuant to the provisions of State law, a project qualifies for an extension of time under the same conditions and circumstances under which it was originally approved. No changes to conditions can be required except if necessary to

comply with a provision of state or federal law. Approval of this request would extend the permit expiration date for TM 16-02 through to November 30, 2024.

BACKGROUND

The City Council approved TM 16-02 on November 5, 2018, for 14 single-family residential lots on 8.36 acres, via Resolution 2018-44. The approval included the dedication of 3.7 acres as public park space, resulting in a net density of 3 units per acre, in compliance with the site's low-density residential land use designation. A mitigated negative declaration was also prepared and adopted for the project, with the mitigations incorporated into the project conditions of approval.

The approval was granted for an initial period of two (2) years, through November 5, 2020. On June 1, 2020, the City Council extended the expiration periods for all active entitlements through May 31, 2021. This was in response to County and State Orders requiring business closures during the COVID-19 pandemic. Subsequent to this action, on September 30, 2020, the state legislature enacted AB 1561 which granted an additional extension of 18 months to housing entitlements that were issued before March 4, 2020, and that would expire before December 31, 2021. This effectively extended the project approval through November 30, 2022.

On November 30, 2022, the applicant filed a request for a 12-month extension of the tentative map and associated improvement plans. On February 27, 2023, the City Council approved the 12-month time extension through November 30. 2023.

On November 30, 2023, the applicant filed a request for another 12-month extension of the tentative map and associated improvement plans. No changes to the approval were requested with their application.

However, on January 16, 2024, the applicant sent an e-mail requesting Public Works staff support for his request to modify his plans and delete portions of several conditions of approval. On January 18, 2024, staff from the Public Works and Community Development Department met with the applicant to discuss his request to modify his plans and conditions of approval. Given the proposed changes, Planning staff indicated that the requested map extension scheduled for the February 5th Council meeting would need to be postponed to analyze his request. The applicant then stated that he would like to request the map extension now, as previously approved without changes, and apply for the modifications after the extension has been granted.

ANALYSIS

Staff has determined that approval of the extension is warranted based on the following:

Municipal Code and Subdivision Map Act: The Subdivision Map Act, Government Code §66452.6(a), mandates an initial two-year life for a tentative map, which may be extended by local ordinance for an additional 12 months. Gilroy City Code Section 21.41(i) provides that the City Council, at its discretion, may extend approval of a

tentative map for an additional 12 months. Moreover, Government Code §66452.6(e) provides that a local agency may extend a Tentative Map for an additional period or periods not to exceed six years. This provision preempts City regulations that limit the number of extensions to three years. Although granting an extension of the tentative map is discretionary, under Government Code §66452.6(e), the courts have held that the local agency's discretion is limited to the length of the extension and that the local agency cannot add new conditions to the tentative map. Under Government Code §66498.1, a local agency may condition or deny a permit, approval, extension, or entitlement only if it determines any of the following:

(1) A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.

(2) The condition or denial is required in order to comply with state or federal law.

Furthermore, the Housing Accountability Act limits the ability of local government to deny a housing development. Government Code Section 65589.5(j) states that a "proposed housing development project cannot be denied if it complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete."

As discussed in the background section, the applicant is currently requesting an extension of the tentative map as previously approved without changes; however, the applicant may ask for changes to the plans and conditions of approval at a future date that would require additional analysis. There are no known specific health or safety concerns at this time or identified with the original approval.

The request would extend approval through November 30, 2024. During this time, the applicant would need to pursue the process for the recordation of a final map. The applicant may also request an additional 12-month extension prior to the new expiration date.

ALTERNATIVES

The City Council may deny the time extension. In this case, the City Council would need to make the necessary findings to deny a tentative map. Staff does not recommend this option.

FISCAL IMPACT/FUNDING SOURCE

No fiscal impacts are associated with this request for a tentative map approval extension. The collection of fees (as established by the City Council) is intended to cover the staff resources necessary to review the final map and improvement plans.

PUBLIC OUTREACH

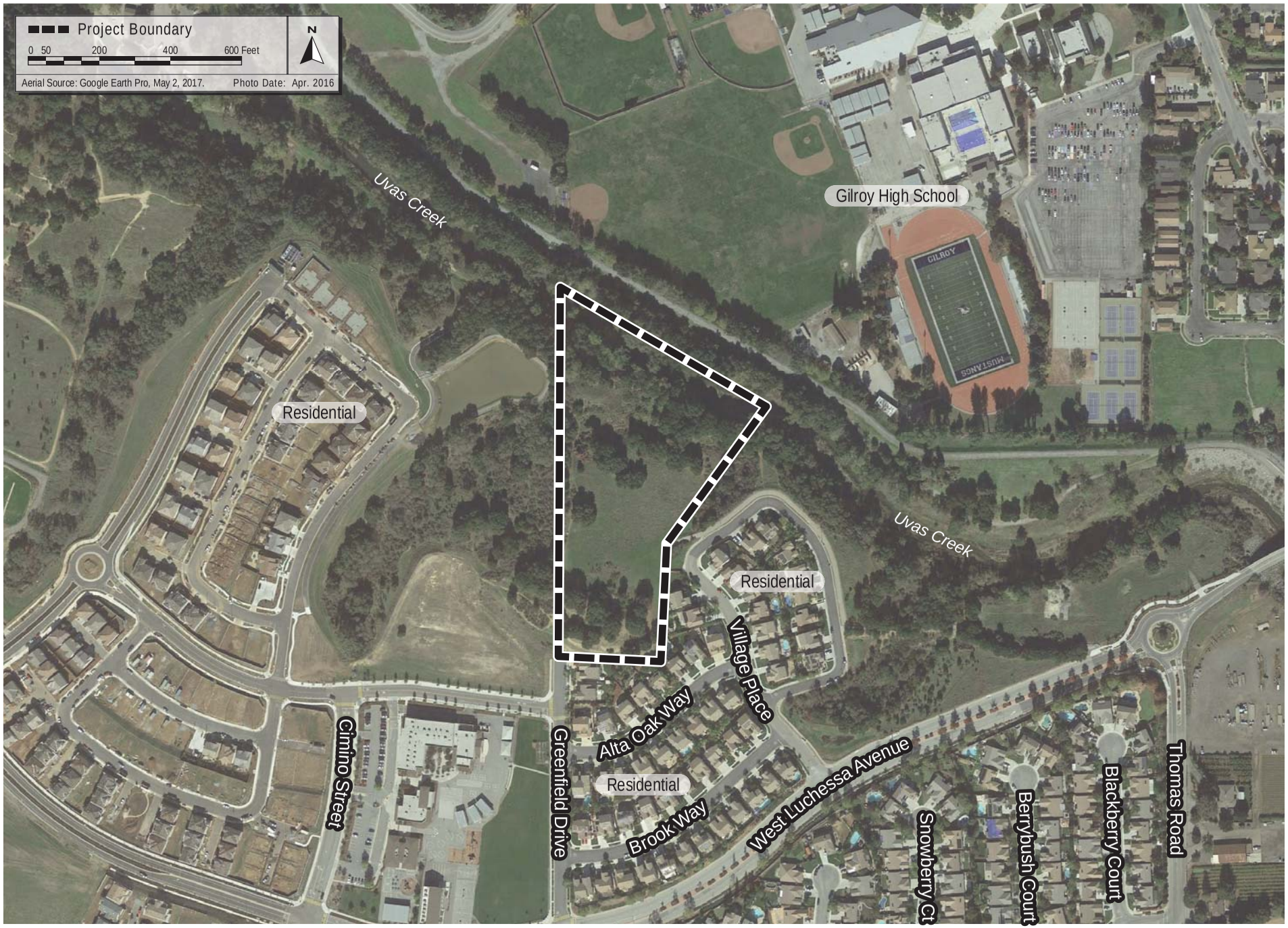
Extensions are legislative actions that do not require notice and hearing.

NEXT STEPS

Upon grant of the extension request, the applicant may proceed with initiating the final map process.

Attachments:

1. Vicinity Map
2. Time Extension Request
3. City Council Resolution of Approval No. 2018-44 (TM16-02)
4. Approved Tentative Parcel Map Plans (TM 16-02)
5. Draft Resolution to Extend TM 16-02



AERIAL PHOTOGRAPH AND SURROUNDING LAND USES

FIGURE 2.0-3

City of Gilroy Planning Department

November 30th, 2023

7351 Hanna Street

Gilroy CA, 95020

RE: Request for second extension of Tentative Map # 16-02

To whom it may concern:

We are formally requesting an extension of TM #16-02 for 12 months to allow processing of the final map and improvement plans.

Please contact me directly if you need additional information and notify me when it is agendized for the City Council.

Thank you,

James Suner

Owner/Developer

Jamessuner@gmail.com

408-607-0777

RESOLUTION 2018-44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GILROY ADOPTING A MITIGATED NEGATIVE DECELARATION AND APPROVING TENTATIVE MAP TM 16-02, CREATING 14 SINGLE-FAMILY RESIDENTIAL LOTS, TWO COMMON PARCELS, ONE PUBLIC PARK PARCEL, LOCATED AT THE NORTHERLY TERMINUS OF GREENFIELD DRIVE AND SOUTH OF UVAS CREEK, APN 808-20-008, FILED BY JAMES SUNER

WHEREAS, James Suner submitted an application requesting tentative map approval to subdivide an 8.36 acre site into 14 single-family lots, two common lots containing private roadways and stormwater detention, a 3.7 acre public park parcel to be dedicated as an extension of Uvas Creek Park Preserve open space, and associated public and private improvements within the R1 single-family zone district; and

WHEREAS, the subject property is located at the northern end of Greenfield Drive, south of Uvas Creek, east of Las Animas Elementary School/Glen Loma Ranch Specific Plan Area development, and east of Villagio residential development (Assessor's Parcel Number 808-20-008); and

WHEREAS, the tentative map application was referred to various public utility companies and City departments, including the Technical Advisory Committee for recommendations; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the TM 16-02 on June 7, 2016, at which public hearing the Planning Commission considered the proposed project, staff report, public comments and testimony, and all other documentation or other evidence received on the project; and

WHEREAS, the Planning Commission found that the project substantially conforms to the intent of the Gilroy General Plan and elements thereof, the Gilroy City Code, and all applicable standards and criteria, and on voted 6-0 (1 absence) to recommend the project to the City Council; and

WHEREAS, a mitigated negative declaration (MND) was completed for the project and made available for a 30-day public review period on July 27, 2018, in compliance with the requirements of the California Environmental Quality Act, and mitigation measures have been identified sufficient to address the environmental effects of the proposed project; and

WHEREAS, a mitigation monitoring and reporting plan has been prepared, consistent with the MND; and

WHEREAS, the City Council held a duly noticed public hearing on October 15, 2018, and considered the public testimony, the Planning Commission recommendation, the City Council Staff Report, and all other documentation related to application TM 16-02; and

WHEREAS, the City Council continued the matter to November 5, 2018, with direction given to staff to meet with the applicant, and submit a resolution with revised conditions of approval reflecting recommendations of the City Council; and

WHEREAS, using its independent judgement, and analysis based on deliberation and consideration of the materials presented at the public hearings, including public testimony received, the City Council concludes the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for TM 16-02 adequately assesses all potential environmental impacts of the project, mitigating potential impacts to a less than significant level, and that the project as proposed and conditioned conforms to the City's General Plan and elements thereof, the Gilroy City Code and all applicable standards and criteria. Further, the City of Gilroy Community Development Department is the custodian for all documents pertaining to the FMND, including its adoption, and the project.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Gilroy does hereby make findings required by the California Environmental Quality Act, the Gilroy City Code and the State Subdivision Map Act Section 66474 and take action to adopt the Mitigating Negative Declaration and approving TM 16-02, as follows:

SECTION I – CEQA Findings

1. Based upon the Record, the submissions by the Project Sponsor(s), the information in the staff report and provided from other interested parties, the oral testimony presented at this public hearing, and all other written materials submitted by all parties, the City Council hereby finds that the contents of Mitigated Negative Declaration (MND) and the procedures through which the MND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA). 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines").
2. The City Council further finds that the MND is adequate, accurate and objective, reflected the independent analysis and judgment of the City Council, and that the summary of comments and responses contained no significant revisions to the Draft Initial Study/Mitigated Negative Declaration (IS/MND), and adopts the MND for the Project in compliance with CEQA.
3. The City Council has reviewed and considered the IS/MND and the record as a whole and finds that there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the mitigation monitoring and reporting

program (MMRP) to avoid potentially significant environmental effects associated with the Project, and hereby adopts the MND.

4. The City Council hereby adopts the Mitigation Monitoring and Reporting Program for the project, incorporated herein. All required mitigation measures identified in the IS/MND and contained in the MMRP are included as conditions of approval.
5. The City Council further finds that since the MND was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the MND due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the MND.

SECTION II – Tentative Map Findings

1. The subdivision request TM 16-02, including the design and improvement of the subdivision, would be substantially consistent with all applicable City of Gilroy General Plan goals, objectives, policies and programs, including the low density residential land use designation given that the project, as proposed and conditioned, would:
   a. Promote infill residential development in an area designated for this type of use and that would be compatible with the existing adjacent single-family residential neighborhoods, near parks and schools, and would protect natural resources, which would be consistent with the Strategic Direction Chapter;
   b. Avoid encroachment into open space areas and provides a net density of 3 units per acre within remaining buildable areas of the site, after dedication of 3.7 acres of land for public park and open space, which would be substantially consistent with Community Design Chapter Policies 1.01, 1.05, 1.09;
   c. Dedicate public land for the Uvas Creek Park Preserve open space, which would include extension of planned bicycle trails (consistent with the adopted 1992 Uvas Creek Park Preserve Plan, the 2002 Park & Recreation System Master Plan and the 2005 Gilroy Trails Master Plan), which would be in substantial compliance with Public Facilities and Services Chapter policies 16.02, 16.04, 16.05, 16.12, and 16.14; and
   d. Avoid and protect sensitive open space habitat along Uvas Creek by providing a setback of 150 feet from top of creek bank, satisfying the minimum setback of 100 feet from top of bank and 35 feet setback from the edge of riparian habitat to the parcels, consistent with Community

Resources Chapter policies 20.01, 20.02, 20.03, 20.06, 20.07, 20.08 and Action 20.B.

e. The site is not covered by a specific plan document, thus no findings for consistency are required for this criteria to comply with the State Subdivision Map Act. However, right of way access to the site would be extended through a small corner of City open space property within the U Ranch Specific Plan area. This acquisition is minimal and would not materially impact the value, use or access for this existing open space amenity.

2. The site is physically suited for the proposed development type and density given that the site contains 4.66 acres of building area upland from portions of the property within the Uvas Creek Park Preserve riparian corridor open space, which can accommodate a net density of 3 units per acre. Further, all proposed residential lots would be located upland of the flood plain along Uvas Creek, grading would be implemented in accordance with standard engineering practices and there are no unusual soils conditions associated with the site that would preclude use of fill for development, and public utilities and infrastructure improvements needed in order to serve TM 16-01 are in close proximity, at the existing terminus of Greenfield Drive.
3. TM 16-01 is consistent with the Gilroy City Code Zoning Ordinance including the R1 District Standards, the Subdivision and Land Development Code, the State Subdivision Map Act, and all City ordinances, policies and standards in effect as of the date the application was accepted as complete for processing on July 12, 2017, given that the development promotes single-family residential development with minimum 6,600 square foot lots sizes, improvements would comply with adopted City Engineering Standards and Specifications for minimum 36 foot wide minimum paved private roadway width, public utility easements, street trees, lighting, utility infrastructure, drainage and stormwater management, and flood control, and interim residential dwelling unit allocations were been granted for the project on May 17, 2016 and have not expired .
4. The subdivision design and improvements would not result in environmental damage or injure fish or wildlife or their habitat, as identified in the MND, given that all significant environmental impacts associated with the project have been identified and would be mitigated to a less than significant level.
5. The design of the applicant agrees with the necessity of and accepts all elements, requirements, and conditions of this resolution as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work, visit or live in this subdivision in particular.

6. The subdivision design and improvements will not conflict with easements acquired by the public at larger for access through or use of the property within the proposed subdivision as follows:
   a. As proposed an easement for Santa Clara Valley Water District shall be preserved and maintained within the proposed Parcel A dedication.
   b. As proposed and conditioned, the development would complete public trails through the site, connect the trails with the proposed development and adjacent developments to the east and west.
   c. As conditioned, would provide public access through the development along the proposed private roadway and sidewalks.
   d. As conditioned, the developer would acquire access across 0.2 acres of land owned by Glen Loma Ranch as public open space, for additional road right of way as necessary to extend Greenfield Drive into the property. This acquisition for roadway access is minimal and necessary to provide suitable access for development of the site consistent with the General Plan, and would not conflict with nor materially diminish the use these affected public open space lands.
7. The development is adjacent to wildlife vegetation and requires additional findings to be made pursuant to the Subdivision Map Act for properties within wildland urban interface areas. As conditioned by the Fire Department, the findings for approval of development in wildland urban interface areas would be satisfied as follows:
   a. The project would be required to comply with vegetation management requirements for property within potential fire hazard areas. This would include ongoing specific vegetation management practices that would be enforced by the City and made the responsibility of the property owners and homeowners association for private open space vegetation of Lots 9-14, and the City for the Uvas Creek Park Preserve open space. Based on the proposed plans and conditions, the project would be consistent with the fire safety regulations adopted by the State and City Fire Department pursuant to Public Resources Code Sections 4290 and 4291.
   b. Adequate fire suppression services would be available to the area based on the provision of adequate access roads and fire hydrants that would be installed to serve the project.
   c. Ingress and egress is provided for the subdivision that meets minimum standards for 20 foot wide paved roadway, grades not exceeding 15 percent, and adequate turning radius provided for maneuverability through the development.
8. As proposed and conditioned, the project would comply with all ordinances, policies and standards in effect as of June 2017 (when the project application

was accepted as complete, as well as any standards adopted by the state for the purpose of protecting public health and safety.

SECTION II - Actions

1. The City Council hereby adopts the Mitigated Negative Declaration and the mitigation monitoring and reporting program prepared for TM 16-02 Greenfield Drive 14 Lot Residential Subdivision project.
2. The City Council hereby approves TM 16-02, subject to the conditions of approval set forth in Exhibit "A" attached hereto.

PASSED AND ADOPTED this 5th day of November, 2018, by the following roll call vote:

AYES: **COUNCILMEMBERS: BLANKLEY, BRACCO, HARNEY, LEROE-MUÑOZ, TOVAR, TUCKER and VELASCO**

NOES: **COUNCILMEMBERS: NONE**

ABSENT: **COUNCILMEMBERS: NONE**

APPROVED:

Roland Velasco, Mayor

ATTEST:

Shawna Freels, City Clerk

EXHIBIT A

CONDITIONS OF APPROVAL
TM 16-02

Note: The following abbreviations identify the City department or division responsible for determining compliance with these conditions. The first group listed has responsibility for compliance at plan check, the second confirms compliance with the condition at final inspection, prior to final occupancy or issuance of a certificate of occupancy, or as specified in the condition. If only one group is identified, they have responsibilities from initial review through compliance verification. An internal condition reference number is located at the end of each condition (e.g. G-1 or MND-S2).

RESPONSIBLE DEPARTMENTS/DIVISIONS			
BL	Building Division/Inspectors	PK	Parks/Landscape Design
CA	City Attorney	PL	Planning Division
CC	Chemical Control Agency	PW	Public Works/Engineering
FP	Fire Prevention	TR	Traffic Division
PD	Police Department	WW	Wastewater/Source Control

GENERAL PROJECT CONDITIONS

1. **Approved Plans.** Approval of Tentative Map TM16-02 is granted for approved plans stamped as "Approved on **November 5, 2018**" ("the plans") on file with the Planning Division. Build-out of the project shall conform to the plans, except as otherwise specified in these conditions. Any future adjustment or modification to the plans shall be considered by the Community Development Director or designee, may require separate discretionary approval, and shall conform to all City, State, and Federal requirements, including subsequent City Code requirements or policies adopted by City Council. (PL, G-1)

2. **Developer.** Developer means permit applicant, property owner, operator, permittee, lessee, and/or tenants using the space(s) for the intended use(s). Developer shall comply with project conditions for the life of the project. (CA, G-2)

3. **Indemnification Agreement.** Developer agrees, as a condition of permit approval, at Developer's own expense, to defend, indemnify, and hold harmless the City of Gilroy ("the City") and its officers, contractors, consultants, attorneys, employees and agents from any and all claim(s), action(s) or proceeding(s) brought against the City or its officers, contractors, consultants, attorneys, employees, or agents to challenge, attack, set aside, void or annul the approval of this resolution or any condition attached thereto or any proceedings, acts or determinations taken, including actions taken under the California Environmental Quality Act of 1970, as

amended, done or made prior to the approval of such resolution that were part of the approval process. (CA, G-3)

4. **Acceptance of Conditions.** Failure to appeal this decision in a timely manner, or commencement of any activity related to the project, in understood to clarify Developer's acceptance of all conditions and obligations imposed by this permit and waiving any challenge to the validity of the conditions and obligations stated herein. (CA, G4)

5. **Covenants and Restrictions.** Any covenants, conditions, and restrictions (CC&Rs) applicable to the project property shall be consistent with the terms of this permit and the City Code. If there is a conflict between the CC&Rs and the City Code or this permit, the City Code or this permit shall prevail. (PL/CA, G-11)

6. **Enforcement Action.** If Developer, owner or tenant fails to comply with any of the conditions of this permit, the Developer, owner or tenant shall be subject revocation or other appropriate enforcement actions pursuant to the City Code. All costs associated with any such actions shall be the responsibility of Developer, owner or tenant. (CA, G-7)

7. **Occupancy Restriction.** Prior to occupancy of residential units and/or acceptance of the subdivision tract, Developer shall complete all required offsite and onsite improvements related to the project, including structures, paving, and landscaping, unless otherwise allowed by the Community Development Director, or stated in these conditions. (BL, G-8)

8. **Expiration.** The tentative map shall have an initial expiration period of twenty-four (24) months from the approval date if the final map is not approved prior to the initial expiration date of **November 5, 2020**, subject to extensions of time that may granted as provided pursuant to the State Subdivision Map Act. (PL, G-12)

9. **Extension Requests.** Should Developer intend to request an extension to the permit expiration date, Developer must submit to the Planning Division a written application with applicable fees prior to the expiration date. Only timely requests may be considered pursuant to the City Code. Should the project approvals expire, allocations granted for 14 residential units pursuant to Gilroy City Code Section 30.50.60 shall likewise expire. (PL, G-5)

PLANNING DIVISION STANDARD CONDITIONS

10. **Subsequent Permits.** Developer shall obtain necessary permits prior to initiating any new construction or modifications authorized under this approval, including but not limited to temporary construction trailers, temporary staging areas, model home sales offices, advertising signs of any kind, exterior and interior modifications. Developer shall pay all requisite fees in effect at the time of plan submittal and/or issuance, as applicable. (PL/BL, PL-1)

11. **Architectural and Site Review**. Architectural and Site Review shall be obtained for development of four or more residential parcels within the project, pursuant to Gilroy City Code Section 30.50.41(a)(5).

12. **Building Plan Details.** Developer plans for building permit applications for future residences shall identify all exterior building materials and colors, including product and finish manufacturer name, color name and number, and surface finish type (e.g. stucco with sand finish, plaster with smooth finish) to be used in construction, subject to review for compliance with Zoning standards. This shall include review and requirement for compliance with the site design requirements of Gilroy City Code Section 30.5.50 which specifies that new residences shall have at least 3 of the following 5 design elements to differentiate from residences on adjacent lots on the same street frontage(PL, PL-2):
    (A) Floor plan.
    (B) Front Elevation.
    (C) Roof Design.
    (D) Exterior Materials.
    (E) Reversed floor plan.

13. **Conditions on Plan Sets.** Developer shall submit plans that include, on all sets, a reproduction of all conditions of approval of this permit, as adopted by the decision-maker. (PL, PL-3)

14. **Landscape and Lighting.** Developer shall submit combined final landscape and lighting plan improvement plans to verify location of street trees and street light standards shall not conflict with drainage plans, landscape plans, tree locations, parking spaces, or any other such land use concerns. (PL, PL-6)

15. **Habitat Conservation Permit.** Concurrent with or prior to an application for a grading permit, Developer shall apply for a Santa Clara Valley Habitat Plan permit from the City of Gilroy. The grading permit will be issued only after payment of assessed fees and approval of the Habitat Plan permit. (PL, PL-9)

16. **Habitat Conservation Fee Payment.** Prior to issuance of a grading permit, Developer shall present to the Community Development Director or designee, a receipt issued by Santa Clara County for full payment of the Santa Clara Valley Habitat Plan fees for associated with the proposed development. Such receipt shall be dated within six (6) months of the grading permit issuance date, or the fee amount may be reassessed and difference collected at the time of grading permit issuance. (PL, PL-10)

17. **Construction Noise.** To minimize potential construction-related impacts to noise, Developer shall include the following language on any grading, site work, and construction plans issued for the subject site (PL/BL, PL-11)

"During earth-moving, grading, and construction activities, Developer shall implement the following measures at the construction site:

(A) Limit construction activity to weekdays between 7:00 a.m. and 7:00 p.m., and on Saturdays between 9:00 a.m. and 7:00 p.m. Construction noise is prohibited on Sundays and City-observed holidays;
(B) Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area;
(C) Construct sound walls or other noise reduction measures prior to developing the project site;
(D) Equip all internal combustion engine driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment;
(E) Prohibit all unnecessary idling of internal combustion engines;
(F) Utilize "quiet" models of air compressors and other stationary noise sources where technology exists; and
(G) Designate a "disturbance coordinator' who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g. bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem."

18. **Air Quality.** To minimize potential construction-related impacts to air quality, Developer shall include the following language on any grading, site work, and construction plans issued for the project site (PL/BL, PL-12):

"During earth-moving, grading, and construction activities, Developer shall implement the following basic control measures at the construction site:

(A) All exposed surfaces (e.g. parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day;
(B) All haul trucks transporting soil, sand, or other loose material onsite or offsite shall be covered;
(C) All visible mud or dirt tracked out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited;
(D) All vehicle speeds on unpaved roads or pathways shall be limited to 15 miles per hour;
(E) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used;
(F) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points;

(G) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator; and

(H) Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations."

19. **Archaeological Resources.** In the event of an accidental discovery of archaeological resources during grading or construction activities, Developer shall include the following language on any grading, site work, and construction plans issued for the project site (BL/PL, PL-13):

"If archaeological or cultural resources are discovered during earth-moving, grading, or construction activities, all work shall be halted within at least 50 meters (165 feet) of the find and the area shall be staked off immediately. The monitoring professional archaeologist, if one is onsite, shall be notified and evaluate the find. If a monitoring professional archaeologist is not onsite, the City shall be notified immediately and a qualified professional archaeologist shall be retained (at Developer's expense) to evaluate the find and report to the City. If the find is determined to be significant, appropriate mitigation measures shall be formulated by the professional archaeologist and implemented by the responsible party."

20. **Cultural Resources.** In the event of an accidental discovery or recognition of any human remains, Developer shall include the following language in all grading, site work, and construction plans (BL/PL, PL-14):

"If human remains are found during earth-moving, grading, or construction activities, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the coroner of Santa Clara County is contacted to determine that no investigation of the cause of death is required. If the coroner determines the remains to be Native American the coroner shall contact the Native American Heritage Commission within 24 hours. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descendent (MLD) from the deceased Native American. The MLD may then make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and associated grave goods as provided in Public Resources Code Section 5097.98. The landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further disturbance if: a) the Native American Heritage Commission is unable to identify a MLD or the MLD failed to make a recommendation within 24 hours after being notified by the commission; b) the descendent identified fails to make a recommendation; or c) the landowner or his authorized representative rejects the recommendation of the descendent, and the mediation by the Native

American Heritage Commission fails to provide measures acceptable to the landowner."

21. **Equipment Screening.** Developer shall provide screening of all mechanical equipment, post indicator valves, backflow prevention devices, etc., shown on final improvement plans. All ground mounted utility appurtenances such as transformers shall not be visible from any public right-of-way and shall be adequately screened through the use or combination of low concrete or masonry walls, berms, and landscaping. (PL, PL-17)

22. Any masonry or concrete walls used for screening purposes shall comply with front and street side yard height limits and be setback from property lines or back of sidewalks at least 3-feet in order to accommodate landscaping along the exterior facing elevation. (PL-22)

23. Backflow preventers shall be painted dark green, except the fire connection which shall be painted yellow. Interior lot lines may be delineated by fencing, constructed of wood material. (PL-17)

24. The final placement and design of the equipment and screening for the items in the above conditions 23, 24 and 25, shall be to the satisfaction of the Community Development Director or designee.

25. **Homeowners Association.** Developer shall establish a Homeowners' Association (HOA) for the development. The HOA shall be responsible for the maintenance and enforcement of parking, private streets, common landscaping, recreation and other interior areas held in common by the HOA. Such responsibilities shall be provided within the CC&Rs for the development. (PL, PL-27)

26. Prior to recordation of the Final Map, the CC&R's shall be submitted to the City for review and approval to confirm the items required in these conditions of approval have been satisfied; subject to review by the Community Development Director, City Engineer and City Attorney.

PLANNING LANDSCAPING CONDITIONS

27. Developer shall submit a Landscape and Irrigation Plan for common areas with completed Landscape Documentation Package, including a soil analysis/management report along with appropriate application review fees, to the Community Development Department, including required documentation for compliance verification, and obtain approval of such plans. Landscaping plans shall include details for tree mitigation and include planting along the retaining wall system supporting the Lots 9-14 building pads. (PL, PL-43)

28. As part of the Landscape Plan submittal, Developer shall not include any invasive plant species, such as those listed by the California Invasive Plant Council. (PL, PL-44)

29. As part of the Landscape Plan submittal, Developer shall clarify a minimum three (3) inch layer of mulch to be applied on all exposed soil surfaces, as required by the State MWELO. (PL, PL-45)

30. With the final landscape plan submittal, Developer shall (as part of the irrigation system) include sensors that suspend or alter irrigation operation during unfavorable weather conditions (e.g. automatic rain shut-off devices). (PL, PL-42)

31. Prior to occupancy or and/or final tract acceptance, Developer shall submit a signed Certificate of Completion, along with all necessary supporting documentation and payment to the Community Development Department, for compliance verification of the landscape installation. Developer shall complete installation of all landscaping and irrigation in accordance with the approved plans. (PL-47, PL-48)

32. Developer is required under MWELO to provide a copy of the approved Certificate of Completion to the property owner or his or her designee. Prior to completion of each build-out phase of development, Developer shall provide the Community Development Director or designee a summary of each lot in that phase and timing of compliance with this requirement. (PL, PL-49)

33. For the life of the project, Developer and/or HOA hall maintain common landscaping and irrigation improvements in accordance with the approved plans, except as otherwise permitted or required by law. Significant changes to the number, placement, and selection of plant species may require a modification to this approval, to be determined by the Community Development Director or designee. (PL, PL-50)

PLANNING DIVISION SPECIAL CONDITIONS

34. **Off-site improvements.** Developer shall comply with the requirements of the Engineering Division for all off-site right of way improvements, which includes acquiring the right of way access to connect Greenfield Drive with the project roadway.

35. **Public/Private Roadway Demarcation.** The improvement plans shall provide a distinctive pavement treatment to demarcate the transition from public to private roadway, to the satisfaction of the Planning Manager and City Engineer.

36. The Building Envelopes that are shown on the tentative map shall not be required.

37. **Private Open Space Restrictions for Lots 9 thru 14.** The area extending from the top of the uppermost retaining wall to the rear and side property lines of Lot 9

through Lot 14, which back up to the Uvas Creek preserve, shall be restricted as follows: No structures, ornamental landscaping, private garden areas, accessory structures, grading, decks, pools, or hardscape improvements shall be permitted within the private open areas. The private open space shall be maintained with approved native or compatible landscaping, and open view fencing only, which is complementary and compatible with the adjacent public open space vegetation. Any modification shall be subject to review and approval of the Community Development Director or designee for compliance with these conditions and Gilroy City Code.

38. **Private Open Space View Fencing Requirement for Lots 9 thru 14).** The Developer shall install open view fencing along the rear of building envelopes (on top of the uppermost retaining wall) and along the perimeter of the private open space areas of Lots 9 through Lot 14. The open view fencing details shall be submitted for review and approval by the Planning Division with grading permits or improvement plans. Fencing shall be installed prior to occupancy of residences on these lots. The open view fencing restrictions shall be included in the project CC&R's. Any modification to this requirement shall be subject to review and approval by the Community Development Director or designee and the Public Works Director for compliance with these conditions and Gilroy City Code.

39. **Public Access Easement.** Public access easements shall be granted for sidewalks and roadways through the development.

40. **Common Improvements.** Developer shall complete all required common landscaping, street trees, lighting and tree mitigation. A phasing schedule may be submitted for approval by the Planning Manager prior to issuance of grading permits. All improvements must be completed prior to acceptance of the Tract map.

41. **Common Retaining Wall Design.** Should the retaining wall be used, plans shall indicate a minimum grade separation of five feet (5') that shall be maintained between the two maximum five-foot (5') tall retaining walls that are proposed to support the fill and building envelopes of lots 9 through 14. This area shall be planted with landscaping designed to prevent climbing and soften the appearance of the wall. Similar landscaping shall be included along the base of the wall.

42. **Processing Fees.** Outstanding application processing fees in the amount of $9,796.81shall be paid, consistent with the application reimbursement agreement. Any outstanding fees must be received prior to recordation of the Final Map.

PLANNING DIVISION ENVIRONMENTAL CONDITIONS

The following mitigation measures shall be incorporated as conditions of approval, consistent with the Mitigation Monitoring and Reporting Program prepared and adopted for the project.

43. **(MM AIR-1.1)** The project shall develop a plan demonstrating that the off-road equipment used on-site to construct the project would achieve a fleet-wide average of at least 30 percent reduction in DPM exhaust emissions or greater. One feasible plan to achieve this reduction would include the following:
    (A) All mobile diesel-powered off-road equipment larger than 25 horsepower and operating on the site for more than two days shall meet, at a minimum, U.S. EPA particulate matter emissions standards for Tier 2 engines or equivalent.
    (B) Generator used to provide power shall meet, at a minimum, U.S. EPA particulate matter emissions standards for Tier 4 engines or equivalent. Or their usage shall be limited to 100 hours total.

44. **(MM BIO-1.1)** Pre-construction nesting bird surveys shall be completed prior to the start of construction activities, if construction activities are proposed to commence during the nesting season (February 1 to August 31) in order to avoid impacts to nesting birds. These surveys shall be completed by a qualified biologist no more than 14 days before construction begins during the early part of the breeding season (February 1 through April 30) and no more than 30 days before construction begins during the latter part of the breeding season (May 1 through August 31). During this survey, the biologist or ornithologist shall observe if any nesting birds are within the project area.

45. **(MM BIO-1.2)** If an active nest is found in an area that will be disturbed by construction, the ornithologist shall designate an adequate buffer zone to be established around the nest, in consultation with the California Department of Fish and Wildlife. The buffer would ensure that nests shall not be disturbed during project construction.

46. **(MM BIO-1.3)** The applicant shall submit a report indicating the results of the pre-construction survey and any designated buffer zones to the satisfaction of the Director of Planning, prior to the issuance of a demolition permit.

47. **(MM BIO-2.1)** Bat Pre-activity Survey. Prior to any removal of trees 12 inches or greater in diameter at 4.5 feet above grade, a pre-activity survey for roosting bats will be conducted within the impact area. The survey will be conducted by a qualified bat biologist. No activities that would result in disturbance of active bat roosts will proceed prior to the completed survey. If no active roosts or maternity colonies are found, then no further action is warranted. If a large maternity colony or bat roost is presented, MM BIO-3.2 or 3.3 shall be implemented.

48. **(MM BIO-2.2)** Avoidance. In order to avoid impacts, if an occupied bat roost is found in a tree that would be disturbed or removed by proposed activities, the Project may be redesigned to avoid the disturbance of the tree. If the roost is unoccupied at the time of the survey, the City may choose to install bat exclusion devices to prevent bats from taking up occupancy of the structure prior to the onset

of the proposed activity. If avoidance is not feasible, MM BIO-3.3 shall be implemented.

49. **(MM BIO-2.3)** Exclude Bats Prior to Disturbance. If disturbance of an active non-breeding pallid bat roost cannot be avoided, the individuals will be safely evicted between August 1 and October 15th or between February 15 and March 15. Bats may be evicted through exclusion after notifying the California Department of Fish and Wildlife. Trees with roosts that need to be removed will first be disturbed at dusk, just prior to removal that evening, to allows bats to escape the darker hours.

50. **(MM BIO-3.1)** Woodrat Pre-Construction Surveys. Pre-construction surveys for woodrat nests shall be conducted within the impact footprint by a qualified mammologist prior to the start of work. The surveys shall be conducted between March 1st and October 31st, when woodrats are more active, and shall be conducted no more than 30 days prior to the start of work. Woodrat nests detected during the survey shall be mapped and one or more of the following measures shall be implemented:

    (A) Disturbance-free Woodrat Buffers. Dusky-footed woodrats are year-round residents. Therefore, avoidance mitigation is limited to redesigning the project to avoid direct impacts on woodrat nests to the extent feasible. Ideally, a minimum 10-foot buffer should be maintained between project construction activities and each nest to avoid disturbance. In some situations, a smaller buffer may be allowed if in the opinion of a qualified biologist, removing the nest would be a greater impact than the anticipated as a result of Project activities.

    (B) Relocation of Woodrat Nest Materials. If active woodrat nests are found within the Project boundary and avoidance is not feasible, then the woodrats shall be evicted from their nests prior to the removal of the nests and onset of ground-disturbing activities to avoid injury or mortality of the woodrats. A qualified biologist shall disturb the woodrat nest such that all woodrats would seek refuge outside of the Project activity area. Subsequently, the nest sticks shall be removed from the site, if feasible, these materials would be piled at the base of a nearby tree or shrub. The spacing between relocated nests shall not be less than 100 feet, unless a qualified biologist has determined that the habitat can support higher densities of nests.

51. **(MM BIO-4.1)** Prior to issuance of a grading permit, the applicant shall submit a final tree replacement plan to mitigate for proposed tree removals consistent with Gilroy City Code Article XXXVIII (Landscaping) and Consolidated Landscape Policy. The final plan shall identify the species, size, numbers, and locations for the replacement trees. The tree replacement program will be subject to review and approval by the Planning Manager and shall be implemented with construction of the subdivision improvements..

52. **(MM BIO-4.2)** The project would also be required to implement tree preservation measures before and during project construction for significant trees to be retained (which as revised by the applicant shall include preservation of trees 46, 49, 52, 53, 54, 56, 70, 74, 75, 76, 77, 79 and 80 as shown on Table 3 Trees Recommended for Removal of the Preliminary Arborist Report). These measures shall be included on all plans. Tree protection measures include the following Tree Preservation Guidelines as established in the arborist report prepared for the project environmental analysis:

Design Recommendations.

(A) The trees identified for preservation shall be established and plotted on all plans (including but not limited to demolition, improvement, utility, drainage, grading, landscape and irrigation plans), subject to review and comment by the Consulting Arborist.

(B) Changes to plans shall be subject to review and comment by the Consulting Arborist with regard to tree impacts.

(C) A Tree Protection Zone (TPZ) shall be established around each tree to be preserved. Specific TPZ zones are specifically required for the following trees located within the area of development:

Tree No.	TPZ
#8	5' North. Dripline in all other directions.
#19	5' North and West. Dripline in all other directions.
#31	5' South. Dripline in all other directions.
#36, 37, 38	10' West. Dripline in all other directions.

(D) TPZ's for trees not listed above shall be established at the dripline or a 10-foot radius, whichever is greater.

(E) Underground services and utilities, including subdrains, water and sewer, shall be routed around the TPZ. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury.

(F) All temporary access roads and staging for materials, equipment, etc., shall remain outside of TPZ's.

(G) Herbicides must be safe for use around trees and labeled for that use.

(H) Irrigation systems must be designed so that no trenching will occur within the TPZ.

Pre-construction Treatments

(I) Per the City's Consolidated Landscape Policy, policies 6.2 and 6.3, the developer shall hire a certified consulting arborist for the entire span of the

project. All arborist recommendations shall be drafted on the final construction, grading, or landscape plans.

(J) The consulting arborist shall sign the final landscape plans authorizing this plan is consistent with the recommendations made in the arborist report.

(K) The construction superintendent shall meet with the Consulting Arborist before beginning work to discuss work procedures and tree protection.

(L) Fence all trees to be retained to completely enclose the Tree Protection Zone prior to demolition, grubbing or grading. Fences shall be 6' high chain link, mounted to steel posts firmly driven into the ground or on stanchions fastened securely with rebar staples 12" deep, as required by the City. Fences are to remain until all grading and construction is completed.

(M) Trees recommended for preservation may require clearance pruning for construction. All pruning shall be completed by a Certified Arborist or Tree Worker and adhere to the latest edition of the ANSI Z133 and A300 standards as well as the Best Management Practices -- Tree Pruning published by the International Society of Arboriculture.

(N) Structures and underground features to be removed within the Tree Protection Zone shall use the smallest equipment, and operate from outside the Tree Protection Zone. The consultant shall be on-site during all operations within the Tree Protection Zone to monitor demolition activity.

(O) Apply and maintain 4-6" wood chip mulch within the Tree Protection Zone.

(P) All tree work shall comply with the Migratory Bird Treaty Act as well as California Fish and Wildlife code 3503-3513 to not disturb nesting birds. To the extent feasible tree pruning and removal should be scheduled outside of the breeding season. Breeding bird surveys should be conducted prior to tree work. Qualified biologists should be involved in establishing work buffers for active nests.

<u>During Construction</u>

(Q) Prior to beginning work, all contractors working in the vicinity of trees to be preserved are required to meet with the Consulting Arborist at the site to review all work procedures, access routes, storage areas and tree protection measures.

(R) No grading, construction, demolition or other work shall occur within the Tree Protection Zone. Any modifications must be approved and monitored by the Consulting Arborist.

(S) Any excavation within the dripline or other work that is expected to encounter tree roots should be approved and monitored by the Consulting Arborist. Roots shall be cut by manually digging a trench and cutting exposed roots with a sharp saw. The Consulting Arborist will identify

where root pruning is required.

(T) If injury should occur to any tree during construction, it should be evaluated as soon as possible by the Consulting Arborist so that appropriate treatments can be applied.

(U) Any roots damaged during grading or construction shall be exposed to sound tissue and cut cleanly with a saw.

(V) Fences have been erected to protect trees to be preserved. Fences define a specific Tree Protection Zone (TPZ) for each tree or group of trees. Fences are to remain until all site work has been completed. Fences may not be relocated or removed without permission of the Consultant.

(W) Construction trailers, traffic and storage areas must remain outside fenced areas at all times.

(X) Prior to grading, pad preparation and excavation work trenching may require root pruning outside of the TPZ. The Consulting Arborist shall identify where root pruning is required prior to the start of work. Roots shall be cleanly cut to the depth of the excavation. Roots shall be cut by manually digging a trench and cutting exposed roots with a saw, with a vibrating knife, rock saw, narrow trencher with sharp blades, or other approved root pruning equipment.

(Y) No materials, chemicals, debris or equipment shall be dumped or stored within the TPZ.

(Z) Any tree pruning required for clearance during construction must be performed by a Certified Arborist.

Post Construction

(AA) Trees preserved and replacement trees shall be monitored following construction of site improvements to assure the health of trees post construction. Occasional pruning, fertilization, mulch, pest management, replanting and irrigation may be required.

ENGINEERING DIVISION CONDITIONS

GENERAL

53. All improvements shall be designed and constructed in accordance with the City of Gilroy Municipal Code and Standard Specifications and Details, and is subject to all laws of the City of Gilroy by reference. Street improvements and the design of all off-site storm drainage facilities, sewer and water lines, and all street sections shall be in accordance with City Standards and shall follow the most current City Master Plan for streets, as approved by the City of Gilroy's Public Works Director/City Engineer.

54. Until such time as the Improvements are accepted by City, Developer shall be responsible for and bear the risk of loss to any of the Improvements constructed or installed.

55. Applicant shall obtain all applicable permits from federal, state, and local agencies as required to construct the proposed improvements. A copy of these permits will be provided prior to building permits.

56. Applicant shall obtain will serve and review letter from Recology confirming serviceability and site accessibility of solid waste pickup. Contract Steven Lucchetti, Operations Manager 408-842-3358.

57. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements without the approval of the City of Gilroy.

58. Prior to building permit issuance, developer shall dedicate necessary easements for the project development, including but not limited to 16-foot Public Service easement along all the project proposed and future street frontages. The private streets shall be designated as a Public Utility Easement (PUE), Water Line Easement (WLE), and Emergency Vehicle Access Easement (EVAE).

59. Prior to the Final Map recordation applicant shall successfully obtain and record necessary ingress/egress and public utility easement from adjacent property owner, APN 808-19-020, for the extension of the Greenfield Drive to serve the proposed development.

60. Improvement plan shall include all approved Conditions of Approval (COA) and approved mitigation measures for the project on the 2nd sheet of the improvement plan set.

61. Improvement plan set submittal shall include civil, landscape, electrical and joint trench plan.

62. Public Improvement Plan title sheet shall include a table identifying ownership and maintenance responsibilities for all existing and proposed improvements, including but not limited to, streets, water, sewer, storm, street lights, landscaping and stormwater treatment areas.

FEES

63. The project is subject to the City's Street Tree, Storm, Sewer, Water, Traffic, and Public Facilities Development Impact Fees. Payment of Street Tree and Storm Development Impact Fees is required at first building permit issuance. Sewer, Water, Traffic, and Public Facilities Development Impact Fees are due prior to building occupancy.

64. At improvement plan submittal, Developer shall submit a $25,000 (Twenty Five Thousand) initial deposit for plan check and processing. This deposit will be credited/accounted for toward final plan check and inspection fee.

65. Prior to plan approval, developer shall submit a detailed project cost estimate with appropriate contingency, subject to City Engineer approval.

66. Prior to final plan approval, Developer shall pay 100% of the plan check and inspection fees and other related fees that the property is subject to, enter into a property improvement agreement, and provide payment and performance bonds.

GRADING & DRAINAGE

67. Prior to final map approval, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities, and the study shall include all off-site tributary areas. The study and the design shall be in compliance with the City's Stormwater Management Guidance Manual (latest edition). Existing offsite drainage patterns, i.e., tributary areas, drainage amount and velocity shall not be altered by the development. The developer shall satisfy the conclusions and recommendations of the approved drainage study and storm water management plan.

68. All grading activity shall address National Pollutant Discharge Elimination System (NPDES) requirements. If all or part of the construction occurs during the rainy season, the developer shall submit an Erosion Control Plan to the Public Works Director for review and approval. This plan shall incorporate erosion control devices and other techniques in accordance with Municipal Code § 27C to minimize erosion. The developer shall have a QSP on site as necessary to ensure implementation and maintenance of all erosion control measures. Specific measures to control sediment runoff, construction pollution and other potential construction contamination sediment runoff, construction pollution and other potential construction contamination shall be addressed through the Erosion Control Plan and Storm Water Pollution Prevention Plan (SWPPP). The SWPPP shall supplement the Erosion Control Plan and project improvement plans. These documents shall also be kept on-site while the project is under construction. A Notice of Intent (NOI) shall be filed with the State Water Resources Control Board, with a copy provided to the Engineering Division before a grading permit will be issued. WDID# shall be provided prior to the commencement or work.

69. All grading operations and soil compaction activities shall be per the approved project's geotechnical report that was prepared for the design of the project and shall be subject to the approval of the Public Works Director. Site preparation and cut/fill construction shall be conducted under the observation of, and tested by, a licensed soils or geotechnical engineer. A report shall be filed with the City of Gilroy for each phase of construction, stating that all site preparation and cut/fill construction were performed in conformance with the requirements of the project's geotechnical report. This shall be subject to review and approval by the Engineering Division. The developer shall add this condition to the general notes on the grading plan.

70. Prior to building permit issuance, the applicant's soils engineer shall review the final grading and drainage plans to ensure that designs for foundations, retaining walls, site grading, and site drainage are in accordance with their recommendations.

The applicant's soils engineer's approval shall then be conveyed to the City either by letter or by signing the plans.

TRANSPORTATION

71. Any work in the public right-of-way shall require a traffic control plan prepared by a licensed professional engineer with experience in preparing such plans. Traffic Control Plan shall be prepared in accordance with the requirements of the latest edition of the California Manual on Uniform Traffic Control Devices. The Traffic Control Plan shall be approved prior to the commencement of any work within the public right of way.

72. At first plan submittal developer shall model all Emergency Vehicle circulation movements, as separate plan sheet. The circulation plan shall be prepared to the city Engineer's satisfaction, and modeled with AutoTurn Swept analysis software, all turning and street circulation movements.

73. At first plan submittal developer shall model all Solid Waste Vehicle circulation movements, as separate plan sheet. The circulation plan shall be prepared to the city Engineer's satisfaction, and modeled with AutoTurn Swept analysis software, all turning and street circulation movements.

74. Developer shall submit final photometric plans as part of Improvement plans for review and approval.

75. Developer shall install all joint trench to have (4) dedicated $1^{1/2}$" SCH 80 PVC conduit for City Fiber Optic need in a quad duct arrangement along public Collector and Arterial streets. Quad duct shall be per City STD EL-11.

76. Developer shall design driveway grades to keep a standard design vehicle from dragging or "bottoming out" on the street or driveway and to keep water collected in the street from flowing onto the lots. The details of such design shall be provided at improvement plan phase and shall be to the satisfaction of the City Transportation Engineer.

77. The developer shall not obstruct the noted sight distance areas. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation.

78. Project shall connect to the existing 12-foot Class-1 Bike Path (trail) at the easterly boundary of the project by lot 14.

FINAL MAP

79. The Final Tract Map shall be presented to the City Council for review and action. The City Council meeting will be scheduled approximately fifty (50) days after the Final Map is deemed technically correct, and Subdivision Improvement Plans with supporting documents, reports and agreements are approved by the City. Executed Final Map shall be returned to the City Public Works Department if Final Map has

not been filed in the County Recorder's Office within ninety (90) days from the date of City Council's approval.

80. The tentative map and all final maps shall designate all common lots and easements as lettered lots or lettered easements. The Final map should be clear on the limits of Public vs. Private (HOA) responsibilities. The Final map should also be clear of the HOA vs. Homeowners responsibilities.

81. Prior to final map approval, the developer shall establish a homeowner association. The homeowner association shall be responsible for the maintenance of the landscaping, walls, private streetlights, private utilities, private streets, and common areas, and shall have assessment power. **HOA shall be responsible maintenance of the Storm Water Control treatment areas and t**he CC&R's shall describe how the stormwater BMPs associated with privately owned improvements and landscaping shall be maintained by the association. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer.

82. **Uvas Creek Parcel A.** Prior to or concurrent with final map approval, Developer shall dedicate Parcel A for the use of the public. Developer shall complete all improvements, including but not limited to the proposed Bicycle Trail and its extension to the adjacent properties. Property Homeowner's Association shall take full responsibility for management and maintenance of the proposed improvements within Parcel A. Seasonal vegetation management shall be scheduled to occur at the end of the rainy season and consistent with the annual weed abatement resolution. The HOA shall implement any vegetation management within Parcel A and Fuel Transition Zones at the beginning of weed abatement season. This language shall be included in the HOA conditions, covenants and restrictions.

83. The bicycle trail alignment within Parcel A shall avoid identified wetland areas.

84. The City shall in good faith support efforts by Developer to facilitate dedication of the open space parcel to a suitable non-City public agency as a means of ensuring long term preservation and management of the open space parcel. This shall be without cost or liability to the City. In the absence of such dedication, the Home Owners Association shall have the responsibility for the long-term preservation and management of such area.

PUBLIC IMPROVEMENTS

85. Prior to building permit issuance, developer shall execute a public improvement agreement and post Payment and Performance bonds each for 100% of cost for improvement with the City that shall secure the construction of the public improvements. Insurance shall be provided per the terms of the agreement.

86. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations.

Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.

87. The developer shall obtain all local and state permits necessary for all project onsite and offsite construction.

88. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from the City.

WATER QUALITY

89. Proposed development shall comply with state mandated regional permits for both pre-construction and post-construction storm water quality requirements per chapter 27D of the Gilroy Municipal Code, and is subject to, but not limited to, the following:

a. At grading permit phase, submit a final design Stormwater Management Plan and final signed Performance Requirement Certifications specified in the City of Gilroy Stormwater Management Guidance Manual (latest edition).

b. At improvement plan phase, confirm that the bioretention basin locations shown on the Stormwater Control Plan match with the locations shown on the Landscape Plans.

c. Prior to building permit issuance, the Developer of the site shall enter into a formal written Stormwater BMP Operation and Maintenance Agreement with the City.

i. The City shall record this agreement against the property or properties involved and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs. The City-standard Stormwater BMP Operation and Maintenance Agreement will be provided by Public Works Engineering.

ii. This Agreement shall require that the BMPs not be modified and BMP maintenance activities not alter the designed function of the facility from its original design unless approved by the City prior to the commencement of the proposed modification or maintenance activity.

iii. This Agreement shall also provide that in the event that maintenance or repair is neglected, or the storm water management facility becomes a danger to public health or safety, the city shall have the authority to perform maintenance and/or repair work and to recover the costs from the owner.

iv. All on-site storm water management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s) or other legal entity approved by the City.

v. Any repairs or restoration/replacement and maintenance shall be in accordance with City-approved plans.

vi. The property owner(s) shall develop a maintenance schedule for the life of any storm water management facility and shall describe the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved Stormwater Runoff Management Plan.

d. Stormwater BMP Inspections will be required for this project and shall adhere to the following:

i. The property owner(s) shall be responsible for having all storm water management facilities inspected for condition and function by a knowledgeable third party.

ii. Unless otherwise required by the City Engineer or designee, storm water facility inspections shall be done at least twice per year, once in Fall, in preparation for the wet season, and once in Winter. Written records shall be kept of all inspections and shall include, at minimum, the following information:

1. Site address;

2. Date and time of inspection;

3. Name of the person conducting the inspection;

4. List of storm water facilities inspected;

5. Condition of each storm water facility inspected;

6. Description of any needed maintenance or repairs; and

7. As applicable, the need for site re-inspection.

e. Upon completion of each inspection, an inspection report shall be submitted to Public Works Engineering no later than October 1st for the Fall report, and no later than March 15th of the following year for the Winter report.

f. Before commencing any grading or construction activities, the developer shall obtain a National Pollutant Discharge Elimination System (NPDES) permit and provide evidence of filing of a Notice of Intent (NOI) with the State Water Resources Control Board.

90. The developer is responsible for ensuring that all contractors are aware of all storm water quality measures and implement such measures. Failure to comply with the

approved construction BMPs will result in the issuance of correction notices, citations or a project stop order.

UTILITIES

91. All service to the development shall be an "underground service" designed and installed in accordance with the Pacific Gas and Electric Company, AT&T (phone) Company and local cable company regulations. Transformers and switch gear cabinets shall be placed underground unless otherwise approved by the Planning Director and the City Engineer. Underground utility plans must be submitted prior to installation.

92. Improvement plans are required for all on-site and off-site improvements. The following items will need to be completed prior to first building permit submittal:

    a) The Developer shall provide joint trench composite plans for the underground electrical, gas, telephone, cable television, and communication conduits and cables including the size, location and details of all trenches, locations of building utility service stubs and meters and placements or arrangements of junction structures as a part of the Improvement Plan submittals for the project. Show preferred and alternative locations for all utility vaults and boxes if project has not obtained PG&E approval. A licensed Civil or Electrical Engineer shall sign the composite drawings and/or utility improvement plans. (All dry utilities shall be placed underground).

    b) The Developer shall negotiate right-of-way with Pacific Gas and Electric and other utilities subject to the review and approval by the Engineering Division and the utility companies.

    c) Will Serve Letter" from each utility company for the subdivision shall be supplied to the City.

93. A note shall be placed on the joint trench composite plans which states that the plan agrees with City Codes and Standards and that no underground utility conflict exists. The Joint trench consultant shall provide the City a separate "project utility composite plan" showing all Civil, Landscape, electrical, and joint trench information to confirm that there are no conflicts with joint trench plan utilities. Joint Trench Shall not be conceptual.

94. Storm and sewer lines in private areas shall be privately owned and maintained by the HOA.

95. Prior to any construction of the dry utilities in the field, the following will need to be supplied to the City:

    a) A professional engineer- original electrical plan.

b) A letter from the design Electrical or Civil Engineer that states the electrical plan conforms to City codes and Standards, and to the approved subdivision improvement plans.

96. Sanitary sewer laterals and/or water meters located in driveways shall have traffic rated boxes and lids.

97. The Developer/Contractor shall make accessible any or all City utilities as directed by the Public Works Director.

98. All mainline storm drain piping shall have a minimum diameter of 18 inches and the lateral connections shall have a minimum diameter of 15 inches.

WATER CONSERVATION

99. Landscape design shall comply with the State Water Efficient Landscape requirements. Prior to building permit issuance complete landscape documentation package shall be submitted along with landscape plan for review and approval of the City Engineer; and prior to final/occupancy permit issuance, project Landscape Architect shall certify compliance with the State requirements and submit a Certificate of Completion by the owner.

100. The project shall fully comply with the measures required by the City's Water Supply Shortage Regulations Ordinance (Gilroy City Code, Chapter 27, Article VI), and subsequent amendments to meet the requirements imposed by the State of California's Water Board. This ordinance established permanent voluntary water saving measures and temporary conservation standards.

101. Recycled water shall be used for construction water, where available, as determined by the Public Works Director. Recycled water shall be billed at the municipal industrial rate based on the current Santa Clara Valley Water District's municipal industrial rate.

WATER

102. The proposed 8" DIP water main within the proposed subdivision shall be connected to the existing water main line on Riverview Circle to provide a looping water system with two points of connection.

103. All construction water from fire hydrants shall be metered and billed at the current hydrant meter rate.

104. Where recycled water is not available, as determined by the Public Works Director, potable water shall be used. All City potable water will be billed based on the City's comprehensive fee schedule under the Portable Fire hydrant meter rate.

105. The Developer shall perform field verification testing of the water system and will modify any part of the systems that does not perform to the standards established by the City.

CONSTRUCTION BMP

106. It is the responsibility of the contractor to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris shall not be washed into the City's storm drains.

107. Blowing dust shall be reduced by timing construction activities so that paving and building construction begin as soon as possible after completion of grading, and by landscaping disturbed soils as soon as possible. Further, water trucks shall be present and in use at the construction site. All portions of the site subject to blowing dust shall be watered as often as deemed necessary by the City, or a minimum of three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites in order to insure proper control of blowing dust for the duration of the project. Watering on public streets shall not occur. Streets will be cleaned by street sweepers or by hand as often as deemed necessary by the Public Works Director, or at least once a day. Watering associated with on-site construction activity shall take place between the hours of 8 a.m. and 5 p.m. and shall include at least one late-afternoon watering to minimize the effects of blowing dust. All public streets soiled or littered due to this construction activity shall be cleaned and swept on a daily basis during the workweek to the satisfaction of the Public Works Director. Demolition or earthwork activities shall be halted when wind speeds (instantaneous gusts) exceed 25 MPH. All trucks hauling soil, sand, or other loose debris shall be covered.

CONSTRUCTION

108. If the project has excess fill or cut that will be off-hauled to a site or on-hauled from a site within the city limits of Gilroy, an additional permit is required. This statement must be added as a general note to the Grading and Drainage Plan.

109. The minimum soils sampling and testing frequency shall conform to Chapter 8 of the Caltrans Construction Manual. The subdivider shall require the soils engineer to daily submit all testing and sampling and reports to the City Engineer.

110. Prior to Final Map approval, the Developer/Applicant shall submit a proposed construction phasing and schedule for approval by the City Engineer. Schedule format shall be Microsoft Project, and shall identify the scheduled critical path for the installation of improvements. The schedule shall be updated weekly.

111. At least one week prior to commencement of work, the Developer shall post at the site and mail to the Engineering Division and to owners of property within (300') three hundred feet of the exterior boundary of the project site a notice that construction work will commence on or around the stated date. The notice shall include a list of contact persons with name, title, phone number and area of responsibility. The person responsible for maintaining the list shall be included. The list shall be current at all times and shall consist of persons with authority to initiate corrective action in their area of responsibility. The names of individuals responsible for dust, noise and litter control shall be expressly identified in the notice.

112. Prior to final inspections, all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director and City Engineer.

113. All work shown on the improvement plans shall be inspected. Uninspected work shall be removed as deemed appropriate by the Public Works Director.

114. All public improvements, including the complete installation of all improvements relative to streets, fencing, sanitary sewer, storm drainage, water system, underground utilities, etc., shall be completed and attested to by the City Engineer before approval of occupancy of any unit. Where facilities of other agencies are involved, such installation shall be verified as having been completed and accepted by those agencies.

115. Construction activity shall be restricted to the period between 7:00 a.m. to 7:00 p.m. Mondays through Fridays, Saturday 9:00 a.m. to 7:00 p.m. for general construction activity. No work shall be done on Sundays and City Holidays. The Public Works Director may apply additional construction period restrictions, as necessary, to accommodate standard commute traffic along arterial roadways and along school commute routes.

116. The City shall be notified at least two (2) working days prior to the start of any construction work and at that time the contractor shall provide a project schedule and a 24-hour emergency telephone number list.

CONSTRUCTION PARKING

117. No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the Public Works Director (§ 15.40.070).

MONUMENTS

118. All monuments shall be set per the recorded final map. A certificate letter by the Surveyor or Engineer will be provided to the City Engineer prior to project acceptance.

ACCEPTANCE

119. Certification of grades and compaction is required prior to Building Permit final. This statement must be added as a general note to the Grading and Drainage Plan.

120. Until such time as all improvements required are fully completed and accepted by City, Developer will be responsible for the care maintenance of and any damage to such improvements. City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or Improvements required for this project prior to the completion and acceptance of the work or Improvements. All such risks shall be the responsibility of and are hereby assumed by the Developer.

121. The developer shall submit as-built plans for civil, landscape, electrical, joint trench.

122. The developer shall submit AutoCAD files each consultant's composite basemap linework showing all public and private improvements and utility layouts. Utility layers shall be clearly labeled to identify private and public status and separate pen color designated.

FIRE DEPARTMENT CONDITIONS

123. TM 16-02 Conditions shall be included on off-site improvement plans as "Fire Department Notes." Prior to street completion, the Fire Marshal shall be contacted and a fire clearance for off-site improvements be scheduled. No building permits will be issued without a Fire –Off-Site Improvement Inspection and Fire Flow Test administered by the Fire Marshal.

124. Open Spaces, including parcel A (between residential lots and the trail) and parcel C, shall have vegetation management to remove dead plants and debris, and to remove, disc or mow weeds during weed abatement season from April to November of each year. Trees in this area shall be limbed up 6' off the ground. In HOA managed areas the HOA shall be responsible. For privately owned property it shall be performed by the property owner.

125. Fire Hydrants shall be able to flow 1500 gpm with a 20 psi residual pressure shall be spaced every 300 ft., and within 150 ft. of any building. Blue reflectors shall be adhered to the road surface in front of each hydrant. Improvement plan shall provide Fire Hydrants per the City Standard. Hydrants shall be installed prior to commencement of construction with combustible materials. A hydrant flow test shall be performed by Fire Marshal prior to possession by the water department.

126. All homes shall be provided with water laterals and meters sized to allow for a residential NFPA 13d fire sprinkler system. Off-site improvement plan shall provide all homes shall be provided with 1.5 inch water laterals and 1" meters sized to allow for a residential NFPA 13d fire sprinkler system. Plot plans for tract homes shall specify that the house is to be provided with fire sprinklers.

127. Roadways shall provide a minimum 20 feet of unobstructed travel. Vertical clearance of not less than 13.5 ft. shall be provided. Turning radius shall not be less than 32' inside and 40' outside. Parking restrictions as follows: For road widths less than 28 ft., no parking on either side, road width less than 36 ft., no parking on one side, road width at or over 36 ft., parking not restricted.

128. Where parking is restricted, it shall be posted with signs for No Parking-Fire Lane and curbs shall be painted red. Include details in Off-Site improvement plans.

129. Final Map shall include a paragraph that reads: "Red curbing and signage shall be maintained by the Home Owners Association. A parking enforcement shall be

implemented by the Homeowners Association and lots A and C subject to vegetation management by the HOA."

130. All individual lots (lots 1, 2, 9 – 14) that border open space must have non-combustible perimeter fences, as well as maintain a minimum 30 foot vegetation zone within their respective lots.

131. The homeowners association will be responsible for vegetation management for parcels A, B, and C.

I, SHAWNA FREELS, City Clerk of the City of Gilroy, do hereby certify that the attached Resolution No. 2018-44 is an original resolution, or true and correct copy of a city Resolution, duly adopted by the Council of the City of Gilroy at a regular meeting of said Council held on the 5th day of November, 2018, at which meeting a quorum was present.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the City of Gilroy this 6th day of November, 2018.

Shawna Freels, MMC
City Clerk of the City of Gilroy

(Seal)

Agenda Item No. 7.3

THE USE OF THESE PLANS AND SPECIFICATIONS SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH THEY WERE PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH USE. REPRODUCTION OR PUBLICATION BY ANY METHOD, IN WHOLE OR PART, IS PROHIBITED. THE PLANS AND SPECIFICATIONS REMAINS IN THE ENGINEER WITHOUT PREJUDICE. VISUAL CONTACT WITH THESE PLANS AND SPECIFICATIONS SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF THE ACCEPTANCE OF THESE RESTRICTIONS

Tentative Map

for

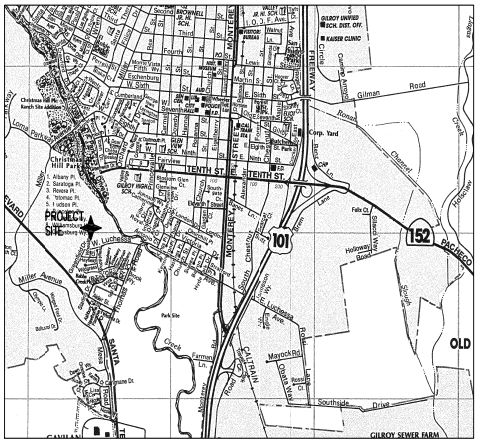
TM 16-02 Greenfield Drive

apn 808-20-008

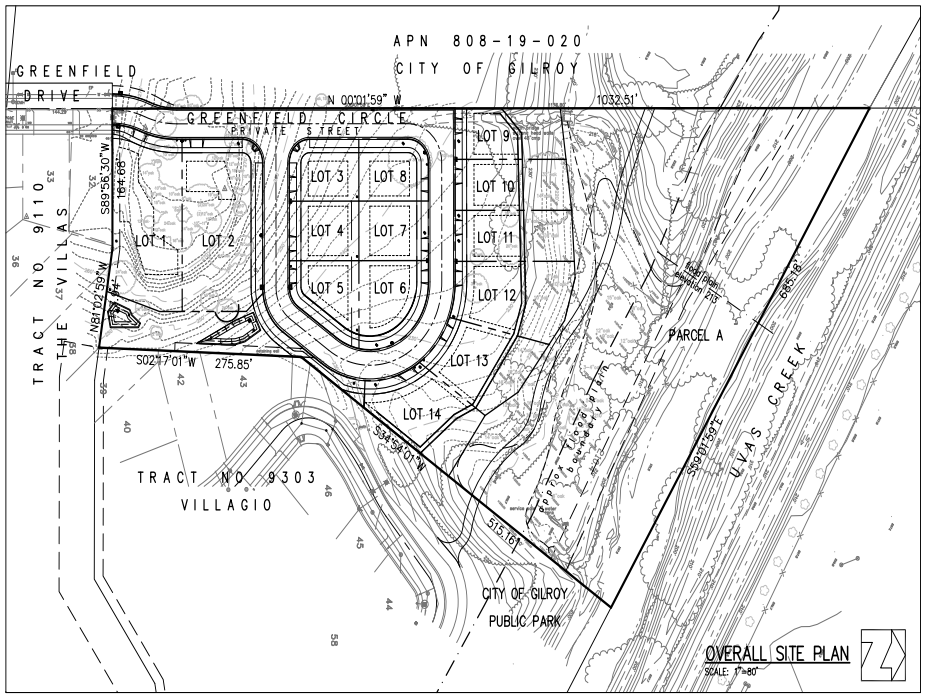
in the

City of Gilroy

Santa Clara County, California



VICINITY MAP
NO SCALE



OVERALL SITE PLAN
SCALE: 1"=80'

ABBREVIATIONS

AC	ASPHALT CONCRETE	FL	FLOWLINE	STD	STANDARD
AB	AGGREGATE BASE	G	GAS LINE	SW	SIDEWALK
AD	AREA DRAIN	GM	GAS METER	T	TELEPHONE LINE
BC	BEGINNING OF CURVE	GB	GRADE BREAK	TBM	TEMPORARY BENCHMARK
BLDG	BUILDING	GUY	GUY WIRE FOR POLE	TC	TOP OF CURB
BOC	BACK OF CURB	GV	GATE VALVE	TOB	TOP OF BANK
BO	BLOW OFF	HP	HIGH POINT	TOE	TOE OF BANK
BWF	BARBWIRE FENCE	INV	INVERT OF PIPE	TYP	TYPICAL
CATV	CABLE TELEVISION	IP	IRON PIPE	W	WATER LINE
CB	CATCH BASIN	JP	JOINT POLE	WM	WATER METER
CI	CURB INLET	JT	JOINT TRENCH	WV	WATER VALVE
CL	CENTERLINE	LP	LOW POINT		
CMP	CORRUGATED METAL PIPE	MAX	MAXIMUM		
CO	CLEAN OUT	MIN	MINIMUM		
CONC	CONCRETE	N.I.C.	NOT IN CONTRACT		
DI	DROP INLET	OHU	OVERHEAD UTILITY		
DIP	DUCTILE IRON PIPE	OS	OVERFLOW STRUCTURE		
DWY	DRIVEWAY	PB	PULL BOX		
E	ELECTRIC LINE	PL	PROPERTY LINE		
EC	END OF CURVE	P.S.E.	PUBLIC SERVICE EASEMENT		
EG	EXISTING GRADE	P.S.D.E.	PRIVATE STORM DRAIN EASEMENT		
ELEV	ELEVATION	PVI	POINT OF VERTICAL INTERSECTION		
EP	EDGE OF PAVEMENT	RCP	REINFORCED CONCRETE PIPE		
ER	END OF RETURN	R/W	RIGHT OF WAY		
(E)	EXISTING	SD	STORM DRAIN PIPE		
FF	FINISH FLOOR	SS	SANITARY SEWER PIPE		
FG	FINISH GRADE	STM	STORM DRAIN MANHOLE		
FH	FIRE HYDRANT	SSMH	SANITARY SEWER MANHOLE		
		SP	SERVICE POLE		

LEGEND

EXISTING / PROPOSED

- CONTOUR ELEVATION
- (size) (type) WATER MAIN — WATER MAIN
- (length) LF (size) SD @ S=(grade) — STORM DRAIN
- (length) LF (size) SS @ S=(grade) — SANITARY SEWER
- ELECTROLIER
- FLOW DIRECTION
- DROP INLET
- MANHOLE
- CURB INLET
- WATER METER
- FIRE HYDRANT
- WATER VALVE
- SIDEWALK
- VERTICAL CURB
- CURB & GUTTER
- JT — JT — JOINT TRENCH
- RETAINING WALL
- SEWER LATERAL
- TREE TO BE REMOVED
- MONUMENT
- ROCK RIP-RAP
- OS — STORM DRAIN OVERFLOW STRUCTURE

PERVIOUS / IMPERVIOUS SURFACE AREA TABLE				
SITE ACREAGE	NUMBER OF LOTS	TOTAL PROJECT AREA OF DISTURBANCE (s.f)	EXISTING IMPERVIOUS SURFACE AREA (s.f)	PROPOSED IMPERVIOUS SURFACE AREA (s.f)
8.56	14	203,753	0	57,769

EXISTING OF REPLACED PERVIOUS SURFACE AREA (s.f)	PROPOSED OF REPLACED PERVIOUS SURFACE AREA (s.f)	LIST OF PLANNED STORMWATER CONTROL MEASURES
0	0	BIORETENTION POND

NOTE:

WHERE THE FIRM OF HANNA & BRUNETTI DOES NOT PROVIDE CONSTRUCTION STAKES, SAID FIRM WILL ASSUME NO RESPONSIBILITY WHATSOEVER FOR IMPROVEMENTS CONSTRUCTED THEREFROM.

NOTE TO CONTRACTOR

CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY; THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS; AND THAT THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER AND THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPTING FOR LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE OWNER OR ENGINEER.

GRADING

CUT 1,063± C.Y.

FILL 20,721± C.Y.

THESE QUANTITIES DO NOT INCLUDE ANY SHRINKAGE, SUBSIDENCE, OVER-EXCAVATION, OR ANY SPECIAL CONDITIONS OR REQUIREMENTS THAT MAY BE SPECIFIED IN THE GEOTECHNICAL INVESTIGATION REPORT. THESE QUANTITIES IN THE AREA FOR PERMIT PURPOSES ONLY. ALL CONTRACTORS BIDDING ON THIS PROJECT SHOULD MAKE THEIR OWN DETERMINATION OF EARTHWORK QUANTITIES PRIOR TO SUBMITTING A BID.

IF THIS PROJECT HAS EXCESS DIRT THAT WILL BE OFF-HAULED TO A SITE WITHIN GILROY'S CITY LIMITS, AN ADDITIONAL PERMIT IS REQUIRED.

EXISTING UNDERGROUND UTILITIES ARE SHOWN IN THEIR APPROXIMATE LOCATIONS BASED ON RECORD INFORMATION AVAILABLE TO THE ENGINEER AT THE TIME OF PREPARATION OF THESE PLANS. LOCATION MAY NOT HAVE BEEN VERIFIED IN THE FIELD AND NO GUARANTEE IS MADE AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION SHOWN. THE CONTRACTOR SHALL NOTIFY UTILITY COMPANIES AT LEAST 2 WORKING DAYS IN ADVANCE OF CONSTRUCTION TO FIELD LOCATE UTILITIES. CALL UNDERGROUND SERVICE ALERT (U.S.A.), AT 1-800-642-2444. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO DETERMINE THE EXISTENCE AND LOCATION OF UTILITIES SHOWN ON THESE PLANS, INDICATED IN THE FIELD BY LOCATING SERVICES, OR EVIDENCE BY FACILITIES VISIBLE AT OR ADJACENT TO THE JOB SITE. ANY ADDITIONAL COST INCURRED AS A RESULT OF THE CONTRACTOR'S FAILURE TO VERIFY LOCATIONS OF EXISTING UTILITIES PRIOR TO BEGINNING CONSTRUCTION SHALL BE BORNE BY THE CONTRACTOR AND IS DEEMED INCLUDED AND MERGED IN THE CONTRACT UNIT PRICE.

DATE: _____ 18

HANNA – BRUNETTI

AMANDA JOY MUSY–VERDEL
RCE 69278
EXPIRES 6–30–18

REGISTERED PROFESSIONAL ENGINEER
AMANDA JOY MUSY-VERDEL
NO. 69278
EXP. 6-30-18
CIVIL
STATE OF CALIFORNIA

NOTES:

1. IF ARCHAEOLOGICAL RESOURCES OR HUMAN REMAINS ARE DISCOVERED DURING CONSTRUCTION, WORK SHALL BE HALTED WITHIN 50 METERS (150 FEET) OF THE FIND UNTIL IT CAN BE EVACUATED BY A QUALIFIED PROFESSIONAL ARCHAEOLOGIST. IF THE FIND IS DETERMINED TO BE SIGNIFICANT, APPROPRIATE MITIGATION MEASURES SHALL BE FORMULATED AND IMPLEMENTED.
   IF HUMAN REMAINS ARE FOUND DURING CONSTRUCTION THERE SHALL BE NO FURTHER EXCAVATION OR DISTURBANCE OF THE SITE OR ANY NEARBY AREA REASONABLY SUSPECTED TO OVERLIE ADJACENT HUMAN REMAINS UNTIL THE CORONER OF SANTA CLARA COUNTY IS CONTACTED TO DETERMINE THAT NO INVESTIGATION OF THE CAUSE OF DEATH IS REQUIRED. IF THE CORONER DETERMINES THE REMAINS TO BE NATIVE AMERICAN THE CORONER SHALL CONTACT THE NATIVE AMERICAN HERITAGE COMMISSION WITHIN 24 HOURS. THE NATIVE AMERICAN HERITAGE COMMISSION SHALL IDENTIFY THE PERSON OR PERSONS IT BELIEVES TO BE THE MOST LIKELY DESCENDENT (MLD) FROM THE DECEASED NATIVE AMERICAN. THE MLD MAY THEN MAKE RECOMMENDATION TO THE LANDOWNER OR THE PERSON RESPONSIBLE FOR THE EXCAVATION WORK, FOR MEANS OF TREATING OR DISPOSING OF, WITH APPROPRIATE DIGNITY, THE HUMAN REMAINS AND ASSOCIATED GRAVE GOODS AS PROVIDED IN PUBLIC RESOURCES CODE SECTION 5097.98. THE LANDOWNER OR HIS AUTHORIZED REPRESENTATIVE SHALL REBURY THE NATIVE AMERICAN HUMAN REMAINS AND ASSOCIATED GRAVE GOODS WITH APPROPRIATE DIGNITY ON THE PROPERTY IN A LOCATION NOT SUBJECT TO FURTHER DISTURBANCE IF:
   a) THE NATIVE AMERICAN HERITAGE COMMISSION IS UNABLE TO IDENTIFY A MLD OR THE MLD FAILED TO MAKE A RECOMMENDATION WITHIN 24 HOURS AFTER BEING NOTIFIED BY THE COMMISSION.
   b) THE DESENDENT IDENTIFIED FAILS TO MAKE A RECOMMENDATION; OR
   c) THE LANDOWNER OR HIS AUTHORIZED REPRESENTATIVE REJECTS THE RECOMMENDATION OF THE DESCENDENT, AND THE MEDIATION BY THE NATIVE AMERICAN HERITAGE COMMISSION FAILS TO PROVIDE MEASURES ACCEPTABLE TO THE LANDOWNER. INCORPORATE THE FOLLOWING NOTE ON THE PROJECT PLANS. IF ARCHAEOLOGICAL RESOURCES OR HUMAN REMAINS ARE DISCOVERED DURING CONSTRUCTION, WORK SHALL BE HALTED WITHIN 50 METERS (165 FEET) OF THE FIND UNTIL A QUALIFIED PROFESSIONAL ARCHAEOLGIST CAN EVALUATE IT. IF THE FIND IS DETERMINED TO BE SIGNIFICANT, APPROPRIATE MITIGATION MEASURES SHALL BE FORMULATED AND IMPLEMENTED.

PROJECT SUMMARY

ASSESSOR'S PARCEL NUMBER	808–20–008
PROJECT AREA	8.56 ACRES
LAND USE	VACANT
ZONING	R1 SINGLE FAMILY RESIDENTIAL
NUMBER OF LOTS	14
TOTAL AREA LOTS	148,098 S.F.
AVERAGE LOT SIZE	10,578 S.F.
ACTIVE WELLS	NONE
PARKING	28 ON–STREET

FLOODZONE STATEMENT

COMMUNITY PANEL NUMBER: 06085C0752H
COMMUNITY NUMBER: 060340 (CITY OF GILROY)
MAP REVISED: MAY 18, 2009

PROJECT IS LOCATED IN ZONE D AND AE

ZONE D
AREAS IN WHICH FLOOD HAZARDS ARE UNDETERMINED, BUT POSSIBLE

ZONE AE
BASE FLOOD ELEVATIONS DETERMINED

OWNER/DEVELOPER

JOHN TAFT
RJ DYER
1230 FIRST STREET
GILROY, CA 95020

CIVIL ENGINEER

HANNA & BRUNETTI
7651 EIGLEBERRY STREET
GILROY, CA 95020

OFFICE: 408 842–2173
FAX: 408 842–3662
EMAIL: ENGINEERING@HANNABRUNETTI.COM

SHEET INDEX

1	COVER SHEET
2–4	GRADING & DRAINAGE PLAN
5	CUT AND FILL PLAN
6	SLOPE ANALYSIS MAP
7	FIRE TRUCK TURNING EXHIBIT
8	STORMWATER MANAGEMENT PLAN
9	STORMWATER TREATMENT DETAILS

Tentative Map
TM 16-02 Greenfield Drive
SANTA CLARA COUNTY CALIFORNIA
CITY OF GILROY
JANUARY 2018

REFERENCES

DATE: FEBRUARY 2018
HORIZ. SCALE: NONE
VERT. SCALE: NONE
DESIGNED BY: AM
DRAWN BY: AM
CHECKED BY: AM

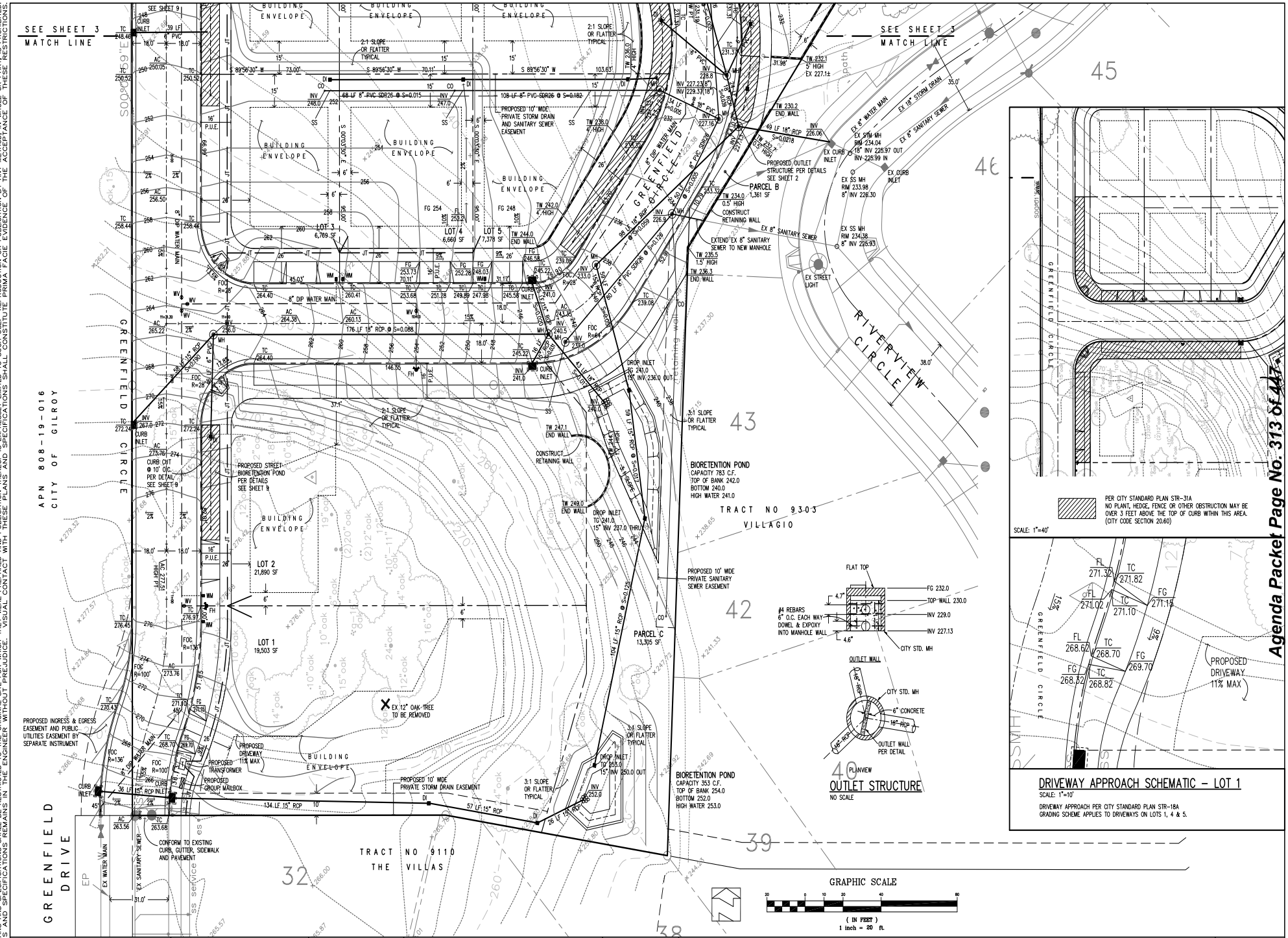
HANNA-BRUNETTI
EST. 1965
CIVIL ENGINEERS · LAND SURVEYORS
CONSTRUCTION MANAGERS

REVISIONS:	DESCRIPTION	BY:
DATE		

SHEET 1 OF 9

JOB NO. 16011

Agenda Packet Page No. 312 of 447



THE USE OF THESE PLANS AND SPECIFICATIONS SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH THEY WERE PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH USE. REPRODUCTION OR PUBLICATION BY ANY METHOD, IN WHOLE OR PART, IS PROHIBITED. TITLE TO THE PLANS AND SPECIFICATIONS REMAINS IN THE ENGINEER WITHOUT PREJUDICE. VISUAL CONTACT WITH THESE PLANS AND SPECIFICATIONS SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF THE ACCEPTANCE OF THESE RESTRICTIONS.

REVISIONS:

DATE	DESCRIPTION	BY:

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EST. 1910
CIVIL ENGINEERS · LAND SURVEYORS
CONSTRUCTION MANAGERS

DATE: FEBRUARY 2018
HORIZ. SCALE: 1"=20'
VERT. SCALE: NONE
DESIGNED BY: AM
CHECKED BY:
DRAWN BY: TM

REFERENCES

Grading & Drainage Plan

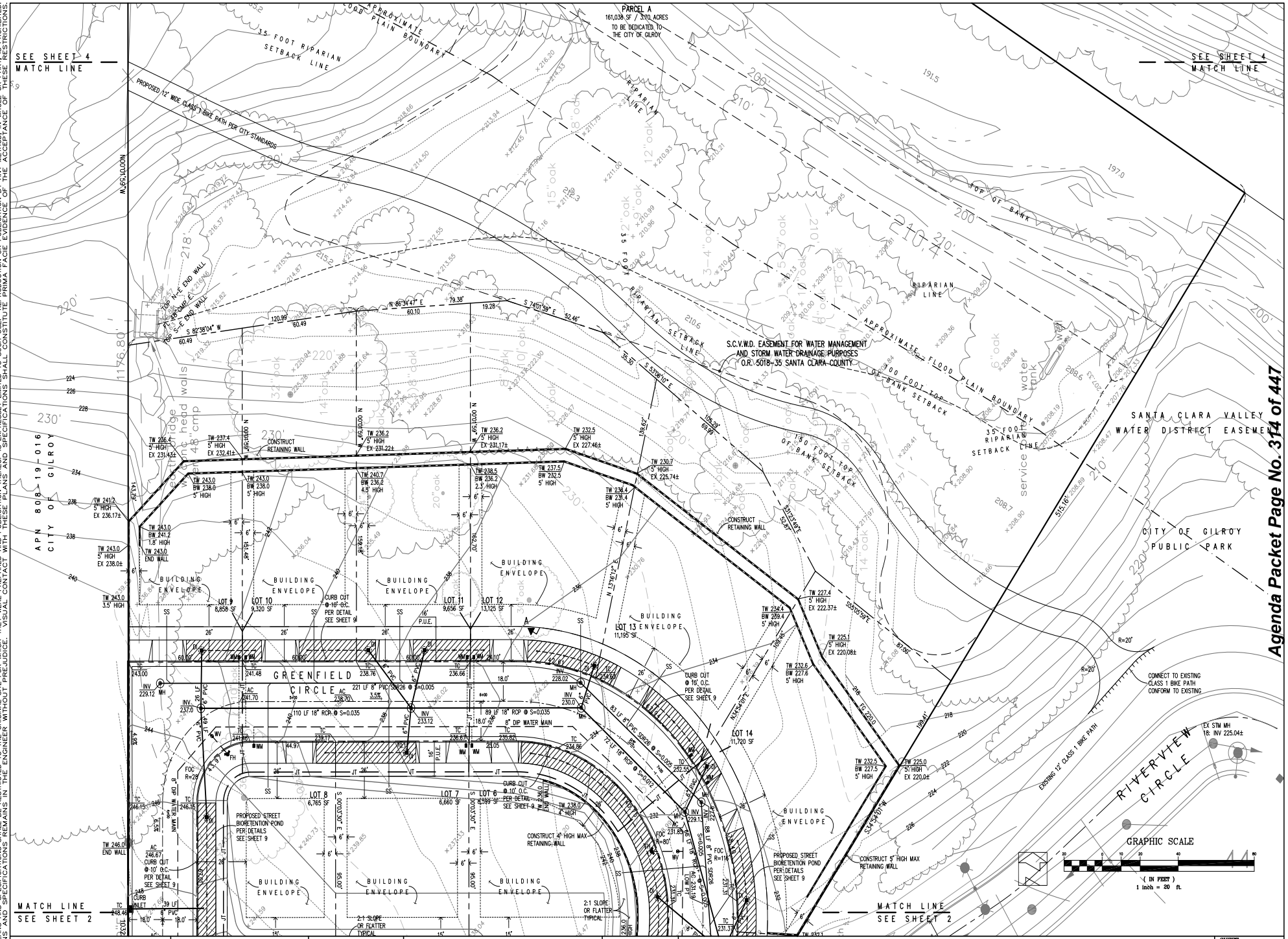
TM 16-02 Greenfield Drive - apn 808-20-008

CITY OF GILROY
FEBRUARY 2018

SANTA CLARA COUNTY
CALIFORNIA

SHEET 2 OF 9

JOB NO. 16011



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CHECKED BY:
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REFERENCES

Grading & Drainage Plan

TM 16-02 Greenfield Drive - apn 808-20-008

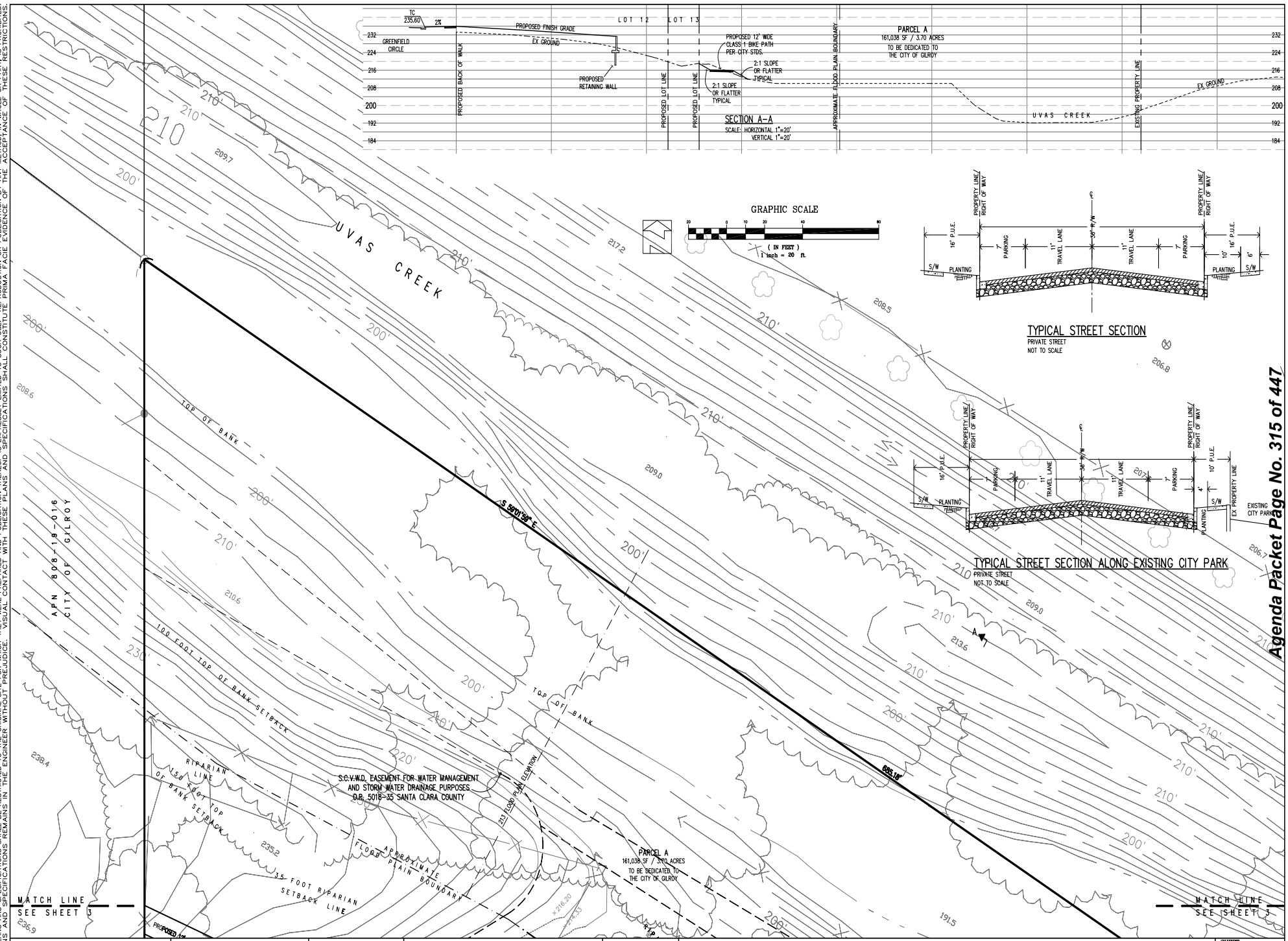
CITY OF GILROY
FEBRUARY 2018

SANTA CLARA COUNTY
CALIFORNIA

SHEET 3 OF 9

JOB NO. 16011

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CONSTRUCTION MANAGERS

DATE: FEBRUARY 2018
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DESIGNED BY: AM
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DRAWN BY: TM

REFERENCES

Grading & Drainage Plan

TM 16-02 Greenfield Drive - apn 808-20-008

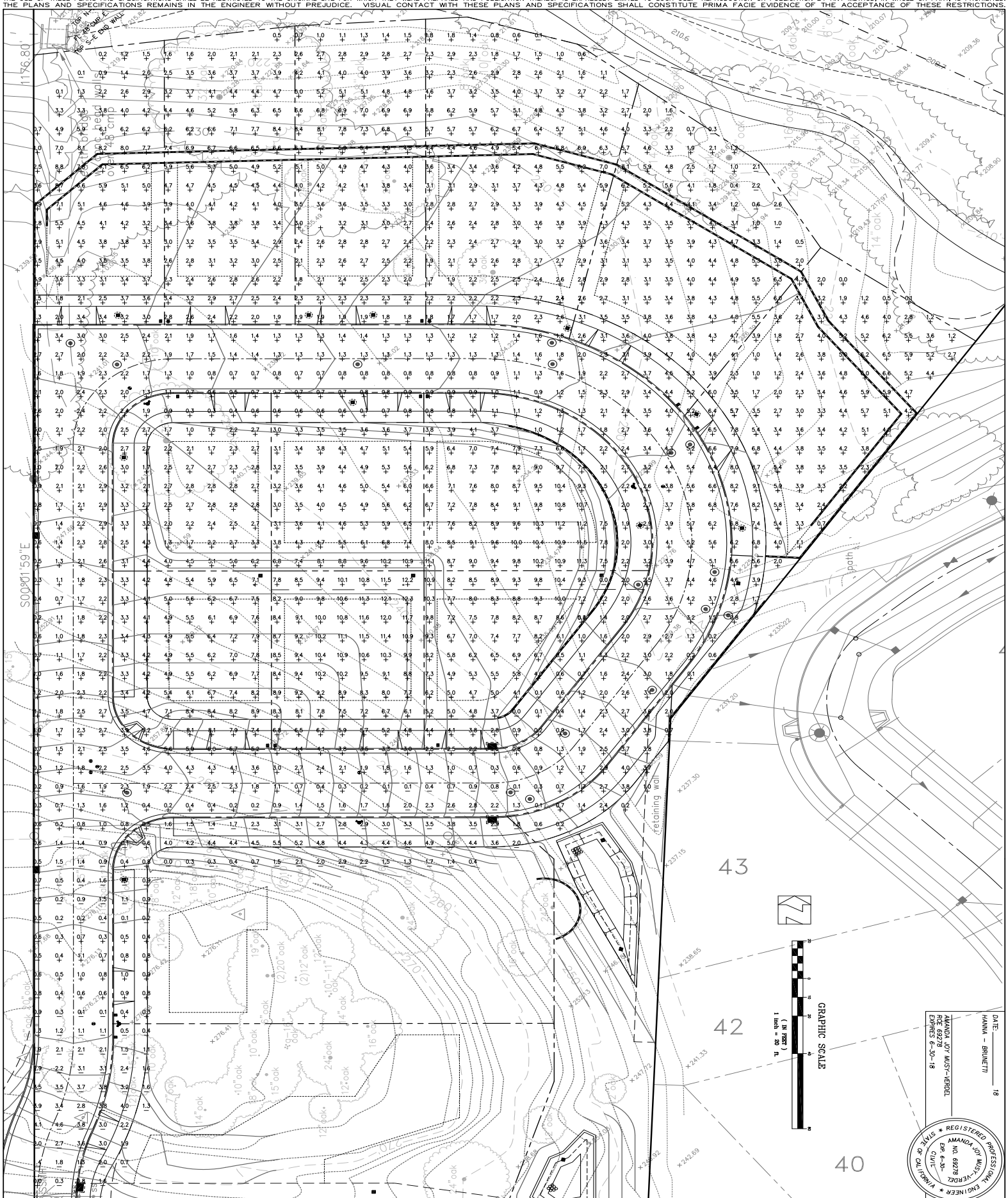
CITY OF GILROY
FEBRUARY 2018

SANTA CLARA COUNTY
CALIFORNIA

SHEET 4 OF 9

JOB NO. 16011

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JOB NO.	SHEET
16011	5 OF 9

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VERT. SCALE: NONE
DESIGNED BY: A.M.
CHECKED BY:
DRAWN BY:

REFERENCES

Cut and Fill Plan

TM 16-02 Greenfield Drive

CITY OF GILROY
FEBRUARY 2018

SANTA CLARA COUNTY
CALIFORNIA

DATE: 18
HANNA - BRUNETTI

AMANDA JOY MUSY-VERDEL
EXP. 6-30-18

REGISTERED PROFESSIONAL ENGINEER
AMANDA JOY MUSY-VERDEL
NO. 69278
EXP. 6-30-
CIVIL
STATE OF CALIFORNIA

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CIVIL ENGINEERS · LAND SURVEYORS
CONSTRUCTION MANAGERS

DATE: FEBRUARY 2018
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REFERENCES

Slope Analysis Map

TM 16-02 Greenfield Drive - apn 808-20-008

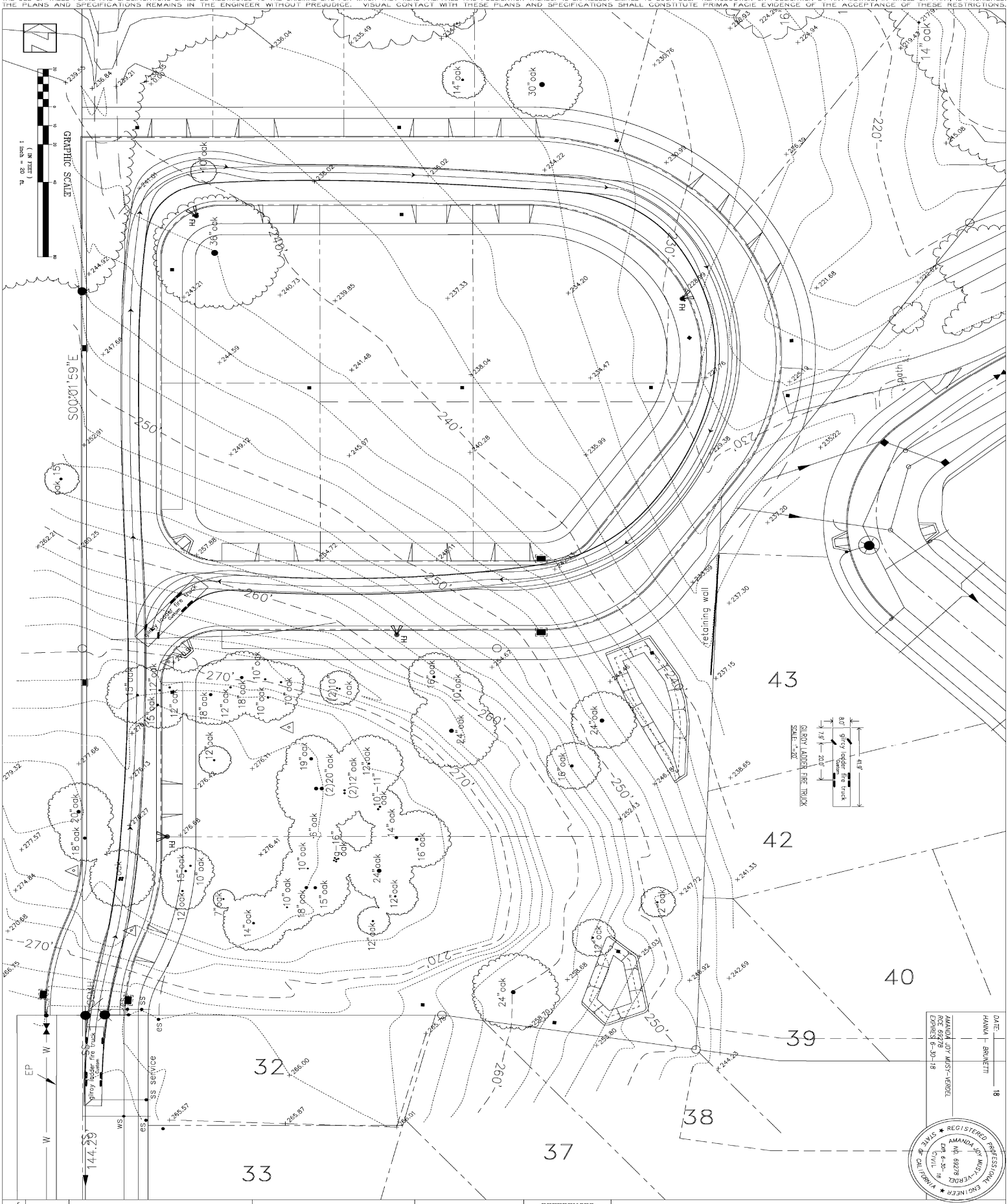
CITY OF GILROY
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JOB NO.	SHEET
16011	7 of 8

REVISIONS:

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DATE: FEBRUARY 2018
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REFERENCES

Fire Truck Turning Exhibit

TM 16-02 Greenfield Drive

CITY OF GILROY SANTA CLARA COUNTY CALIFORNIA
FEBRUARY 2018

DATE: 18
HANNA BRUNETTI

AMANDA JOY MUSY-VERDEL
RCE 69278
EXPIRES 6-30-18

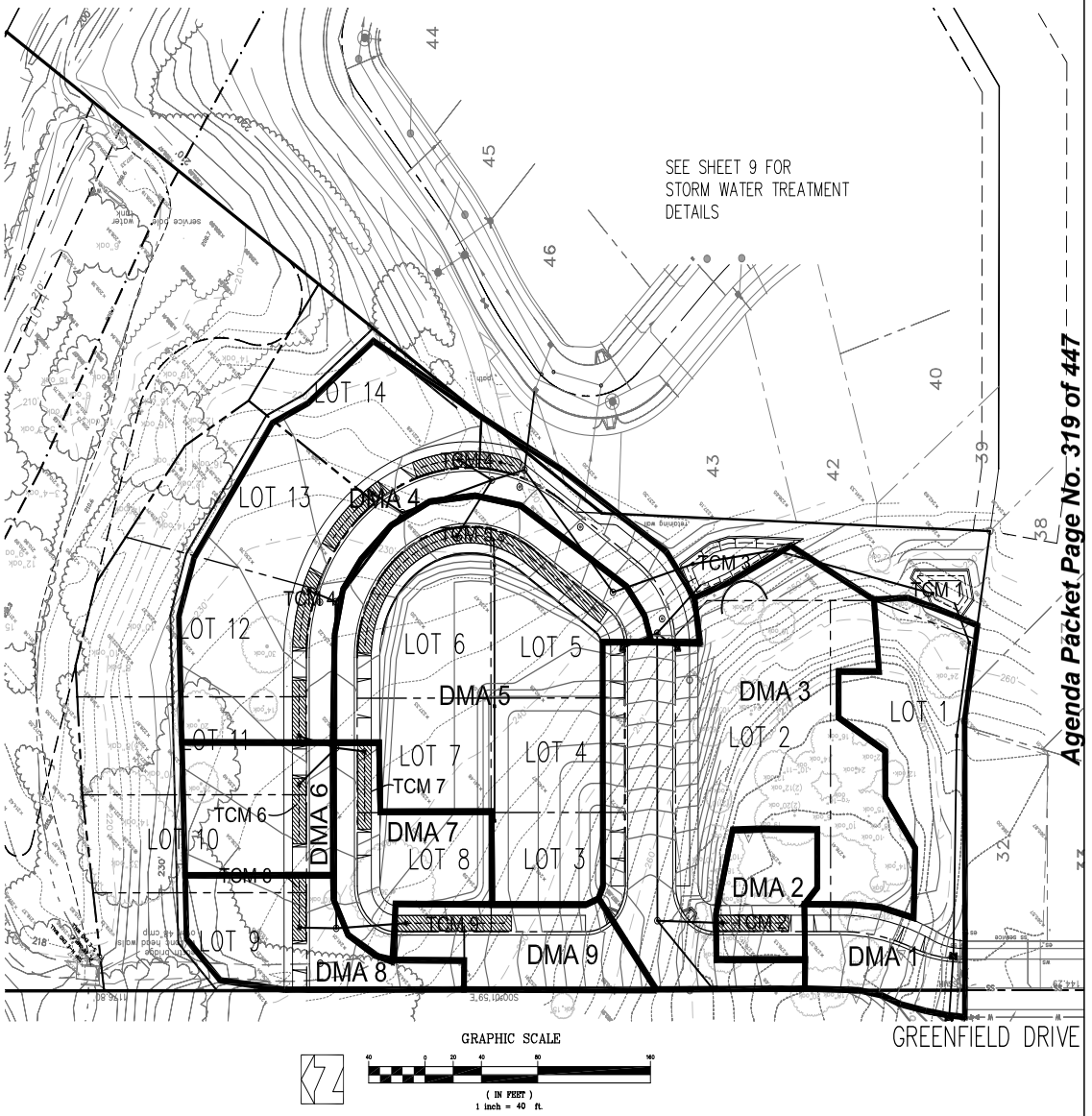
REGISTERED PROFESSIONAL ENGINEER
AMANDA JOY MUSY-VERDEL
NO. 69278
EXP. 6-30-18
CIVIL
STATE OF CALIFORNIA

Agenda Item No. 7.3

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STORMWATER TREATMENT AREA											
DMA ID	TCM ID	DESCRIPTION OF AREA	TOTAL AREA (SF)	LANDSCAPE SELF-TREATING AREA (SF)	TREATMENT AREA HARDSCAPE/ROOF (SF)	TREATMENT AREA REQUIRED (SF) PER 4% RULE		TREATMENT AREA PROVIDED (SF)	TREATMENT VOLUME REQUIRED (CF)	TREATMENT VOLUME PROVIDED (CF)	TYPE OF TREATMENT PROVIDED
DMA 1	TCM 1	DRIVEWAY, SIDEWALK & LANDSCAPE	17,618	12,145	5,473	219		932	404	777	BIORETENTION
DMA 2	TCM 2	DRIVEWAY, SIDEWALK & LANDSCAPE	5,075	3,398	1,677	67		495	96	328	BIORETENTION
DMA 3	TCM 3	DRIVEWAY, SIDEWALK & LANDSCAPE	38,774	25,200	13,574	543		1,640	1115	1439	BIORETENTION
DMA 4	TCM 4	DRIVEWAY, SIDEWALK & LANDSCAPE	35,064	23,325	11,739	470		1,459	962	983	BIORETENTION
DMA 5	TCM 5	DRIVEWAY, SIDEWALK & LANDSCAPE	38,507	29,954	8,553	342		2,129	556	1436	BIORETENTION
DMA 6	TCM 6	DRIVEWAY, SIDEWALK & LANDSCAPE	8,520	4,505	4,015	161		448	325	351	BIORETENTION
DMA 7	TCM 7	DRIVEWAY, SIDEWALK & LANDSCAPE	8,793	5,308	3,485	139		497	266	329	BIORETENTION
DMA 8	TCM 8	DRIVEWAY, SIDEWALK & LANDSCAPE	8,884	6,178	2,706	108		286	283	290	BIORETENTION
DMA 9	TCM 9	DRIVEWAY, SIDEWALK & LANDSCAPE	7,846	1,299	6,547	262		773	497	514	BIORETENTION

*4% OF IMPERVIOUS AREA IN EACH DMA REQUIRED TO TREAT STORMWATER



Agenda Packet Page No. 319 of 447

REVISIONS:		
DATE	DESCRIPTION	BY:

HANNA-BRUNETTI EST. 1910
CIVIL ENGINEERS · LAND SURVEYORS
CONSTRUCTION MANAGERS

DATE: FEBRUARY 2018
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VERT. SCALE: NONE
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CHECKED BY:
DRAWN BY: TM

REFERENCES

Stormwater Management Plan

TM 16-02 Greenfield Drive - apn 808-20-008

CITY OF GILROY
FEBRUARY 2018

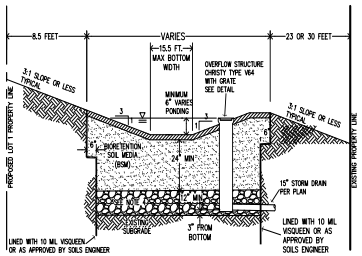
SANTA CLARA COUNTY
CALIFORNIA

SHEET 8 OF 9

JOB NO. 16011

Agenda Item No. 7.3

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BIORETENTION POND DETAIL – TCM 1

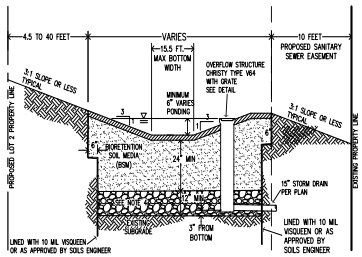
WITH UNDERDRAIN – NOT TO SCALE

DESIGN NOTES

1. FULL DESIGN GUIDANCE PROVIDED IN BIORETENTION TECHNICAL SPECIFICATIONS DOCUMENT.
2. OVERFLOW STRUCTURE REQUIRED FOR IN-LINE SYSTEMS WITHOUT AN OVERFLOW BYPASS.
3. CURB AND SIDEWALK DETAILS MAY BE MODIFIED FOR PROJECT BY GEOTECHNICAL ENGINEER.
4. IF CALTRANS CLASS 2 PERMEABLE IS NOT AVAILABLE, SUBSTITUTE CLASS 3 PERMEABLE WITH AN OVERLYING 3" DEEP LAYER OF 3/4" (NO. 4) OPEN-GRADED AGGREGATE.
5. BIORETENTION SOIL MEDIA (BSM) SPECIFICATION PER BIORETENTION TECHNICAL SPECIFICATIONS.
6. PLANTING DESIGN AND IRRIGATION PER BIORETENTION TECHNICAL SPECIFICATIONS.
7. MULCH (OPTIONAL) PER BIORETENTION TECHNICAL SPECIFICATIONS.
8. LOCATE ENERGY DISSIPATION COBBLE PADS AS SPECIFIED IN INLET DETAILS – AVOID DECORATIVE USE.

CONSTRUCTION NOTES

1. SCARIFY SUBGRADE BEFORE INSTALLING BIORETENTION AREA AGGREGATE AND BSM.
2. FACILITY EXCAVATION TO ALLOW FOR SPECIFIED SOIL AND MULCH DEPTHS TO ACHIEVE FINISHED ELEVATIONS ON CIVIL PLANS.
3. INSTALL UNDERDRAIN WITH HOLES FACING DOWN. UNDERDRAIN DISCHARGE ELEVATION SHALL BE NEAR TOP OF AGGREGATE LAYER. UNDERDRAIN SLOPE MAY BE FLAT.
4. COMPACT EACH 6" LIFT OF BSM WITH LANDSCAPE ROLLER OR BY LIGHTLY WETTING. IF WETTING, LET DRY OVERNIGHT BEFORE PLANTING.
4. DO NOT WORK WITHIN BIORETENTION AREA DURING RAIN OR UNDER WET CONDITIONS.
5. KEEP HEAVY MACHINERY OUTSIDE BIORETENTION AREA LIMITS.



BIORETENTION POND DETAIL – TCM 3

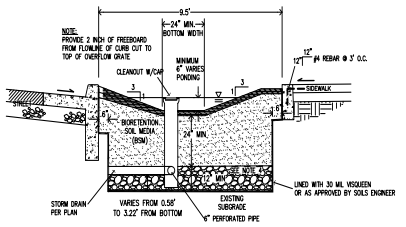
WITH UNDERDRAIN – NOT TO SCALE

DESIGN NOTES

1. FULL DESIGN GUIDANCE PROVIDED IN BIORETENTION TECHNICAL SPECIFICATIONS DOCUMENT.
2. OVERFLOW STRUCTURE REQUIRED FOR IN-LINE SYSTEMS WITHOUT AN OVERFLOW BYPASS.
3. CURB AND SIDEWALK DETAILS MAY BE MODIFIED FOR PROJECT BY GEOTECHNICAL ENGINEER.
4. IF CALTRANS CLASS 2 PERMEABLE IS NOT AVAILABLE, SUBSTITUTE CLASS 3 PERMEABLE WITH AN OVERLYING 3" DEEP LAYER OF 3/4" (NO. 4) OPEN-GRADED AGGREGATE.
5. BIORETENTION SOIL MEDIA (BSM) SPECIFICATION PER BIORETENTION TECHNICAL SPECIFICATIONS.
6. PLANTING DESIGN AND IRRIGATION PER BIORETENTION TECHNICAL SPECIFICATIONS.
7. MULCH (OPTIONAL) PER BIORETENTION TECHNICAL SPECIFICATIONS.
8. LOCATE ENERGY DISSIPATION COBBLE PADS AS SPECIFIED IN INLET DETAILS – AVOID DECORATIVE USE.

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2. FACILITY EXCAVATION TO ALLOW FOR SPECIFIED SOIL AND MULCH DEPTHS TO ACHIEVE FINISHED ELEVATIONS ON CIVIL PLANS.
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4. COMPACT EACH 6" LIFT OF BSM WITH LANDSCAPE ROLLER OR BY LIGHTLY WETTING. IF WETTING, LET DRY OVERNIGHT BEFORE PLANTING.
4. DO NOT WORK WITHIN BIORETENTION AREA DURING RAIN OR UNDER WET CONDITIONS.
5. KEEP HEAVY MACHINERY OUTSIDE BIORETENTION AREA LIMITS.



STREET BIORETENTION DETAIL

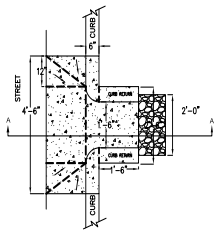
WITH UNDERDRAIN – NOT TO SCALE

DESIGN NOTES

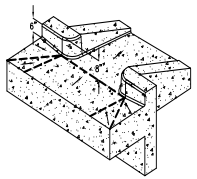
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2. OVERFLOW STRUCTURE REQUIRED FOR IN-LINE SYSTEMS WITHOUT AN OVERFLOW BYPASS.
3. CURB AND SIDEWALK DETAILS MAY BE MODIFIED FOR PROJECT BY GEOTECHNICAL ENGINEER.
4. IF CALTRANS CLASS 2 PERMEABLE IS NOT AVAILABLE, SUBSTITUTE CLASS 3 PERMEABLE WITH AN OVERLYING 3" DEEP LAYER OF 3/4" (NO. 4) OPEN-GRADED AGGREGATE.
5. BIORETENTION SOIL MEDIA (BSM) SPECIFICATION PER BIORETENTION TECHNICAL SPECIFICATIONS. REFER TO APPENDIX C OF THE SCVURPPP C.3 STORMWATER HANDBOOK.
6. PLANTING DESIGN AND IRRIGATION PER BIORETENTION TECHNICAL SPECIFICATIONS.
7. MULCH (OPTIONAL) PER BIORETENTION TECHNICAL SPECIFICATIONS. A MINIMUM 2-INCH LAYER OF COMPOSTED WOOD MULCH SHOULD BE PROVIDED ON ALL EXPOSED AREAS OF BIOTREATMENT SOIL.
8. LOCATE ENERGY DISSIPATION COBBLE PADS AS SPECIFIED IN INLET DETAILS – AVOID DECORATIVE USE.

CONSTRUCTION NOTES

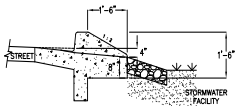
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5. KEEP HEAVY MACHINERY OUTSIDE BIORETENTION AREA LIMITS.



PLAN VIEW



PERSPECTIVE VIEW



SECTION A–A

BIORETENTION DESIGN NOTES

1. FOR USE WITH STORMWATER FACILITIES WITH SIDE SLOPES.
2. PROVIDE SPOT ELEVATIONS ON PLANS (FE, OE, GE, IE). SEE DETAIL 100.
3. CURB AND WALL DETAILS MAY BE MODIFIED BY CIVIL AND GEOTECHNICAL ENGINEERS.
4. WHERE INLET FLOW VELOCITY IS HIGH, EXTEND COBBLE INTO FACILITY, BUT AVOID EXCESSIVE USE.
5. CURB HEIGHT MAY BE REDUCED TO 4–INCHES WHERE ADJACENT TO A SIDEWALK. SEE DETAILS 110 & 111.

CONSTRUCTION NOTES

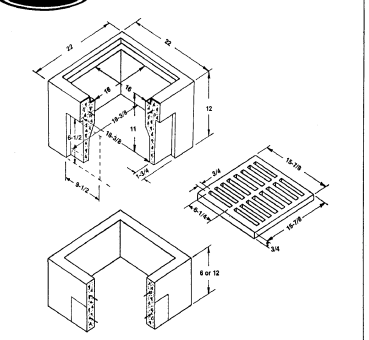
1. AFTER CONSTRUCTION PLACE SAND BAGS AT GUTTER OPENINGS TO KEEP STORM FLOWS FROM ENTERING FACILITY UNTIL VEGETATION IS ESTABLISHED.

CURB CUT WITH SLOPE DETAIL

WITHOUT UNDERDRAIN – NOT TO SCALE

V64 Drain Box 18-3/8" x 18-3/8"

Christy



The concrete drain box box has a cast in galvanized frame and is specifically engineered for drainage in medium traffic areas such as parking lots, school grounds, walkways, etc. Its design permits final grading material to "lock in" and finish clean. Knockouts accommodate up to 8" O.D. pipe. Approximate dimensions shown.

CHRISTY ORDERING CODE	ITEM	APPROX. SHIPPING WEIGHT	DESCRIPTION
V64BOX	Drain Box	198	V64 Drain Box (18-3/8" x 18-3/8") — 12 Per Pallet
V64-71C	Grate	31	71C165 Square Cast Iron
V64XB	Extension	85	1572 6" Reinforced Concrete — 24 Per Pallet
V64X12	Extension	148	1573 12" Reinforced Concrete — 12 Per Pallet

TO FIND CENTIMETERS MULTIPLY INCHES BY 2.5
TO FIND KILOGRAMS MULTIPLY POUNDS BY .45

PRECAST CONCRETE PRODUCTS

QUALITY PRECAST CONCRETE PRODUCTS

Agenda Packet Page No. 320 of 447

REVISIONS:

DATE	DESCRIPTION	BY:

HANNA-BRUNETTI EST. 1910
CIVIL ENGINEERS · LAND SURVEYORS
CONSTRUCTION MANAGERS

DATE: FEBRUARY 2018
HORIZ. SCALE: 1"=40'
VERT. SCALE: NONE
DESIGNED BY: AM
CHECKED BY:
DRAWN BY: TM

REFERENCES

Stormwater Treatment Details

TM 16-02 Greenfield Drive - apn 808-20-008

CITY OF GILROY
FEBRUARY 2018

SANTA CLARA COUNTY
CALIFORNIA

SHEET 9 OF 9

JOB NO. 16011

RESOLUTION NO. 2024-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GILROY APPROVING A SECOND TIME EXTENSION FOR TENTATIVE MAP (TM 16-02) CREATING 14 SINGLE-FAMILY RESIDENTIAL LOTS, TWO COMMON PARCELS, AND ONE PUBLIC PARK PARCEL, LOCATED AT THE NORTHERLY TERMINUS OF GREENFIELD DRIVE AND SOUTH OF UVAS CREEK, APN 808-20-008

WHEREAS, in 2016, James Suner submitted an application requesting tentative map approval to subdivide an 8.36-acre site into 14 single-family lots, two common lots containing private roadways and stormwater detention, a 3.7-acre public park parcel to be dedicated as an extension of Uvas Creek Park Preserve open space, and associated public and private improvements within the R1 single-family zone district; and

WHEREAS, the subject property (Assessor's Parcel Number 808-20-008) is located at the northern end of Greenfield Drive, south of Uvas Creek and adjacent to the Glen Loma Ranch Specific Plan Area development; and

WHEREAS, on November 5, 2018, the City Council of the City of Gilroy, by Resolution No 2018-44, adopted a mitigated negative declaration and approved Tentative Map Application TM 16-02 for an initial period of two years, subject to 131 conditions (inclusive of CEQA mitigation measures); and

WHEREAS, on June 1, 2020, the City Council adopted Resolution No. 2020-33, extending the expiration date through May 31, 2021, of all tentative maps, architectural and site permits, and planned unit development approvals that were active during the COVID-19 shelter in place order; and

WHEREAS, on September 29, 2020, Assembly Bill No. 1561 Chapter 195 was enacted to amend Section 65583 and to add Section 65914.5 to the Government Code relating to land use, to extend by 18 months the period for the expiration of a housing entitlement that was issued before, and was in effect on, March 4, 2020, and that will expire before December 31, 2021; and

WHEREAS, legislative extensions granted by the State and City Council extended approval of TM 16-02 through November 30, 2022; and

WHEREAS, On November 30, 2022, James Suner submitted a request to further extend the expiration date of Tentative Map TM 16-02; and

WHEREAS, On February 27, 2023, the City Council extended the approval of TM 16-02 for another 12-months, through November 30, 2023, subject to the approved plans and all conditions of approval and mitigation measures in City Council Resolution 2018-44; and

WHEREAS, On November 30, 2023, James Suner submitted a second request to extend the expiration date of Tentative Map TM 16-02; and

WHEREAS, On February 5, 2024, the City Council considered the second request to extend the expiration date of Tentative Map TM 16-02; and

WHEREAS the location and custodian of the documents or other materials that constitute the record of proceedings of TM 16-02 and all associated plans, CEQA documents, approved entitlements, and time extension requests is the office of the City Clerk.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF GILROY hereby approves a 12-month time extension of time for TM 16-02 through November 30, 2024. Approval of the TM 16-02 time extension shall be subject to the approved plans and all conditions of approval and mitigation measures applied to the project by City Council Resolution No. 2018-44, which are incorporated by reference herein.

PASSED AND ADOPTED by the City Council of the City of Gilroy at a regular meeting duly held on the 5th day of February 2024 by the following roll call vote:

AYES:	**COUNCIL MEMBERS:**
NOES:	**COUNCIL MEMBERS:**
ABSTAIN:	**COUNCIL MEMBERS:**
ABSENT:	**COUNCIL MEMBERS:**

APPROVED:

_____
Marie Blankley, Mayor

ATTEST:

_____
Thai Nam Pham, City Clerk

7.4. Extension and Maintenance of Existing Parklet Permits Until Adoption and Implementation of a Formal Downtown Parklet Program

City of Gilroy

STAFF REPORT

Agenda Item Title:	**Extension and Maintenance of Existing Parklet Permits Until Adoption and Implementation of a Formal Downtown Parklet Program**
Meeting Date:	February 5, 2024
From:	Jimmy Forbis, City Administrator
Department:	Community Development
Submitted By:	Sharon Goei, Community Development Director
Prepared By:	Sharon Goei, Community Development Director

STRATEGIC PLAN GOALS Promote Economic Development Activities

RECOMMENDATION

1. Direct staff to extend the Revocable Encroachment Permit for Occupying Parking Stalls, Permit No. 20100081, for the parklet in front of Station 55 Seafood and Mexican Cocina at 55 Fifth Street until the City has adopted and implemented a formal downtown parklet program; and
2. Direct staff to maintain the Revocable Encroachment Permit for Occupying an Existing Parklet, Permit No. 21040011, for the parklet in front of Tempo Kitchen and Bar at 7560 Monterey Street, until the City has adopted and implemented a formal downtown parklet program.

ANALYSIS

At the January 22, 2024 City Council Regular Meeting, the Council decided to pursue a downtown parklet program and provided direction for the two existing parklets to remain in place until the City has a formal parklet program. Staff is seeking Council action on each parklet permit to carry out the Council's direction.

For the parklet in front of Station 55 Seafood and Mexican Cocina at 55 Fifth Street, staff recommends that the Council direct staff to extend the Revocable Encroachment

Permit for Occupying Parking Stalls, Permit No. 20100081, for the Station 55 parklet until the City has adopted and implemented a formal downtown parklet program.

For the parklet in front of Tempo Kitchen and Bar at 7560 Monterey Street, staff recommends that the Council direct staff to maintain the Revocable Encroachment Permit for Occupying an Existing Parklet, Permit No. 21040011 for the Tempo parklet until the City has adopted and implemented a formal downtown parklet program.

FISCAL IMPACT/FUNDING SOURCE

There are no fees or costs associated with this item other than minimal staff time managing permit documentation.

7.5. Adopt a Resolution of the City Council of the City of Gilroy Authorizing Execution of Administering Agency-State Master Agreements for State and Federal-Aid Funded Projects

City of Gilroy

STAFF REPORT

Agenda Item Title:	**Adopt a Resolution of the City Council of the City of Gilroy Authorizing Execution of Administering Agency-State Master Agreements for State and Federal-Aid Funded Projects**
Meeting Date:	February 5, 2024
From:	Jimmy Forbis, City Administrator
Department:	Administration
Submitted and Prepared By:	Bryce Atkins, Assistant to the City Administrator

STRATEGIC PLAN GOALS Maintain and Improve City Infrastructure

RECOMMENDATION

Council adopt the resolution.

BACKGROUND

Pursuant to requirements from the State of California for the legislative funding the City has received for the Monterey Road HAWK Crosswalk Project near the Gateway Senior Apartments, the City must adopt the attached resolution and provide it as part of its submittal package to attain access to the funding. The resolution is formatted based on the template provided by Caltrans, the department of the State that is administering these funds. The resolution authorizes the City Administrator to execute the various forms of agreements for fund transfers. The Fund Transfer Agreement (FTA) that the City must complete is to be finalized by the City and submitted in a form acceptable to the State based on their template, which may require edits and revisions before execution. The resolution is a requirement of the grant funds and allows the FTA to be edited and completed in a timely manner following edits from the State.

ALTERNATIVES

Council may reject the resolution. Staff does not recommend rejection, as that would potentially jeopardize the grant funding. The resolution is based on the State's template, and the terms of the FTA are governed by the State.

FISCAL IMPACT/FUNDING SOURCE

None. This is a procedural step to receive the grant funds already awarded; this action alone does not generate fiscal impacts on the City. The awarded grant funds from the State under this FTA totals $350,000.

PUBLIC OUTREACH

This item was included on the publicly posted agenda for this meeting.

NEXT STEPS

If adopted, staff will submit the signed resolution along with the FTA to Caltrans for accessing the grant funding.

Attachments:

1. Resolution Authorizing Execution of Administering Agency-State Master Agreements for State and Federal-Aid Funded Projects

RESOLUTION NO. 2024-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GILROY AUTHORIZING EXECUTION OF ADMINISTERING AGENCY-STATE MASTER AGREEMENTS FOR STATE AND FEDERAL-AID-FUNDED PROJECTS

WHEREAS, the City of Gilroy is eligible to receive Federal and/or State Funding for certain Transportation Projects through the California Department of Transportation; and

WHEREAS, Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and/or Fund Transfer Agreements must be executed with the California Department of Transportation before such funds can be claimed; and

WHEREAS, the City of Gilroy wishes to delegate the authority to execute these agreements and any amendments thereto to the City Administrator.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Gilroy does hereby designate the City Administrator as the person authorized to execute all Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and/or Fund Transfer Agreements, and any amendments thereto with the California Department of Transportation.

PASSED AND ADOPTED this 5th day of February 2024 by the following vote:

AYES:	**COUNCIL MEMBERS:**
NOES:	**COUNCIL MEMBERS:**
ABSTAIN:	**COUNCIL MEMBERS:**
ABSENT:	**COUNCIL MEMBERS:**

APPROVED:

_____
Marie Blankley, Mayor

ATTEST:

_____
Thai Nam Pham, City Clerk

7.6. Resolution of the City Council of the City of Gilroy Declaring Weeds a Nuisance

City of Gilroy

STAFF REPORT

Agenda Item Title:	**Resolution of the City Council of the City of Gilroy Declaring Weeds a Nuisance**
Meeting Date:	February 5, 2024
From:	Jimmy Forbis, City Administrator
Department:	Fire Department
Submitted By:	Jim Wyatt, Fire Chief
Prepared By:	Jonathan Crick, Deputy Fire Marshal

STRATEGIC PLAN GOALS N/A

RECOMMENDATION

Council adopts a resolution declaring weeds and accumulated refuse a nuisance in order to commence the 2024 weed abatement process for the City of Gilroy.

EXECUTIVE SUMMARY

Gilroy City Code, Chapter 12, Article III, establishes a procedure for the abatement of weeds and refuse. The annual weed and refuse abatement program include an initial resolution declaring weeds and refuse a public nuisance. The resolution sets April 15, 2024, for a public hearing of the list of properties subject to abatement. The list created for the public hearing includes sites identified as having a weed or refuse problem in the current year as well as during any one of the prior three years. Adoption of the list at the public hearing provides authority for the City (or its contractor) to perform the abatement of weeds and/or refuse for the listed sites and provides for cost recovery by adding it to the property owner's property tax bill as an assessment.

BACKGROUND

The Santa Clara County Weed Abatement Program began in the mid-1970s to reduce the spread of wildfire. The Santa Clara County Weed Abatement Program provides weed abatement services for ten cities in Santa Clara County and the unincorporated areas of Santa Clara County. Pursuant to an updated agreement signed

in 2021 between the City of Gilroy and the Santa Clara County Agriculture Commissioner's Office, the County Vegetation Management Program has been implementing the weed abatement program as a contractor to the City. Under the agreement, all abatement activities are conducted by the County including the noticing of property owners, property inspections, and the collection of abatement fees and inspection costs. The City is responsible for adopting necessary resolutions and conducting public hearings on the matter.

ANALYSIS

Program Details

The list created for the public hearings includes sites identified as having a weed or refuse problem in the current year as well as during any one of the prior three years. County staff will mail the initial abatement notice to identified property owners within approximately two weeks of the resolution being adopted. Required information in the weed abatement notice includes the public hearing date, instructions on the proper abatement of the sites, and the May 15, 2024 deadline for abatement activities. In addition, the notice also identifies the consequences of not meeting the deadline.

All identified sites will be required to pay the initial inspection fee, currently set at $96. If a site is abated by the May 15, 2024 abatement deadline then additional fees, such as re-inspection fees and/or abatement oversight fees, will not be assessed. The property owner is required to maintain the abated site; failure to do so will result in the assessment of additional fees. All properties must be free of fire hazards throughout the year to meet minimum safety standards.

Sites that are identified to have weed and/or refuse problems will remain on the list for at least three years. However, property owners can have their property removed from the list. For instance, a site that has achieved three "compliant" years in a row or a vacant site that has since been developed and is fully landscaped may be removed from the list.

After the initial outreach, the County will also send all property owners a reminder letter 30 days prior to the May 15, 2024 abatement deadline.

After May 15, 2024, the County will conduct inspections and notify those property owners who have not abated their properties. For sites not in the Wildland Urban Interface (WUI) Hazardous Fire Area, the property owner has two weeks to complete the work. If abatement is completed prior to the next inspection, these properties will not be subject to additional fees.

The two-week extension is not provided to properties in the WUI Hazardous Fire Area because these areas are considered to have high fire hazards. In addition, the Public Resources Code requires weed abatement in these areas without any extensions. For sites in the WUI Hazardous Fire Area, the County will immediately assign the site for abatement by a private contractor. Any site that is abated by the County will be

assessed the inspection fee ($96), the failed inspection fee ($546), and the cost incurred by the abatement contractor, which is based primarily on the square footage of the site, as well as the abatement oversight cost ($884).

Since the implementation of this program in 2010, the number of sites on the County's list has fluctuated from year to year, but the numbers for Gilroy have decreased since 2017. In Gilroy, there were: 282 sites identified in 2017, 166 sites in 2018, 174 sites in 2019, 146 sites in 2020, 150 in 2021, 147 for 2022,166 for 2023, and 154 for 2024.

Key dates associated with this year's program are as follows:

February 5, 2024 City Council Resolution of Public Nuisance
March 13, 2024* County Notification to Listed Property Owners
April 15, 2024 Public hearing to consider List of Properties requiring abatement
May 1, 2024* County Notification of Abatement Deadline
May 15, 2024 Abatement Deadline
May 30, 2024* County conducts initial inspections
June 13, 2024* Extended Deadline for non-WUI properties only
August 5, 2024* Public hearing for City Council to Authorize Assessments

**Dates are approximate at this time and provide an estimate as determined by the responsible Agency.*

ALTERNATIVES

There are no alternatives. Section 12.48 of Chapter 12 of the Gilroy Municipal Code requires that the City Council pass a resolution declaring weeds and accumulated refuse to be a public nuisance. Chapter 12 further requires that the City Council order the Fire Chief to implement the weed abatement process.

FISCAL IMPACT/FUNDING SOURCE

The use of the County as a contract agency to carry out their portions of the program has been self-funded through cost recovery from property owners that have failed to abate their sites. The Fire Marshal's office absorbs the staffing cost for coordination and communication with the County, the pre-hearing meeting when a property owner appeals the fees and processing of the Council Resolutions and Public Hearings. If the County does not collect adequate funds to meet the program budget, they will prorate the shortfall to the cities based on the percentage of the properties from each City in the program. We will not know until later in the year if there is a budget shortfall because abatement activities will continue through October. Historically, the County has not had a budget shortfall because they have collected adequate fees directly from the property owners to cover the cost of the program.

PUBLIC OUTREACH

As part of the annual program, property owners receive two Weed and Refuse Abatement notices from the Santa Clara County Weed Abatement Program that clearly identify the requirements of the program. Pursuant to the program requirements, the County also notifies property owners when their properties fail inspections. The City of Gilroy performs a variety of fire prevention public outreach, including weed abatement, in coordination with the Communication and Engagement Office. Such outreach includes a combination of social media, Gilroy Email Express, and utility bill insert mailings.

NEXT STEPS

Once Council adopts the resolution, the public hearing of sites needing abatement will be set for April 15, 2024. In addition, a report of the property assessments will be presented to the City Council at a public hearing on August 5, 2024. Prior to the hearing, property owners are invited to contact the Fire Marshal to review any assessments they believe are in error. A final list will be presented to the City Council for approval of the assessment. The County Property Tax Assessor will then place the fees on the next property tax bill as an assessment.

Attachments:

1. Draft Resolution
2. 2024 Gilroy Commencement Report (Property List)

RESOLUTION NO. 2024-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GILROY DECLARING CERTAIN WEEDS GROWING IN THE CITY OF GILROY AND ACCUMULATIONS OF REFUSE IN THE CITY OF GILROY TO BE A PUBLIC NUISANCE, DESCRIBING WEEDS AND REFUSE WHICH CONSTITUTE SUCH NUISANCE, AND PROVIDING NOTICE OF THE ADOPTION OF THE RESOLUTION BY PUBLICATION THEREOF

WHEREAS, certain weeds are growing in the City of Gilroy ("City") upon the various streets, alleys, sidewalks, and upon private property, which weeds bear seeds of a wingy or downy nature, or which may attain such growth as to become, when dry, a fire menace, or which are otherwise noxious and dangerous; and

WHEREAS, certain refuse is accumulating in the City upon public and private property; and

WHEREAS, said weeds and refuse constitute a public nuisance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Gilroy as follows:

1. That such weeds and refuse do now constitute and will continue to constitute a public nuisance, and it is ordered that said public nuisance be abated in the manner provided by Article III of Chapter 12 of the Gilroy City Code.
2. That said nuisance exists upon all of the streets, alleys, sidewalks, and private property within said City as shown, described, and delineated on the several maps of the property in the City, which are recorded in the Office of the County Assessor of the County of Santa Clara, reference in each instance for the description of any particular street, alley or private property being hereby made to the several maps aforesaid, and in the event of there being several subdivision maps on which said lots are shown, reference is hereby made to the latest subdivision map.
3. That it is ordered that Monday, the 15th of April 2024, at the hour of 6:00 o'clock p.m. in the Council Chambers of the City Council of the City, 7351 Rosanna Street, Gilroy, California, is hereby fixed as the time and place when objections to the proposed destruction or removal of said weeds and refuse shall be heard and given due consideration.
4. That the Chief of the Fire Department of the City is hereby ordered and directed to cause notice of the adoption of this resolution and notice of said hearing to be given to all of the affected property owners at their stated mailing address on the latest tax assessor's role, and also to be given in the manner

and form provided in Sections 14.29 and 12.53 of the Gilroy City Code, and to cause said notice to be published in the City, at least ten (10) days prior to said hearing; and

5. That nothing in this Resolution prohibits the issuance of citations for violations of City Code Section 12.46 or City Fire Code with regards to Section 304.1.2.

PASSED AND ADOPTED this 5th day of February 2024 by the following roll call vote:

AYES:	**COUNCIL MEMBERS:**
NOES:	**COUNCIL MEMBERS:**
ABSTAIN:	**COUNCIL MEMBERS:**
ABSENT:	**COUNCIL MEMBERS:**

APPROVED:

_____
Marie Blankley, Mayor

ATTEST:

_____
Thai Nam Pham, City Clerk

2024 WEED ABATEMENT PROGRAM
COMMENCEMENT REPORT
CITY OF GILROY

Exhibit A

	Situs			APN		CITY/STATE			
1		HECKER PASS		783-03-070	SUNSET HILLS DEVELOPMENT LLC	575 SOUTHSIDE DR STE C	GILROY	CA	95020	200
2	8351 1	WINTER	CT	783-03-077	SUNSET HILLS DEVELOPMENT LLC	575 SOUTHSIDE DR STE C	GILROY	CA	95020	200
3		HECKER PASS		783-04-032	HOEY RANCH COMPANY	2485 HECKER PASS HWY	GILROY	CA	95020-8802	200
4	820 1	SUNRISE	DR	783-20-049	YANG, DI P	2478 N STEVENS AVE	ROSEMEAD	CA	91770-2947	200
5	1885 1	HOLLYHOCK	LN	783-45-014	ROSS, RICHARD JOHN III	1885 HOLLYHOCK LN	GILROY	CA	95020-0000	200
6	1920 1	MANTELLI	DR	783-45-016	SEVILLA, JERRY M AND CUNANAN ,	PO BOX 5175 ARAMCO MC	DHAHRAN SAUDI	IA	31311	200
7		HOLLYHOCK	LN	783-45-044	ENTERPRISE REI 8 LLC	10440 S DE ANZA BLVD STE	CUPERTINO	CA	95014	200
8	2320 1	WILDROSE	CT	783-46-039	AHMADI, AMINREZA	P O BOX 608	LOS GATOS	CA	95030	200
9	8565	STRAWBERRY	LN	783-46-079	LE, ANH	682 KAWEAH AVE	CLOVIS	CA	93619	200
10	0	SUNFLOWER	CL	783-47-003	ENTERPRISE REI 8 LLC	24168 BIG BASIN WY	SARATOGA	CA	95070	02-
11	1463 1	PHEASANT	DR	783-50-058	PALMER, MARY L	1463 PHEASANT DR	GILROY	CA	95020-8219	200
12	8745 1	WILD IRIS	DR	783-52-032	VARGAS, ANABEL AND GOMEZ ,	1355 ST FRANCIS ST	REDWOOD CITY	CA	94061	200
13	1350 1	PEREGRINE	DR	783-55-021	TORRES, ALICIA S	1350 PEREGRINE DR	GILROY	CA	95020-0000	200
14	9246 1	DOVE	CT	783-57-004	AYALA, DANIEL J AND ELIZABETH L	9246 DOVE CT	GILROY	CA	95020-0000	200
15	9231 1 N	EGRET	CT	783-58-044	CODIGA, RICHARD AND SCOTT-	9231 N EGRET CT	GILROY	CA	95020-0000	200
16	2363 1	BANYAN	ST	783-64-029	ISSAKHANI, MEDIKO AND ROBERT	606 ALTINO BLVD	SAN JOSE	CA	95136	200
17	2333 1	BANYAN	ST	783-64-032	GHARIBADEH, RAMSIN	3344 MEADOWLANDS LN	SAN JOSE	CA	95135-1624	200
18	2354 1	BANYAN	ST	783-65-022	KARBALAEINEMATMOEINI,	2121 CRUDEN BAY WAY	GILROY	CA	95020-0000	200
19	9261 1	TEA TREE	CT	783-72-006	WOODWARD, DEBBIE	9261 TEA TREE CT	GILROY	CA	95020-0000	200
20	1820 1	CAROB	CT	783-72-017	NGUYEN, HENRY H ET AL	6971 SPUMANTE WAY	GILROY	CA	95020-0000	200
21	1810 1	CAROB	C	783-72-018	OPINSKI, ROSE	2626 FALLBROOK DR	MERCED	CA	95340	200
22	9145 1	TEA TREE	WY	783-72-020	PAWLICKI, AGNIESZKA	1851 CAROB CT	GILROY	CA	95020-0000	200
23	9035 1	TEA TREE	WY	783-72-025	ATLLURI, SASI K AND SURAPANENI ,	10800 MAXINE AVE	CUPERTINO	CA	95014-0120	200
24	9030 1	TEA TREE	WY	783-72-026	DO, NGOC BICH THI ET AL	979 STORY RD #7024	SAN JOSE	CA	95122	200

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	Situs			APN		CITY/STATE			
25	8962 1	TEA TREE	WY	783-72-030	THIEN, TRACY	38 PARK FLETCHER PL	SAN JOSE	CA	95136-2403	200
26	8971 1	TEA TREE	WY	783-72-033	BHATTARAI, ATUL R AND	1660 WHEATLEY PL	SAN JOSE	CA	95121-0000	200
27	8950 1	MIMOSA	CT	783-72-035	PHAM, LAN ET AL	1085 MICHIGAN AVE	SAN JOSE	CA	95125-2417	200
28	8955 1	MIMOSA	CT	783-72-036	INNEH, EMMANUEL AND JENNIFER	1710 VALLEY OAKS DR	GILROY	CA	95020	200
29	2204 1	BANYAN	CT	783-72-039	NAYYAR, SAPNA ET AL	2282 PENTLAND WAY	SAN JOSE	CA	95148	200
30	2273 1	BANYAN	CT	783-72-051	PREMNATH, FLEMING J AND	2356 PATRICIA DR	SANTA CLARA	CA	95050-5018	200
31	2283 1	BANYAN	CT	783-72-052	JEONG, JONGHUN AND CHOI ,	PO BOX 10652	SAN JOSE	CA	95127	200
32	2202 1	COLUMBINE	CT	783-72-061	KRUPA, STANISLAW TRUSTEE & ET	901 CALLE SERRA	SAN DIMAS	CA	91773	200
33		FARRELL	AV	790-07-085	KUANG, WEIWEI	1952 EISENHOWER DR	SANTA CLARA	CA	95054-1621	200
34	95	FARRELL	AV	790-07-086	KUANG, WEIWEI	1952 EISENHOWER DR	SANTA CLARA	CA	95054-1621	200
35		FARRELL	AV	790-07-087	KUANG, WEIWEI	1952 EISENHOWER DR	SANTA CLARA	CA	95054-1621	200
36		FARRELL	AV	790-07-088	KUANG, WEIWEI	1952 EISENHOWER DR	SANTA CLARA	CA	95054-1621	200
37	171 1	RONAN	AV	790-15-009	NGUYEN, THUAN TRONG AND LE ,	3295 KLOETZE LN	SAN JOSE	CA	95148-0000	200
38	8877 1	MONTEREY	RD	790-15-036	MARGARETICH, BOZO AND VANJA ET	946 STANLEY AVE	LOS ALTOS	CA	94024-5067	200
39		KERN	AV	790-17-003	D R HORTON BAY INC	3000 EXECUTIVE PKWY STE	SAN RAMON	CA	94583	200
40	301 1	WELBURN	AV	790-28-005	ANDERSON, KEITH RICHARD	301 WELBURN AVE	GILROY	CA	95020-4434	200
41		CHURCH	ST	790-36-002	HOWSON INDUSTRIES LLC	1648 MULBERRY LN	SAN JOSE	CA	95125-4942	200
42	1375 1	1ST	ST	790-39-019	S A PROPERTIES GROUP LLC	5820 STONERIDGE MALL RD	PLEASANTON	CA	94588	200
43	108 1	CHICKADEE	LN	790-66-057	TEMPLE SAN JOSE LLC	527 SIMAS DR	MILPITAS	CA	95035-4723	200
44	7733 1	MONTEREY	RD	799-03-054	7711 MONTEREY RD LLC	UNIT 305	SAN JOSE	CA	95138	200
45	7711 1	MONTEREY	RD	799-03-055	7711 MONTEREY RD LLC	UNIT 305	SAN JOSE	CA	95138	200
46	7273 1	EIGLEBERRY	ST	799-09-080	KAUR, SANDEEP AND SINGH ,	3117 OAKGATE WAY	SAN JOSE	CA	95148-3026	200
47	7040 1	CHURCH	ST	799-11-068	DING, ANDREW	7595 NEWCASTLE DR	CUPERTINO	CA	95014-5220	200
48		CHURCH	ST	799-11-069	GOLDEN BRIDGE PROPERTIES LLC	1669 2 HOLLENBECK AVE	SUNNYVALE	CA	94087	200

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	Situs				APN		CITY/STATE			
49	7421 1		HANNA	ST	799-18-031	JEUNG, MICHAEL A ET AL	7421 HANNA ST	GILROY	CA	95020-5723	200
50	6700 1		CHURCH	ST	799-33-001	MONSEF, CYRUS	6700 CHURCH ST	GILROY	CA	95020-6508	200
51	6687		FILBRO	DR	799-44-093	TMP ROYAL WAY LLC	5671 SANTA TERESA BLVD	SAN JOSE	CA	95123	200
52	6675		ROYAL	WY	799-44-094	TMP ROYAL WAY LLC	5671 SANTA TERESA BLVD	SAN JOSE	CA	95123	200
53	6630		ROYAL	WY	799-44-095	TMP ROYAL WAY LLC	5671 SANTA TERESA BLVD	SAN JOSE	CA	95123	200
54	6640		ROYAL	WY	799-44-096	TMP ROYAL WAY LLC	5671 SANTA TERESA BLVD	SAN JOSE	CA	95123	200
55	6650		ROYAL	WY	799-44-097	TMP ROYAL WAY LLC	5671 SANTA TERESA BLVD	SAN JOSE	CA	95123	200
56	6660		ROYAL	WY	799-44-098	TMP ROYAL WAY LLC	5671 SANTA TERESA BLVD	SAN JOSE	CA	95123	200
57			THOMAS	RD	799-44-109	TMP ROYAL WAY LLC	5671 SANTA TERESA BLVD	SAN JOSE	CA	95123	200
58	321 1	W	LUCHESSA	AV	799-44-110	TMP ROYAL WAY LLC	5671 SANTA TERESA BLVD	SAN JOSE	CA	95123	200
59	1410 1		1ST	ST	808-01-021	EAGLE LLC	41368 DANZON CT	FREMONT	CA	94539	200
60	7890 1		SANTA TERESA	BL	808-01-022	EAGLE LLC	41368 DANZON CT	FREMONT	CA	94539	200
61	1490 1		1ST	ST	808-01-023	EAGLE LLC	41368 DANZON CT	FREMONT	CA	94539	200
62			PONDEROSA	DR	808-01-024	PIROZZOLI, MONICA TRUSTEE & ET	366 5TH ST	GILROY	CA	95020	200
63			LUCHESSA	AV	808-19-030	CHRISTOPHER, DONALD C ET AL	305 BLOOMFIELD AVE	GILROY	CA	95020	200
64					808-19-031	COMMUNITY RESOURCES INC	480 E STATE ST STE 100	EAGLE	ID	83616	200
65			THOMAS	LN	808-20-008	SUNER CORPORATION	9761 ZUNI LN	GILROY	CA	95020-0000	200
66	10 1	W	LUCHESSA	AV	808-21-009	YAHYA, NAAIM A TRUSTEE & ET AL	1835 SULLIVAN CT	MORGAN HILL	CA	95037	200
67	6201 1		THOMAS	RD	808-38-001	THOMAS ROAD PROPERTIES LTD THE	7888 WREN AVE UNIT D-143	GILROY	CA	95020	200
68	6151 1		THOMAS	RD	808-39-066	CORP PRESI BISH CHURCH CHRIST	50 E NORTH TEMPLE FL 22	SALT LAKE CITY	UT	84150-3620	200
69			LUCHESSA	AV	808-58-005	CHRISTOPHER, DONALD C ET AL	305 BLOOMFIELD AVE	GILROY	CA	95020	200
70	3000		HECKER PASS	HW	810-20-021	HP AG LAND LLC	23 CORPORATE PL UNIT 150	NEWPORT BEACH	CA	92625	200
71	2740 1		HECHER PASS	HY	810-20-033	OWENS FINANCIAL GROUP INC	2221 OLYMPIC BLVD	WALNUT CREEK	CA	94595	200
72	2480 1		HECKER PASS	HY	810-20-037	HOEY, JAMES W TRUSTEE & ET AL	2480 HECKER PASS HWY	GILROY	CA	95020-0000	200

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	Situs			APN		CITY/STATE			
73	2300 1	HECKER PASS	HY	810-20-039	SYNGENTA FLOWERS LLC	PO BOX 500	SLATER	IA	50244	200
74	800	WILDFLOWER	CT	810-28-024	WILLIAMS, JAKIE C TRUSTEE & ET	1000 MESA RD	GILROY	CA	95020-6820	200
75	925 1	WILDFLOWER	CT	810-28-026	WILLIAMS, JAKIE C TRUSTEE & ET	1000 MESA RD	GILROY	CA	95020-6820	200
76	935 1	WILDFLOWER	CT	810-28-027	WILLIAMS, JAKIE C TRUSTEE & ET	1000 MESA RD	GILROY	CA	95020-6820	200
77	945 1	WILDFLOWER	CT	810-28-028	WILLIAMS, JAKIE C TRUSTEE & ET	1000 MESA RD	GILROY	CA	95020-6820	200
78	955 1	WILDFLOWER	CT	810-28-029	WILLIAMS, JAKIE C TRUSTEE & ET	1000 MESA RD	GILROY	CA	95020-6820	200
79	950 1	WILDFLOWER	CT	810-28-032	WILLIAMS, JAKIE C TRUSTEE & ET	1000 MESA RD	GILROY	CA	95020-6820	200
80	940 1	WILDFLOWER	CT	810-28-033	WILLIAMS, JAKIE C TRUSTEE & ET	1000 MESA RD	GILROY	CA	95020-6820	200
81	930 1	WILDFLOWER	CT	810-28-034	WILLIAMS, JAKIE C TRUSTEE & ET	1000 MESA RD	GILROY	CA	95020-6820	200
82	920 1	WILDFLOWER	CT	810-28-035	WILLIAMS, JAKIE C TRUSTEE & ET	1000 MESA RD	GILROY	CA	95020-6820	200
83	910 1	WILDFLOWER	CT	810-28-036	WILLIAMS, JAKIE C TRUSTEE & ET	1000 MESA RD	GILROY	CA	95020-6820	200
84	900 1	WILDFLOWER	CT	810-28-037	WILLIAMS, JAKIE C TRUSTEE & ET	1000 MESA RD	GILROY	CA	95020-6820	200
85	6675 1	EAGLE RIDGE	CT	810-60-018	DO & PARTNERS LLC	9419 GERANIUM CIR	FOUNTAIN VALLEY	CA	92708	200
86	6685 1	EAGLE RIDGE	CT	810-60-019	DO & PARTNERS LLC	9419 GERANIUM CIR	FOUNTAIN VALLEY	CA	92708	200
87	6695 1	EAGLE RIDGE	CT	810-60-020	DO & PARTNERS LLC	9419 GERANIUM CIR	FOUNTAIN VALLEY	CA	92708	200
88	1520 1	HECKER PASS	RD	810-66-012	VILLAGE AT SANTA TERESA LP	1700 S EL CAMINO REAL	SAN MATEO	CA	94402	200
89	6615 1	EAGLE RIDGE	CT	810-72-029	DO & PARTNERS LLC	9419 GERANIUM CIR	FOUNTAIN VALLEY	CA	92708	200
90	6625 1	EAGLE RIDGE	CT	810-72-030	DO & PARTNERS LLC	9419 GERANIUM CIR	FOUNTAIN VALLEY	CA	92708	200
91	6635 1	EAGLE RIDGE	CT	810-72-031	DO & PARTNERS LLC	9419 GERANIUM CIR	FOUNTAIN VALLEY	CA	92708	200
92	6645 1	EAGLE RIDGE	CT	810-72-032	DO & PARTNERS LLC	9419 GERANIUM CIR	FOUNTAIN VALLEY	CA	92708	200
93	6651 1	EAGLE RIDGE	CT	810-72-033	DO & PARTNERS LLC	9419 GERANIUM CIR	FOUNTAIN VALLEY	CA	92708	200
94	6655 1	EAGLE RIDGE	CT	810-72-034	DO & PARTNERS LLC	9419 GERANIUM CIR	FOUNTAIN VALLEY	CA	92708	200
95	671 1	EAGLE RIDGE	CT	810-72-035	DO & PARTNERS LLC	9419 GERANIUM CIR	FOUNTAIN VALLEY	CA	92708	200
96		MONTEREY	RD	835-01-034	SOUTHERN PACIFIC					200

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	Situs			APN		CITY/STATE			
97		MONTEREY	RD	835-01-035	SOUTHERN PACIFIC				200
98		FOREST	ST	835-01-050	LEAVESLEY & FOREST LLC	611 S WESTLAKE AVE	LOS ANGELES	CA	90057	200
99		MURRAY	AV	835-01-059	HIGHLY VISUAL LLC	8840 FOREST ST	GILROY	CA	95020-0000	200
100		LEAVESLEY	AV	835-01-064	LEAVESLEY & FOREST LLC	611 S WESTLAKE AVE	LOS ANGELES	CA	90057	200
101	8585 1	MURRAY	AV	835-01-065	ESPARZA, ROBERT TRUSTEE	443 EL CAJON DR	SAN JOSE	CA	95111-3509	200
102	210 1	LAS ANIMAS	AV	835-02-013	SHELTON, G WILLIAM	1216 PALADIN WAY	PLEASANTON	CA	94566	200
103		MONTEREY	RD	835-02-014	SOUTHERN PACIFIC		GILROY	CA	95020-0000	200
104	260 1	LAS ANIMAS	AV	835-02-016	CLOMONEY LLC	PO BOX 60352	SUNNYVALE	CA	94088	200
105	230 1	LAS ANIMAS	AV	835-02-061	CLOMONEY LLC	PO BOX 60352	SUNNYVALE	CA	94088	200
106	402 1	MADISON	CT	835-03-059	LOPEZ, JUAN R AND REBECCA G	1500 E HAMILTON AVE UNIT	CAMPBELL	CA	95008	200
107		SAN YSIDRO	AV	835-04-064	J FILICE & SONS LTD	751 B FIRST ST	GILROY	CA	95020	200
108		LAS ANIMAS	AV	835-04-067	MONTANO, LYDIA R AND ALFRED JR	15191 KARL AVE	MONTE SERENO	CA	95030-2229	200
109		MURRAY		835-04-068	MONTANO, LYDIA R AND ALFRED JR	15191 KARL AVE	MONTE SERENO	CA	95030-2229	200
110	600 1	LAS ANIMAS	AV	835-04-082	QUALITY CONSTRUCTION	453 RAVENSDALE AVE	MOUNTAIN VIEW	CA	94043	200
111	9096 1	SAN YSIDRO	AV	835-04-085	QUALITY CONSTRUCTION	453 RAVENSDALE DR	MOUNTAIN VIEW	CA	94043	200
112	9090 1	SAN YSIDRO	AV	835-04-086	QUALITY CONSTRUCTION	453 RAVENSDALE DR	MOUNTAIN VIEW	CA	94043	200
113	315 1	LAS ANIMAS	AV	835-05-006	LAS ANIMAS DEVEL CO LLC	PO BOX 1772	GILROY	CA	95021	200
114	135 1	LAS ANIMAS	AV	835-05-007	MANN, BALDEV AND GURMEET	832 E BELL ST	PALO ALTO	CA	94303	200
115	55 1	LAS ANIMAS	AV	835-05-008	SHELTON, G WILLIAM	1216 PALLADIN WAY	PLEASANTON	CA	94566	200
116	410 1	COHANSEY	AV	835-05-016	GERA, NICHOLAS TRUSTEE & ET AL	19341 MONTE VISTA DR	SARATOGA	CA	95070-6219	200
117	405 1	LAS ANIMAS	AV	835-05-024	TES INVESTMENTS LLC	1754 TECHNOLOGY DR STE	SAN JOSE	CA	95110	200
118	8805	FOREST	ST	835-31-031	HOLLER, DYLAN R TRUSTEE	405 SPRING GROVE RD	HOLLISTER	CA	95023	200
119		MURAOKA	DR	835-31-032	8805 FORREST QOZB LLC	PO BOX 787	DIABLO	CA	94528	200
120		SWANSTON	LN	841-01-064	EDMISTON, RODNEY D TRUSTEE	18640 SUTTER BLVD STE 100	MORGAN HILL	CA	95037	200

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	Situs			APN		CITY/STATE			
121			NU	841-02-046	UNION PACIFIC CO	10031 FOOTHILLS BLVD	ROSEVILLE	CA	95030	200
122		WHEELER	ST	841-02-055	DRL PROPERTIES LLC	2545 MUIRFIELD WAY	GILROY	CA	95020-0000	200
123	341 1	LEWIS	ST	841-03-063	PATEL, JITENDRA AND NAYANA	39625 FREMONT BLVD	FREMONT	CA	94538	200
124	7600 1	FOREST	ST	841-03-070	VAZQUEZ, QUIRINO AND YOLANDA	835 GREEN VALLEY RD	WATSONVILLE	CA	95076	200
125	222 1	MARTIN	ST	841-06-040	LIU, DENG AND CHEN , SHASHA	400 PALM AVE	MILLBRAE	CA	94030	200
126	7492 1	CHESTNUT	ST	841-07-027	SANCHEZ, ELOY G AND ANGELICA M	7492 CHESTNUT ST	GILROY	CA	95020-5806	200
127	7472 1	CHESTNUT	ST	841-07-043	TORRES-FERNANDEZ, ELISA ET AL	7472 CHESTNUT ST	GILROY	CA	95020-5806	200
128	7498 1	CHESTNUT	ST	841-07-049	ZHENG, SHAO LAN AND ZHU ,	7498 CHESTNUT ST	GILROY	CA	95020-5806	200
129	601	RENZ	LN	841-10-039	PACIFIC GAS AND ELECTRIC CO					200
130	430 1	OLD GILROY	ST	841-11-075	LETTERFORMS INC	3843 CONCORD BLVD	CONCORD	CA	94519	200
131		SOUTH	FW	841-14-058	SOUTHERN PACIFIC					200
132		SOUTH	FW	841-14-059	SOUTHERN PACIFIC					200
133				841-14-060	SOUTHERN PACIFIC					200
134				841-14-072	SOUTHERN PACIFIC					200
135	5870 1	MONTEREY	RD	841-14-080	GARLIC FARM TRUCK CENTER LLC	5000 E 2ND ST UNIT G	BENECIA	CA	94510	200
136	6900 1	CAMERON	BL	841-17-100	MCCARTHY GILROY LLC	210 ALMENDRA AVE	LOS GATOS	CA	95030-7211	200
137				841-17-121	UNITED NATURAL FOODS WEST INC	P.O. BOX 990	MINNEAPOLIS	MN	55406	200
138	6509 1	CAMERON	BL	841-17-124	GILROY INDUSTRIAL OWNER LLC	3953 MAPLE AVE UNIT 300	DALLAS	TX	75219	200
139		PACHECO PASS	HW	841-18-082	AMAZON.COM SERVICES LLC	P.O.BOX 80416	SEATTLE	WA	98108	200
140	402	HADLEY	CT	841-53-032	MARQUEZ, PRISCILLA A	402 HADLEY CT	GILROY	CA	95020-5839	02-
141		HOOVER	CT	841-53-066	NGUYEN, THU TAM	2673 MCLAUGHLIN AVE	SAN JOSE	CA	95121-2752	200
142		CAMINO		841-69-042	SOUTHPOINT BUSINESS PARK	P O BOX 5368	SAN JOSE	CA	95150	200
143	900	PACHECO PASS	HW	841-70-014	CAPRARA, JANICE TRUSTEE & ET AL	26769 EL CAMINO REAL	GONZALES	CA	93926	200
144	850 1	HOLLOWAY	RD	841-70-026	GILROY PARTNERS LLC	67 MOUNTAIN BLVD UNIT 201	WARREN	NJ	07059	200

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	Situs			APN			CITY/STATE			
145	555 1	HOLLOWAY	RD	841-70-037	ROCHA, JOE A AND VICTORIA M	575 SOUTHSIDE DR	GILROY	CA	95020	200
146	6970 1	CAMINO		841-70-049	TEMPLE GILROY LLC	527 SIMAS DR	MILPITAS	CA	95035-4723	200
147	5885 1	ROSSI	LN	841-72-001	SIEMPRE SOBRE EL DINERO LLC	190 N MONTGOMERY ST	SAN JOSE	CA	95110	200
148	560 1	ROSSI	CT	841-72-008	PULMUONE FOODS USA INC	2315 MOORE AVE	FULLERTON	CA	92833	200
149	590 1	ROSSI	CT	841-72-009	PULMUONE FOODS USA INC	2315 MOORE AVE	FULLERTON	CA	92833	200
150	5835 1	ROSSI	LN	841-72-010	PULMUONE FOODS USA INC	2315 MOORE AVE	FULLERTON	CA	92833	200
151	5815 1	ROSSI	LN	841-72-011	PULMUONE FOODS USA INC	2315 MOORE AVE	FULLERTON	CA	92833	200
152	505 E	LUCHESSA	AV	841-73-005	BERRY JAMIESON LLC	PO BOX 1802	GILROY	CA	95021	200
153	5980 1	TRAVEL PARK	CR	841-75-011	HOANG, VINCE AN TRI	5240 MONTEVERDE LN	LINCOLN	CA	95648	200
154	6601 1	CAMERON	BL	841-84-009	MCCARTHY GILROY LLC	210 ALMENDRA AVE	LOS GATOS	CA	95030-7211	200

8.1. Award a Contract to ASG Builders for the FY24 Annual CDBG Sidewalk/Curb Ramp Project No. 24-PW-285 in the amount of $97,290, Approve a Project Contingency of $19,458, and Approve a Total Project Expenditure of $116,748 for Construction

1. Staff Report:
2. Public Comment
3. Possible Action:

   Award a contract to ASG Builders in the amount of $97,290 and approve a project contingency of $19,458 for the FY24 Annual CDBG Sidewalk/Curb Ramp Project (No. 24-PW-285) and authorize the City Administrator to execute the contract and associated documents.

City of Gilroy

STAFF REPORT

Agenda Item Title:	**Award a Contract to ASG Builders for the FY24 Annual CDBG Sidewalk/Curb Ramp Project No. 24-PW-285 in the amount of $97,290, Approve a Project Contingency of $19,458, and Approve a Total Project Expenditure of $116,748 for Construction**
Meeting Date:	February 5, 2024
From:	Jimmy Forbis, City Administrator
Department:	Public Works
Submitted By:	Karl Bjarke, Interim Public Works Director
Prepared By:	Susana Ramirez, Engineer I

STRATEGIC PLAN GOALS Maintain and Improve City Infrastructure

RECOMMENDATION

Award a contract to ASG Builders in the amount of $97,290 and approve a project contingency of $19,458 for the FY24 Annual CDBG Sidewalk/Curb Ramp Project (No. 24-PW-285) and authorize the City Administrator to execute the contract and associated documents.

EXECUTIVE SUMMARY

The City receives Community Development Block Grant (CDBG) Program funds from the U.S. Department of Housing and Urban Development (HUD). Eligible activities that can be funded under Capital Improvements include annual curb ramp and sidewalk improvements to be used within low and moderate-income neighborhoods. The FY24 Annual CDBG Sidewalk/Curb Ramp Project (Project), No. 24-PW-285, will install new curb ramps that are in compliance with the Americans with Disabilities Act (ADA).

The CDBG capital improvement allocation for the Project was approved by the City Council on May 1, 2023, for the Program Year 2023-24. The Annual Action Plan identified the sidewalk and curb ramp projects as public improvements that create safe pedestrian pathways in low and moderate-income neighborhoods. Based on U.S.

Census tract data, Gilroy has neighborhoods that meet the low and moderate-income thresholds. The curb ramps identified in this project were chosen at locations in these neighborhoods where they don't currently exist.

Staff advertised the Project in the San Jose Mercury News and on the City's website and received six bids. After a successful bid opening, staff recommends awarding a contract to the lowest bidder, ASG Builders, of Mountain View, CA, in the amount of $97,290. In addition, staff recommends approval of a contingency in an amount not to exceed $19,458. Including the base bid amount and contingency, the Council is requested to approve a maximum expenditure of $116,748 to construct the Project. The entire Project will be funded through grant money received from the CDBG Program.

BACKGROUND

The City is a designated "entitlement" jurisdiction participating in HUD's CDBG Program. This classification as an "entitlement" jurisdiction allows the City to receive an annual allocation of CDBG funds. The City is required to spend a minimum amount of these funds each year. The City is also required to submit an Annual Action Plan (Plan), which identifies specific projects/activities within that fiscal/program year. Staff from the Community Development and Public Works Departments collaborated to identify projects that qualify as defined by HUD.

Eligible activities that can be funded under Capital Improvements include the annual curb ramp and sidewalk improvements, principally within low and moderate-income neighborhoods. The FY24 Annual CDBG Sidewalk/Curb Ramp Project, No. 24-PW-285, was created to install new curb ramps that are in compliance with ADA. Staff identified substandard sidewalks, curb ramps, and areas that lack curb ramps in low and moderate-income neighborhoods and assembled a bid package to keep costs within available CDBG funds.

ANALYSIS

The 13 curb ramps included in this year's project are located at the following intersections:

1. 7th St/ Dowdy St (3)
2. 7th St/ Carmel St (4)
3. Hanna St/ La Sierra Wy (2)
4. Hanna St/ Broadway St (1)
5. Rosanna St/ 2nd St (2)
6. Rosanna St/ Fourth St (1)

Staff advertised the Project in the San Jose Mercury News and on the City's website and received six bids. A summary of the bid results is shown below:

RANK	COMPANY NAME	TOTAL BID AMOUNT
1	ASG Builders	$ 97,290
2	McKim Corporation	$ 174,500
3	FBD Vanguard	$ 177,432
4	JJR Construction	$ 215,415
5	Precision Grade	$ 230,310
6	Inder Design Build LLC	$ 238,610

After a successful bid opening, staff recommends awarding a contract to the lowest bidder, ASG Builders, in the amount of $97,290. In addition, staff recommends approval of a contingency in an amount not to exceed $19,458. Council is requested to approve a maximum expenditure of $116,748, including the base bid amount and contingency, to construct the Project.

The Project will be funded through grant money received from the CDBG Program. Staff identified and prioritized work for infrastructure improvements based on the following criteria: (1) installing new curb ramps on streets that currently don't have ramps, and (2) installing curb ramps on streets to be resurfaced or rehabilitated in upcoming pavement rehabilitation projects. Based on the Engineer's Estimate, it was anticipated that there would be enough CDBG funds to upgrade a total of 13 curb ramps in FY24. Therefore, staff identified 13 locations that would require curb ramps to be constructed.

ALTERNATIVES

The alternative to the staff recommendations is to reject all bids. Staff does not recommend this option as there is a grant deadline to spend the monies and submit reimbursement to HUD by mid-April 2024, thus jeopardizing the allocation of future CDBG funds from HUD due to not utilizing funds in a timely manner.

FISCAL IMPACT/FUNDING SOURCE

Staff recommends the award of the contract in the amount of $97,290 and approves a contingency amount of $19,458 for a total construction authorization of $116,748. The City's CDBG Fund (Fund 245) receives CDBG Program funding annually from HUD. The funding for this Project is through the City's approved FY 2023-24 CDBG allocation. There are sufficient budgetary appropriations available to accommodate this project's expenditure.

PUBLIC OUTREACH

Affected residents will be notified in advance of the construction by the contractor.

NEXT STEPS

Upon Council's approval of this contract, the contract will be executed, and staff will work with the contractor to develop a final project schedule to begin construction in

March 2024.

Attachments:

1. ASG Builders- Agreement

SECTION 00500
AGREEMENT

FY24 ANNUAL CDBG SIDEWALK/CURB RAMP PROJECT NO. 24-PW-285

THIS AGREEMENT, made this 5th day of February, 2023, by and between the **City of Gilroy**, hereinafter called the "City," and ASG Builders hereinafter called the "Contractor."

WITNESSETH:

WHEREAS, the City has caused the Contract Documents to be prepared comprised of bidding and contract requirements and technical specifications and drawings for the construction of the FY24 Annual CDBG Sidewalk/Curb Ramp Project No. 24-PW-285, as described therein, and

WHEREAS, the Contractor has offered to perform the proposed work in accordance with the terms of the Contract Documents.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the City and Contractor agree as follows:

Article 1. Work.

Contractor shall complete the Work as specified or indicated in the Contract Documents.

Article 2. Contract Time.

The Work shall be completed by the Contractor in accordance with the Contract Documents within the time period required by Paragraph 00810-2.0, Time Allowed for Completion, subject to extension as expressly provided in the Contract Documents.

Article 3. Liquidated Damages.

The city and the contractor recognize that the city will suffer substantial damages and significant financial loss as a result of the contractor's delays in performance of the work described in the contract documents. The city and the contractor hereby acknowledge and agree that the damages and financial loss sustained as a result of any such delays in performance will be extremely difficult and impractical

to ascertain. Therefore, the city and contractor hereby agree that in the event of such delays in performance, the city shall be entitled to compensation by way of liquidated damages (and not penalty) for the detriment resulting therefrom in accordance with paragraph 00700-6.5, liquidated damages, of the contract documents. The city and the contractor further agree that the amounts designated as liquidated damages are a reasonable estimate of the city's damages and financial loss in the event of any such delays in performance considering all of the circumstances existing as of the date of this agreement, including the relationship of such amounts to the range of harm to the city which reasonably could be anticipated as of the date of this agreement and the expectation that proof of actual damages would be extremely difficult and impractical.

By initialing this paragraph below, the parties hereto signify their approval and consent to the terms of this article 3.

	361
City's Initials	**Contractors Initials**

Article 4. Contract Price.
In consideration of the Contractors performance of the Work in accordance with the Contract Documents, the City shall pay the Contract Price set forth in the Contract Documents.

Article 5. Contract Documents.
The Contract Documents which comprise the entire agreement between City and Contractor concerning the Work consist of this Agreement (Section 00500 of the Contract Documents) and the following, all of which are hereby incorporated into this Agreement by reference with the same force and effect as if set forth in full.

Invitation to Bid
Instructions to Bidders
Bid Documents
Designation of Subcontractors
Bid Guaranty Bond
Agreement
Acknowledgements
Performance Bond
Payment Bond
General Conditions
Supplementary Conditions
General Requirements
Standard Specifications (Caltrans)
Technical Specifications

Drawings
Addenda, if any
Executed Change Orders, if any
Maintenance Bond
Notice of Award
Notice to Proceed

Article 6. Miscellaneous.
Capitalized terms used in this Agreement which are defined in Section 01090, References, of the Contract Documents will have the meanings set forth in Section 01090, References.

Contractor shall not assign any rights, obligations, duties, or responsibilities under or interest in the Contract Documents without the prior written consent of the City, which consent may be withheld by the City in its sole discretion. No assignment by the Contractor of any rights, obligations, duties or responsibilities under or interests in the Contract Documents will be binding on the City without the prior written consent of the City (which consent may be withheld in City's sole discretion); and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, executed by the City, no assignment will release or discharge the assignor from any liability, duty, obligation, or responsibility under the Contract Documents.

Subject to the foregoing, the Contract Documents shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Nothing contained in the Contract Documents shall in any way constitute a personal obligation of or impose any personal liability on any employees, officers, directors, agents or representatives of the City or its successor and assigns.

In accordance with California Business and Professions Code Section 7030, the Contractor is required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against Contractors if a complaint regarding a latent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning the Contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

IN WITNESS WHEREOF, this agreement has been executed on this day of February 5, 2024.

ASG1 Builders
Name of Contractor

Signature of Contractor

CEO
Title of Signator

ATTEST:

Signature

COO
Title of Signator

Signature of City

City Administrator
Title of Signator

Approved as to form by
City Attorney

ATTEST:

Signature

Title of Signator

*****END OF SECTION*****

8.2. Award a Contract to Hexagon Transportation Consultants, Inc. for the First Street (SR152)/Kern Avenue Traffic Signal Design Project No. 24-RFP-PW-494 in the amount of $264,685, Approve a Project Contingency of $39,703, and Approve a Total Project Expenditure of $304,388 for Design Services

1. Staff Report:
2. Public Comment
3. Possible Action:

   Adopt a resolution of the City Council of the City of Gilroy amending the Fiscal Year 2023-2024 budget and appropriating an additional $121,821 from the Traffic Impact Fund (425).

   Award a contract to Hexagon Transportation Consultants, Inc. in the amount of $264,685 and approve a project contingency of $39,703 for a total project expenditure of $304,388 for the design and preparation of bid documents for the First Street (SR152)/Kern Avenue Traffic Signal Design Project No. 24-RFP-PW-494 and authorize the City Administrator to execute the contract and associated documents.

City of Gilroy

STAFF REPORT

Agenda Item Title:	**Award a Contract to Hexagon Transportation Consultants, Inc. for the First Street (SR152)/Kern Avenue Traffic Signal Design Project No. 24-RFP-PW-494 in the amount of $264,685, Approve a Project Contingency of $39,703, and Approve a Total Project Expenditure of $304,388 for Design Services**
Meeting Date:	February 5, 2024
From:	Jimmy Forbis, City Administrator
Department:	Public Works
Submitted By:	Karl Bjarke, Interim Public Works Director
Prepared By:	Julie Oates, Engineer II

STRATEGIC PLAN GOALS Maintain and Improve City Infrastructure

RECOMMENDATION

a) Adopt a resolution of the City Council of the City of Gilroy amending the Fiscal Year 2023-2024 budget and appropriating an additional $121,821 from the Traffic Impact Fund (425).

b) Award a contract to Hexagon Transportation Consultants, Inc. in the amount of $264,685 and approve a project contingency of $39,703 for a total project expenditure of $304,388 for the design and preparation of bid documents for the First Street (SR152)/Kern Avenue Traffic Signal Design Project No. 24-RFP-PW-494 and authorize the City Administrator to execute the contract and associated documents.

EXECUTIVE SUMMARY

This project includes the design and preparation of bid documents for traffic signal improvements at the First Street (SR152)/Kern Avenue intersection (Project Intersection). The Fiscal Year 2024-2028 Capital Improvement Program (CIP), which was adopted by the City Council on June 5, 2023, funded the design (in FY24) and the

construction (in FY25) of a new traffic signal at the Project Intersection. Since the Project Intersection is within the Caltrans right-of-way, the traffic signal design will need to go through the Caltrans review and encroachment permit process, as well as the City's review process. Staff recommends awarding a contract to Hexagon Transportation Consultants, Inc., of Gilroy, CA, to design and prepare the bid documents for the new traffic signal improvements at the Project Intersection. The proposed contract amount is $264,685. Staff requests authorization for $39,703 in contingency for a total project expenditure of $304,388.

BACKGROUND

The First Street (SR152)/Kern Avenue intersection (i.e., Project Intersection) is a "T" intersection that currently operates with one-way stop control on the southbound Kern Avenue approach. Since First Street is part of California State Route 152, the Project Intersection is within the Caltrans right-of-way. Recent changes at the Project Intersection include a new crosswalk and pedestrian hybrid beacon across the east leg of the intersection, which was installed by Caltrans in the Fall of 2020. In addition, the pavement markings on the southbound Kern Avenue approach were recently modified to prohibit southbound left turns from Kern Avenue to First Street. The pavement marking changes were done in conjunction with the recently constructed and occupied apartment complex near the Project Intersection. The pedestrian hybrid beacon and pavement marking modifications were implemented as interim measures to improve safety and traffic operations until a new traffic signal could be constructed at the Project Intersection.

The Fiscal Year 2024-2028 Capital Improvement Program (CIP), which was adopted by the City Council on June 5, 2023, funded the design (in FY24) and construction (in FY25) of a new traffic signal at the Project Intersection. The first phase of the design process will include a traffic operations analysis. It is anticipated that left turns from Kern Avenue to First Street will be reinstated as part of the new traffic signal design. The existing pedestrian hybrid beacon at the Project Intersection will no longer be needed and will be removed. To the extent possible, the equipment and underground infrastructure associated with the pedestrian hybrid beacon will be repurposed.

Since the Project Intersection is within the Caltrans right-of-way, the traffic signal design will need to go through the Caltrans review and encroachment permit process, as well as the City's review process.

ANALYSIS

On October 20, 2023, a Request for Proposals (RFP) was issued to seven consultants on the City's prequalified list of design consultants (from a previous Request for Qualifications) to provide professional services for designing traffic signal improvements at the Project Intersection.

The City received five proposals from the following consultant teams:

- Advanced Mobility Group
- Hexagon Transportation Consultants, Inc.
- Kimley-Horn
- Ruggeri-Jensen-Azar
- TJKM

The proposals were evaluated by a scoring committee and ranked per the criteria identified in the RFP. Hexagon Transportation Consultants, Inc. (Hexagon) was ranked the highest and was selected to design the traffic signal improvements based on their local knowledge, experience, project understanding, project approach, and schedule.

ALTERNATIVES

The alternative to the staff recommendation is not to award the contract. Staff does not recommend this option because it would delay the design and, ultimately, the construction of the new traffic signal improvements.

FISCAL IMPACT/FUNDING SOURCE

Hexagon's proposed cost for the design services is $264,685. Staff recommends a contingency of $39,703 to address unanticipated changes or requests made by outside agencies (such as Caltrans). Therefore, the total expenditure allocation request is $304,388.

The project will be funded by the Traffic Impact Fund (425). The current FY24 CIP budget of $182,567 for design services is not sufficient to fund the design of the project. Staff recommends the City Council adopt a resolution amending the FY24 budget and appropriating an additional $121,821 from the Traffic Impact Fund (425) to fund the design of the project fully.

PUBLIC OUTREACH

There is no public outreach planned during the design phase of the project. Appropriate public outreach will be conducted for the construction phase of the project.

NEXT STEPS

If Council approves the proposed contract with Hexagon, staff will direct the consultant to begin the design process. Final design and bid documents are anticipated to be completed in early 2025. Bidding and construction would begin soon after the design and bid documents are completed.

Attachments:

1. Draft Resolution
2. Hexagon - Agreement

RESOLUTION 2024-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GILROY AMENDING THE BUDGET FOR THE CITY OF GILROY FOR 2023-2024 AND APPROPRIATING PROPOSED EXPENDITURE AMENDMENTS

WHEREAS, the City Administrator prepared and submitted to the City Council a budget for the City of Gilroy for Fiscal Years 2023-2024 and 2024-2025, and the City Council carefully examined, considered, and adopted the same on June 5, 2023; and

WHEREAS, City Staff has prepared and submitted to the City Council proposed amendments to said budget for Fiscal Year 2023-2024 for the City of Gilroy in the staff report dated February 5, 2024, for the First Street (SR152)/Kern Avenue Traffic Signal Design Project, City Project No. 24-RFP-PW-494.

NOW, THEREFORE, BE IT RESOLVED THAT the appropriations for Fiscal Year 2023-2024 for Traffic Impact Fund 425 shall be increased by $121,821.

PASSED AND ADOPTED by the City Council of the City of Gilroy at a regular meeting duly held on the 5th day of February 2024 by the following roll call vote:

AYES:	**COUNCIL MEMBERS:**
NOES:	**COUNCIL MEMBERS:**
ABSTAIN:	**COUNCIL MEMBERS:**
ABSENT:	**COUNCIL MEMBERS:**

APPROVED:

_____
Marie Blankley, Mayor

ATTEST:

_____
Thai Nam Pham, City Clerk

AGREEMENT FOR SERVICES
(For design professional contracts over $5,000)

This AGREEMENT made this 5th day of February, 2024 between:

CITY: City of Gilroy, having a principal place of business at 7351 Rosanna Street, Gilroy, California

and CONSULTANT: Hexagon Transportation Consultants, Inc., having a principal place of business at 100 Century Center Court, Suite 501, San Jose, CA 95112.

ARTICLE 1. TERM OF AGREEMENT

This Agreement will become effective on February 26, 2024 and will continue in effect through December 31, 2026 unless terminated in accordance with the provisions of **Article 7** of this Agreement.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

It is the express intention of the parties that CONSULTANT is an independent contractor and not an employee, agent, joint venturer or partner of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT or any employee or agent of CONSULTANT. Both parties acknowledge that CONSULTANT is not an employee for state or federal tax purposes. CONSULTANT shall not be entitled to any of the rights or benefits afforded to CITY'S employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement benefits or any other employment benefits. CONSULTANT shall retain the right to perform services for others during the term of this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONSULTANT

A. Specific Services

CONSULTANT agrees to: perform the services as outlined in **Exhibit "A"** ("Specific Provisions") and **Exhibit "B"** ("Scope of Services") within the time periods described in and **Exhibit "C"** ("Milestone Schedule").

B. Method of Performing Services

CONSULTANT shall determine the method, details and means of performing the above-described services. CITY shall have no right to, and shall not, control the manner or determine the method of accomplishing CONSULTANT'S services.

C. Employment of Assistants

CONSULTANT may, at the CONSULTANT'S own expense, employ such assistants as CONSULTANT deems necessary to perform the services required of CONSULTANT by this Agreement, subject to the prohibition against assignment and subcontracting contained in **Article 5** below. CITY may not control, direct, or supervise CONSULTANT'S assistants in the performance of those services. CONSULTANT assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholding.

D. Place of Work

CONSULTANT shall perform the services required by this Agreement at any place or location and at such times as CONSULTANT shall determine is necessary to properly and timely perform CONSULTANT'S services.

ARTICLE 4. COMPENSATION

A. Consideration

In consideration for the services to be performed by CONSULTANT, CITY agrees to pay CONSULTANT the amounts set forth in **Exhibit "D"**. In no event however shall the total compensation paid to CONSULTANT exceed $264,685.00.

B. Invoices

CONSULTANT shall submit invoices for all services rendered.

C. Payment

Payment shall be due according to the payment schedule set forth in **Exhibit "D"**. No payment will be made unless CONSULTANT has first provided City with a written receipt of invoice describing the work performed and any approved direct expenses (as provided for in **Exhibit "A"**, **Section IV**) incurred during the preceding period. If CITY objects to all or any portion of any invoice, CITY shall notify CONSULTANT of the objection within thirty (30) days from receipt of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute. It shall not constitute a default or breach of this Agreement for CITY not to pay any invoiced amounts to which it has objected until the objection has been resolved by mutual agreement of the parties.

D. Expenses

CONSULTANT shall be responsible for all costs and expenses incident to the performance of services for CITY, including but not limited to, all costs of equipment used or provided by CONSULTANT, all fees, fines, licenses, bonds or taxes required of or imposed against CONSULTANT and all other of CONSULTANT'S costs of doing business. CITY shall not be responsible for any expenses incurred by CONSULTANT in performing services for CITY, except for those expenses constituting "direct expenses" referenced on Exhibit "A."

ARTICLE 5. OBLIGATIONS OF CONSULTANT

A. Tools and Instrumentalities

CONSULTANT shall supply all tools and instrumentalities required to perform the services under this Agreement at its sole cost and expense. CONSULTANT is not required to purchase or rent any tools, equipment or services from CITY.

B. Workers' Compensation

CONSULTANT agrees to provide workers' compensation insurance for CONSULTANT'S employees and agents and agrees to hold harmless, defend with counsel acceptable to CITY and indemnify CITY, its officers, representatives, agents and employees from and against any and all claims, suits, damages, costs, fees, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, arising out of any injury, disability, or death of any of CONSULTANT'S employees.

C. Indemnification of Liability, Duty to Defend

1. As to professional liability, to the fullest extent permitted by law, CONSULTANT shall defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, to the extent arising or resulting directly or indirectly from any willful or negligent acts, errors or omissions of CONSULTANT or CONSULTANT'S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

2. As to other liability, to the fullest extent permitted by law, CONSULTANT shall defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, arising or resulting directly or indirectly from any act or omission of CONSULTANT or CONSULTANT'S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

D. Insurance

In addition to any other obligations under this Agreement, CONSULTANT shall, at no cost to CITY, obtain and maintain throughout the term of this Agreement: (a) Commercial Liability Insurance on a per occurrence basis, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of $1,000,000 per occurrence for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof; and (b) Professional Liability Insurance (Errors & Omissions) with a minimum coverage of $1,000,000 per occurrence or claim, and $2,000,000 aggregate; provided however, Professional Liability Insurance written on a claims made basis must comply with the requirements set forth below. Professional Liability Insurance written on a claims made basis (including without

limitation the initial policy obtained and all subsequent policies purchased as renewals or replacements) must show the retroactive date, and the retroactive date must be before the earlier of the effective date of the contract or the beginning of the contract work. Claims made Professional Liability Insurance must be maintained, and written evidence of insurance must be provided, for at least five (5) years after the completion of the contract work. If claims made coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the earlier of the effective date of the contract or the beginning of the contract work, CONSULTANT must purchase so called "extended reporting" or "tail" coverage for a minimum of five (5) years after completion of work, which must also show a retroactive date that is before the earlier of the effective date of the contract or the beginning of the contract work. As a condition precedent to CITY'S obligations under this Agreement, CONSULTANT shall furnish written evidence of such coverage (naming CITY, its officers and employees as additional insureds on the Comprehensive Liability insurance policy referred to in (a) immediately above via a specific endorsement) and requiring thirty (30) days written notice of policy lapse or cancellation, or of a material change in policy terms.

E. Assignment

Notwithstanding any other provision of this Agreement, neither this Agreement nor any duties or obligations of CONSULTANT under this Agreement may be assigned or subcontracted by CONSULTANT without the prior written consent of CITY, which CITY may withhold in its sole and absolute discretion.

F. State and Federal Taxes

As CONSULTANT is not CITY'S employee, CONSULTANT shall be responsible for paying all required state and federal taxes. Without limiting the foregoing, CONSULTANT acknowledges and agrees that:

- CITY will not withhold FICA (Social Security) from CONSULTANT'S payments;
- CITY will not make state or federal unemployment insurance contributions on CONSULTANT'S behalf;
- CITY will not withhold state or federal income tax from payment to CONSULTANT;
- CITY will not make disability insurance contributions on behalf of CONSULTANT;
- CITY will not obtain workers' compensation insurance on behalf of CONSULTANT.

G. Prevailing Wage

CONTSULTANT agrees and acknowledges that it is its obligation to determine whether, and to what extent, any work performed is or any workers employed relative to any construction to be performed under this Agreement are subject to any Codes, Ordinances, Resolutions, Rules and other Regulations and established policies of CITY and the laws of the State of California and the United States, including, without limitation, the California Labor Code and Public Contract Code relating to public contracting and prevailing wage requirements ("Prevailing Wage Laws"). To the extent Prevailing Wage Laws apply to work performed or workers employed for the purpose of performing work under this Agreement, CONTSULTANT shall fully comply with and ensure that all workers and/or subcontractors are informed of and comply with all Prevailing Wage Laws and specifically any applicable requirement of California Labor Code Sections 1720 et seq. and 1770 et seq. and the regulations thereunder, which require the payment of prevailing wage rates based on labor classification, as determined by the State of California, and the performance of other requirements on certain "public works" or "maintenance" projects. It is the duty of CONTRACTOR to post a copy of applicable prevailing wages at the job site. Prevailing wage information may be obtained at www.dir.ca.gov.

No CONSULTANT or Subconsultant may be awarded an Agreement containing Public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code 1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.

ARTICLE 6. OBLIGATIONS OF CITY

A. Cooperation of City

CITY agrees to respond to all reasonable requests of CONSULTANT and provide access, at reasonable times following receipt by CITY of reasonable notice, to all documents reasonably necessary to the performance of CONSULTANT'S duties under this Agreement.

B. Assignment

CITY may assign this Agreement or any duties or obligations thereunder to a successor governmental entity without the consent of CONSULTANT. Such assignment shall not release CONSULTANT from any of CONSULTANT'S duties or obligations under this Agreement.

ARTICLE 7. TERMINATION OF AGREEMENT

A. Sale of Consultant's Business/ Death of Consultant.

CONSULTANT shall notify CITY of the proposed sale of CONSULTANT's business no later than thirty (30) days prior to any such sale. CITY shall have the option of terminating this Agreement within thirty (30) days after receiving such notice of sale. Any such CITY termination pursuant to this **Article 7.A** shall be in writing and sent to the address for notices to CONSULTANT set forth in **Exhibit A, Subsection V.I.**, no later than thirty (30) days after CITY' receipt of such notice of sale.

If CONSULTANT is an individual, this Agreement shall be deemed automatically terminated upon death of CONSULTANT.

B. Termination by City for Default of Consultant

Should CONSULTANT default in the performance of this Agreement or materially breach any of its provisions, CITY, at CITY'S option, may terminate this Agreement by giving written notification to CONSULTANT. For the purposes of this section, material breach of this Agreement shall include, but not be limited to the following:

1. CONSULTANT'S failure to professionally and/or timely perform any of the services contemplated by this Agreement.

2. CONSULTANT'S breach of any of its representations, warranties or covenants contained in this Agreement.

CONSULTANT shall be entitled to payment only for work satisfactorily completed through the date of the termination notice, as reasonably determined by CITY, provided that such payment shall not exceed the amounts set forth in this Agreement for the tasks described on Exhibit C" which have been fully, competently and timely rendered by CONSULTANT. Notwithstanding the foregoing, if CITY terminates this Agreement due to CONSULTANT'S default in the performance of this Agreement or material breach by CONSULTANT of any of its provisions, then in addition to any other rights and remedies CITY may have, CONSULTANT shall reimburse

CITY, within ten (10) days after demand, for any and all costs and expenses incurred by CITY in order to complete the tasks constituting the scope of work as described in this Agreement, to the extent such costs and expenses exceed the amounts CITY would have been obligated to pay CONSULTANT for the performance of that task pursuant to this Agreement.

C. Termination for Failure to Make Agreed-Upon Payments

Should CITY fail to pay CONSULTANT all or any part of the compensation set forth in Article 4 of this Agreement on the date due, then if and only if such nonpayment constitutes a default under this Agreement, CONSULTANT, at the CONSULTANT'S option, may terminate this Agreement if such default is not remedied by CITY within thirty (30) days after demand for such payment is given by CONSULTANT to CITY.

D. Transition after Termination

Upon termination, CONSULTANT shall immediately stop work, unless cessation could potentially cause any damage or harm to person or property, in which case CONSULTANT shall cease such work as soon as it is safe to do so. CONSULTANT shall incur no further expenses in connection with this Agreement. CONSULTANT shall promptly deliver to CITY all work done toward completion of the services required hereunder, and shall act in such a manner as to facilitate any the assumption of CONSULTANT's duties by any new consultant hired by the CITY to complete such services.

ARTICLE 8. GENERAL PROVISIONS

A. Amendment & Modification

No amendments, modifications, alterations or changes to the terms of this Agreement shall be effective unless and until made in a writing signed by both parties hereto.

B. Americans with Disabilities Act of 1990

Throughout the term of this Agreement, the CONSULTANT shall use due professional care to comply fully with all applicable provisions of the Americans with Disabilities Act of 1990 ("the Act") in its current form and as it may be amended from time to time. CONSULTANT shall also require such compliance of all subcontractors performing work under this Agreement, subject to the prohibition against assignment and subcontracting contained in Article 5 above. The CONSULTANT shall defend with counsel acceptable to CITY, indemnify and hold harmless the CITY OF GILROY, its officers, employees, agents and representatives from and against all suits, claims, demands, damages, costs, causes of action, losses, liabilities, expenses and fees, including without limitation attorneys' fees, that may arise out of any violations of the Act by the CONSULTANT, its subcontractors, or the officers, employees, agents or representatives of either.

C. Attorneys' Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable

attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

D. Captions

The captions and headings of the various sections, paragraphs and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

E. Compliance with Laws

The CONSULTANT shall keep itself informed of all State and National laws and all municipal ordinances and regulations of the CITY which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Without limiting the foregoing, CONSULTANT agrees to observe the provisions of the Municipal Code of the CITY OF GILROY, obligating every contractor or subcontractor under a contract or subcontract to the CITY OF GILROY for public works or for goods or services to refrain from discriminatory employment or subcontracting practices on the basis of the race, color, sex, religious creed, national origin, ancestry of any employee, applicant for employment, or any potential subcontractor.

F. Conflict of Interest

CONSULTANT certifies that to the best of its knowledge, no CITY employee or office of any public agency interested in this Agreement has any pecuniary interest in the business of CONSULTANT and that no person associated with CONSULTANT has any interest that would constitute a conflict of interest in any manner or degree as to the execution or performance of this Agreement.

G. Entire Agreement

This Agreement supersedes any and all prior agreements, whether oral or written, between the parties hereto with respect to the rendering of services by CONSULTANT for CITY and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

No other agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Such other agreements or conversations shall be considered as unofficial information and in no way binding upon CITY.

H. Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflict of laws provisions of any jurisdiction. The exclusive jurisdiction and venue with respect to any and all disputes arising hereunder shall be in state and federal courts located in Santa Clara County, California.

I. Notices

Any notice to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in **Exhibit "A"**, **Section V.I.** but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed delivered as of actual receipt; mailed notices will be deemed delivered as of three (3) days after mailing.

J. Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

K. Time of the Essence

All dates and times referred to in this Agreement are of the essence.

L. Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

Executed at Gilroy, California, on the date and year first above written.

CONSULTANT:	**CITY:**
HEXAGON TRANSPORTATION CONSULTANTS, INC.	CITY OF GILROY
By: Jeff A. Elia	By:
Name: Jeffrey Elia, PE	Name: Jimmy Forbis
Title: Vice President, Principal Associate	Title: City Administrator
Social Security or Taxpayer Identification Number 77-0478675	
Approved as to Form	ATTEST:
City Attorney	City Clerk

EXHIBIT "A"

SPECIFIC PROVISIONS

I. PROJECT MANAGER

CONSULTANT shall provide the services indicated on the attached **Exhibit "B"**, Scope of Services ("Services"). (All exhibits referenced are incorporated herein by reference.) To accomplish that end, CONSULTANT agrees to assign Jeffrey Elia, PE, who will act in the capacity of Project Manager, and who will personally direct such Services.

Except as may be specified elsewhere in this Agreement, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the Services required herein.

II. NOTICE TO PROCEED/COMPLETION OF SERVICE

A. NOTICE TO PROCEED

CONSULTANT shall commence the Services upon delivery to CONSULTANT of a written "Notice to Proceed", which Notice to Proceed shall be in the form of a written communication from designated City contact person(s). Notice to Proceed may be in the form of e-mail, fax or letter authorizing commencement of the Services. For purposes of this Agreement, Jorge Duran, PE shall be the designated City contact person(s). Notice to Proceed shall be deemed to have been delivered upon actual receipt by CONSULTANT or if otherwise delivered as provided in the **Section V.I.** ("Notices") of this **Exhibit "A"**.

B. COMPLETION OF SERVICES

When CITY determines that CONSULTANT has satisfactorily completed all of the Services, CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has satisfactorily completed all of the Services and, if so requested, CITY shall make this determination within two (2) weeks of such request, or if CITY determines that CONSULTANT has not satisfactorily completed all of such Services, CITY shall so inform CONSULTANT within this two (2) week period.

III. PROGRESS SCHEDULE

The schedule for performance and completion of the Services will be as set forth in the attached **Exhibit "C"**.

IV. PAYMENT OF FEES AND DIRECT EXPENSES

Payments shall be made to CONSULTANT as provided for in **Article 4** of this Agreement.

Direct expenses are charges and fees not included in **Exhibit "B"**. CITY shall be obligated to pay only for those direct expenses which have been previously approved in writing by CITY. CONSULTANT shall obtain written approval from CITY prior to incurring or billing of direct expenses.

Copies of pertinent financial records, including invoices, will be included with the submission of billing(s) for all direct expenses.

V. OTHER PROVISIONS

A. CONSULTANT'S SERVICES TO BE APPROVED BY A REGISTERED PROFESSIONAL ENGINEER

All civil (including structural and geotechnical) engineering plans, calculations, specifications and reports shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary" or "for review only." All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping.

B. STANDARD OF WORKMANSHIP

CONSULTANT represents and warrants that it has the qualifications, skills and licenses necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT'S representations and warranties regarding its skills, qualifications and licenses. CONSULTANT shall perform such Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

Any plans, designs, specifications, estimates, calculations, reports and other documents furnished under this Agreement shall be of a quality acceptable to CITY. The minimum criteria for acceptance shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar purposes.

C. RESPONSIBILITY OF CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of the Services furnished by it under this Agreement. The CITY'S review, acceptance or payment for any of the Services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and CONSULTANT shall be and remain liable to CITY in accordance with applicable

law for all damages to CITY caused by CONSULTANT'S negligent performance of any of the services furnished under this Agreement.

D. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

CITY, through its authorized employees, representatives or agents, shall have the right, at any and all reasonable times, to audit the books and records (including, but not limited to, invoices, vouchers, canceled checks, time cards, etc.) of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years (from the date of final payment to CONSULTANT), or for any longer period required by law, sufficient books and records in accordance with standard California accounting practices to establish the correctness of all charges submitted to CITY by CONSULTANT, all of which shall be made available to CITY at the CITY's offices within five (5) business days after CITY's request.

E. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data (including, but not limited to, computer data and source code), drawings, descriptions, documents, discussions or other information developed or received by or for CONSULTANT and all other written and oral information developed or received by or for CONSULTANT and all other written and oral information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY, be used for any purposes other than the performance of the Services, nor be disclosed to an entity not connected with the performance of the such Services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry (other than that which becomes generally known as the result of CONSULTANT'S disclosure thereof) shall be deemed confidential. CONSULTANT shall not use CITY'S name or insignia, or distribute publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

F. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

G. OWNERSHIP OF MATERIAL.

All material including, but not limited to, computer information, data and source code, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared (or caused to be prepared) under this Agreement shall be the property of CITY, but CONSULTANT may retain and use copies thereof subject to **Section V.E** of this **Exhibit "A"**.

CITY shall not be limited in any way in its use of said material at any time for any work, whether or not associated with the City project for which the Services are performed.

H. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

I. NOTICES.

Notices are to be sent as follows:

CITY:	Jorge Duran, PE City of Gilroy 7351 Rosanna Street Gilroy, CA 95020
CONSULTANT:	Jeffrey Elia, PE Hexagon Transportation Consultants, Inc. 8070 Santa Teresa Blvd Suite 230 Gilroy, CA 95020

J. FEDERAL FUNDING REQUIREMENTS.

☐ If the box to the left of this sentence is checked, this Agreement involves federal funding and the requirements of this **Section V.J.** apply.

☒ If the box to the left of this sentence is checked, this Agreement does not involve federal funding and the requirements of this **Section V.J.** do not apply.

1. DBE Program

CONSULTANT shall comply with the requirements of Title 49, Part 26, Code of Federal Regulations (49 CFR 26) and the City-adopted Disadvantaged Business Enterprise programs.

2. Cost Principles

Federal Acquisition Regulations in Title 48, CFR 31, shall be used to determine the allowable cost for individual items.

3. Covenant against Contingent Fees

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Local Agency shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

EXHIBIT "B"

SCOPE OF SERVICES

HEXAGON TRANSPORTATION CONSULTANTS, INC.

Cover Letter

November 10, 2023

Ms. Carina Baksa
City of Gilroy
7351 Rosanna Street
Gilroy, California 95020

Re: Request for Proposals Engineering Services for First Street (SR 152)/Kern Avenue Traffic Signal Design Project No. 24-RFP-PW-494

Dear Ms. Baksa,

Hexagon Transportation Consultants, Inc. is pleased to submit this proposal for Professional Services for the signalization of First Street and Kern Avenue. Our consulting team includes *RJA* for civil engineering and survey work and *David J. Powers and Associates* for environmental clearance work.

Over the last 20 years, Hexagon has worked closely with the City of Gilroy on a wide range of transportation projects, including design plans for traffic signal improvements at 3rd Street/Wren Avenue, 10th Street/Church Street, Cameron Boulevard/SR 152, and Cameron Boulevard/McCarthy Business Park driveway as well as dozens of other traffic engineering and planning projects.

We have built our firm around three fundamental principles. First, we are committed to delivering the highest quality work. Second, we deliver products when we promise them. Finally, we are accessible and responsive.

All members of our team possess the technical expertise and the local experience in Gilroy to provide the services necessary to achieve all of this project's objectives. We are excited about the opportunity to work with the City to improve safety and operations at this intersection.

Hexagon's principal contact person will be our Vice President, Jeffrey Elia, P.E. He is a licensed Civil Engineer in the State of California and is also empowered to bind the firm in contract. Mr. Elia works in Hexagon's Gilroy office and is readily available to attend meetings at City Hall or in the field, as necessary. Mr. Elia's contact information is as follows:

8070 Santa Teresa Boulevard, Suite 230, Gilroy, CA 95020 | (408) 846-7413 | jelia@hextrans.com

We appreciate the opportunity to submit this proposal for your consideration. Please do not hesitate to contact us if additional information is needed.

Sincerely,

HEXAGON TRANSPORTATION CONSULTANTS, INC.

Jeffrey Elia, P.E.
Vice President

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1. Project Understanding and Project Approach

Project Understanding

A traffic signal will be installed at the intersection of First Street (SR 152) and Kern Avenue to provide full signal control of vehicles, bicycles, and pedestrians. This "T" intersection currently operates with one-way stop control on the Kern Avenue approach. In Fall of 2020, Caltrans installed a crosswalk and a pedestrian hybrid beacon (PHB) across the east leg of the intersection. Earlier this year the signing and striping on the Kern Avenue approach was modified to prohibit southbound left turns from Kern Avenue to First Street, presumably to address safety and operational issues associated with making that movement without the benefit of traffic signal control.

As part of the signalization project, the existing signal facilities associated with the PHB will need to be removed or modified and repurposed for the traffic signal project. It is our understanding that the existing lane configuration and the buffered bike lanes on First Street at the intersection will be maintained. We assume that the left-turn movement from Kern Avenue will be added back to the intersection with the installation of the traffic signal. Existing sidewalk widths, curb alignments, and corner radii will remain the same as existing. All four quadrants of the intersection have new curb ramps that appear to meet ADA standards. Unless signal pole placement or pedestrian push button access become an issue, we do not anticipate the need to rebuild any of the existing curb ramps.

Opportunities, Constratins, and Potential Issues

We have identified several opportunities, constraints, and potential key issues associated with traffic signal improvements at this location. These issues are discussed below.

Opportunities

Constructing a new traffic signal at this intersection will provide a safer and more efficient intersection by providing signal control of pedestrian crossings and left-turn vehicle movements. The north half of the intersection sits within the City's right-of-way (ROW), which limits Caltrans approval of geometric features to just the south half of the intersection. The existing signal controller cabinet and 2070 signal controller for the PHB system should be able to remain to control the new traffic signal. It appears that two or three of the four existing signal poles for the PHB system could remain in their current locations and be repurposed for the full signalization of the intersection. Much of the existing signal conduit system at the intersection for the PHB system consists of 3" conduits. These conduits should have plenty of capacity to be reused for the traffic signal system. The existing PG&E service point and meter pedestal providing power to the existing PHB system should be able to be reused for the new traffic signal system.

Constraints and Potential Key Issues

The sidewalk on the south side of First Street is about 5' wide. Therefore, any new signal poles placed on the south side of the intersection will require the existing fence line and hedges in front of the cemetery to be modified in order to accommodate the signal pole and ADA passage space within the sidewalk. It appears the fence line and hedges sit within Caltrans ROW. Caltrans plans for this intersection show the ROW line sitting about 16' south of the existing south curb line on First Street.

Currently the crosswalk across First Street is placed on the east leg of the intersection. At this position, the crosswalk will conflict with left-turn traffic from the Kern Avenue approach. With implementation of signal control, this will lead to some inefficiencies in traffic operations as the north-south pedestrian

phase and southbound left-turn vehicle movement will be operating at the same time. Under that scenario, left-turn vehicles will need to yield to pedestrians in the crosswalk, which is not the safest or most efficient signal phasing scheme. Our traffic operations analysis will evaluate whether it is beneficial to switch the crosswalk to the west leg of the intersection where it would conflict with right-turn traffic, as is the standard configuration for a T intersection.

The existing mast arm signal pole on the southeast quadrant of the intersection (for eastbound traffic) has a mast arm length of 35'. This mast arm is not long enough to hold a left-turn signal head for the eastbound left-turn movement when the intersection is signalized. As such, this pole likely will need to be removed and replaced with a new mast arm pole with a longer mast arm.

Project Approach

Our project team will coordinate to prepare construction drawings and bid documents for the improvement project. Additionally, our team will handle environmental clearance for the project. We will manage the Caltrans application and plan review process on behalf of the City.

Our work effort is divided into two phases. The **first phase** includes conducting a traffic operations analysis of the intersection with the proposed improvements and developing a conceptual design for City review and for input into the environmental clearance aspect of the project. The work in this phase will be used to complete the Intersection Control Evaluation (ICE) analysis that Caltrans will require. The **second phase** of work includes refining the design and developing construction plans for the improvements for City bidding. An important component of this effort will be working through the Caltrans review and permit process and addressing the needs of any other agencies involved.

Our scope of work assumes that the intersection and traffic signal improvements can be designed to meet applicable Caltrans standards. As such, we do not anticipate the need for a Design Standard Decision Document (DSDD) to be prepared for this project. Similarly, based on Caltrans form TR-0416 – Applicant's Checklist to Determine Applicable Review Process and on Figure 9-4 – Steps to Determine the Appropriate Caltrans Review Process of the Caltrans *Project Development Procedures Manual*, we expect the signalization project to be very straight forward, allowing it to be processed through the Caltrans Encroachment Permits Office Process (EPOP) rather than the more complicated Quality Management Assessment Process (QMAP).

After consulting with the Caltrans District 4 ICE Coordinator, we found that, because the type of intersection control will be changed, this project will be required to prepare an ICE analysis. Therefore, our scope of work includes preparing a Step 1 (screening) ICE analysis for the project. The assessment is needed primarily to rule out a roundabout or all-way stop control as viable options. The District 4 ICE Coordinator indicated that the need to prepare an ICE analysis is not a factor that is considered when determining whether a project can follow the simple EPOP process or whether it has to go through the more involved QMAP process. Therefore, we do not anticipate that the ICE analysis will complicate the Caltrans permit process.

Proposed Scope of Work

Traffic Signal Improvement Plans

The traffic signal plans will be designed to be compliant with applicable State and Federal Standards, modified for any special City standards and requirements. We will maximize the use of existing traffic

signal equipment, conduit, boxes, and cabinets currently associated with the PHB system in order to reduce construction cost and duration.

Intersection Improvement Plans

Existing sidewalks, curb returns, and curb ramps will be kept as is to the extent feasible in order to reduce construction cost and minimize disturbance to existing facilities. The existing ramps at the intersection meet current Caltrans ADA standards. RJA will prepare plans for any ramp or sidewalk modifications needed for the placement of new signal poles. We do not expect changes to the existing storm system or drainage patterns within the intersection. RJA will provide topographic surveys and ROW mapping over the limits of the project as described in the RFP. Benchmarks and control points for construction layout will be provided. An orthographic photo of the intersection will be utilized for the striping layout.

Signal Interconnect Plans

It is assumed that signal interconnect cable will be needed to connect the new signal to the existing signal at Westwood Drive – about 610' to the west. The signal design plans will include the necessary notes and details to document the installation or modification of signal interconnect facilities.

There is a gap of about 270' between the traffic signal pull box on the northwest corner of Kern Avenue and the nearest traffic signal pull box for the Westwood Drive signal. As such, interconnecting the two signals would require only a relatively short segment of new interconnect conduit to be installed, assuming Caltrans allows the interconnect cable to be comingled with traffic signal conductors and loop detector cable.

Our scope assumes that the new signal will not need to be interconnected with the adjacent signal at Wren Avenue – 1,400' to the east. If Caltrans requires signal interconnect cable and conduit to be extended to this intersection, then additional time and budget may be necessary.

Signing and Striping Plan

Signing and striping plans will be designed for the subject intersection and street segments affected by the off-site improvements. These plans will be designed in accordance with CA MUTCD standards and requirements. The lane configurations on First Street would remain as is. The Kern Avenue approach would be modified to have a southbound left-turn pocket.

Intersection Safety Lighting Photometric Analysis

Hexagon will conduct a photometric analysis of the safety lighting at the intersection to verify that the safety lighting layout and luminaire types specified in the design adequately satisfy lighting standards.

Traffic Control Plans

Hexagon will prepare traffic-handling plans for the street segments affected by the construction of the proposed improvements. This includes construction activity in City ROW as well as State ROW. The plans will include construction area signage, temporary traffic control devices, and detour signage as needed to safely handle auto traffic as well as bicycle and pedestrian traffic during construction activities.

Intersection Control Evaluation (ICE) Analysis

Hexagon will prepare an ICE report consisting of a Step 1 ICE screening analysis of the project intersection. This evaluation will be performed for AM and PM peak-hour volumes under existing/near-

term conditions and long-range (GP buildout) conditions. Per ICE procedures, the Step 1 analysis will evaluate the high-level feasibility of roundabout control, traffic signal control, and all-way stop control at the subject intersection.

There is only about 610', center-to-center, between Kern Avenue and Westwood Drive. Caltrans may have concerns with this spacing as it is minimal for traffic signals. In order to address potential Caltrans concerns, the ICE analysis will include an assessment of vehicle queueing to confirm that the new signal will not interfere with intersection operations at Westwood Drive.

As part of this analysis, we will perform the following tasks:

- Collect new AM and PM peak-hour traffic count data at Kern Avenue and at Westwood Drive.
- Develop a forecast for projected near-term southbound left-turn volumes from Kern Avenue using previous count data as well as the size of the apartment project recently completed on Kern Avenue.
- Obtain long range traffic projections from the Gilroy General Plan and/or City of Gilroy Travel Demand Model.
- Evaluate all-way stop and signal warrants at the project intersection based on the projected traffic volumes.
- Conduct intersection level of service (LOS) and queueing analyses for one-way stop control, all-way stop control, signal control, and roundabout control at the project intersection.
- Conduct intersection LOS and queueing analyses at the First Street/Westwood Drive intersection.
- Collect accident data from the SWITRS database to evaluate if the accident experience signal warrant is satisfied at this location and to calculate the accident rate for comparison to the statewide average rate.
- Evaluate ROW and other constraints associated with implementing a roundabout at this location.
- Summarize the ICE Step 1 assessment in a technical letter report.

Note that our scope of work does not include time or budget to conduct a microscopic traffic simulation of traffic operations in the corridor. If Caltrans requires a simulation analysis to evaluate close intersection spacing, then additional time and budget will be necessary.

CEQA Documentation

Given the nature of the improvements proposed, we believe the project will qualify for a Categorical Exemption (CE) under California Environmental Quality Act (CEQA) Guideline Section 15301, Class 1, Existing Facilities, which consists of the operation, repair, maintenance, or minor alterations of existing public or private facilities, involving negligible or no expansion of existing or former use. Under subsection (c), existing facilities include: "existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities..." Our scope includes preparation of a Memorandum supporting the use of a CE, preparation of a draft Notice of Exemption (NOE), meeting attendance, and project management and contract administration.

Work Tasks

1. Project Management and Administration

Monthly Progress Reports

Hexagon will develop monthly progress reports for City review. These reports will include details of scope items in progress and those completed during the reporting period as well as budget status, project milestones, deliverables, and action items with the name of responsible parties.

Progress Meetings

Throughout the course of the project, Hexagon and RJA will attend monthly progress review meetings, as necessary, with City staff to discuss progress of the project and the design plans. Hexagon will prepare meeting agendas, action item logs for follow up items, and meeting minutes.

Project Schedule

We will maintain an up-to-date project schedule throughout the course of the project. An updated project schedule will be provided to the City during each monthly progress meeting.

2. Project Initiation

Kick-Off Meeting

Hexagon and RJA will attend a kick-off meeting with City staff to discuss the goals and objectives of the project, refine the scope of work of the design project, establish the project schedule, and establish communication protocols for the project.

Obtain and Review Background Information

Hexagon will contact the City Public Works Department and Caltrans to research any special requirements the City or State may have regarding the proposed traffic signal installation. Hexagon will work with agency staff to obtain any relevant background information that may be useful or required to complete the signal design, such as traffic studies and as-built plans. The design team will obtain existing utility plans for this area for use in the design of new traffic signal pole and cabinet locations.

Field Investigations

Hexagon will field-verify existing traffic signal interconnect and street light facilities, the routing of electrical conduits, and the size, location, and contents of existing pull boxes and cabinets near the intersection. Potential conflicts with overhead and underground utilities and obstructions, and other conflicts not readily apparent on the topographic maps will be identified in the field.

As part of this effort, we will identify existing traffic signal equipment and pedestrian facilities that are not up to current standards/codes.

3. Preliminary Design and Analysis

Preliminary Design (35%)

We will develop a preliminary (35%) design for the new traffic signal system to achieve the required improvements for early review and comment by the City. The intent of this task will be to resolve major design issues and constraints and to help ensure that the following review submittals substantially achieve the goals and objectives for this project.

Preliminary Plans - These plans will represent a conceptual layout of proposed civil and traffic signal improvements at the intersection. We will submit preliminary plans to the City in in PDF and hardcopy format (up to three (3) sets).

Preliminary Cost Estimates – A preliminary estimate of probable construction costs will be prepared based on the preliminary design plans.

Draft Specifications - Technical Specifications will be provided in draft form for review by City staff.

Coordination Items

As part of this task, the design team will identify potential utility issues, as well as utility companies and other agencies that may need to be involved.

The preliminary design will be used as an input into the CEQA process.

Design Review Meeting

At the completion of the preliminary plans, Hexagon and RJA will attend one meeting with City staff to discuss the preliminary design plans and coordination issues. The outcome of this meeting will be used to guide the development of the construction documents and to identify solutions to major design issues.

ICE Analysis

The ICE analysis will be completed at this stage of the project and submitted to the City for review and comment in preparation for the eventual submittal to Caltrans.

4. Environmental Documentation

Preparation of the Categorical Exemption Memorandum

David J. Powers & Associates (DJP&A) will prepare a brief Memorandum documenting why the project is eligible for a CE and how no exceptions to the use of a CE exist (CEQA Section 15300.2). The proposed intersection improvements will be described based upon plans and operational elements provided by the project team. This task includes preparation of an Archaeological Sensitivity Assessment by Archaeological/Historical Consultants, under contract to DJP&A, to analyze the sensitivity of the project area for Native American or historic-era archaeological resources.

Upon completion of the Administrative Draft Memorandum, DJP&A will provide an electronic copy in Microsoft Word for the City's review. At this point, if it is determined that none of the exceptions apply and no mitigation is needed to reduce or avoid impacts due to unusual circumstances, DJP&A will prepare and file a Notice of Exemption (NOE), as described below.

In the event the project would result in significant impacts and is not eligible for a Categorical Exemption, DJP&A can prepare an Initial Study/Mitigated Negative Declaration under a separate scope and fee.

Categorical Exemption and Preparation of Notice of Exemption

Once confirmed by the City that the project is categorically exempt, DJP&A will prepare a draft NOE per Section 15062 of the CEQA Guidelines and submit the NOE to City staff for one round of review. Upon project approval, DJP&A will file the NOE at the State Clearinghouse and Santa Clara County Clerk's office and pay the $50 filing fee on behalf of the City. The NOE will not require circulation to the public. Filing the NOE will begin the 35-day statute of limitations on legal challenges to the City's decision that the project is exempt.

Meetings

The project team will attend up to two (2) meetings with City staff to discuss the environmental documentation. This scope does not include public hearing attendance, since categorically exempt projects are not required to go to public hearing.

5. Construction Documents

Plans, Specifications, and Estimates (65% and 95%)

Plans – The design team will respond to and address plan check comments on the preliminary design plans and produce construction plans. These plans will address agency comments and will add additional design elements, notes and details, full equipment specifications, and any other features required to bring the construction plans to a complete and biddable state.

Specifications - A separate Technical Specifications document will be prepared for inclusion in the Project Specifications. Our scope of work assumes that the City will be preparing the front end specifications/bid instructions for the project. Prior to completing the 95% submittal, the design team will review the front end specs/bid instructions and provide comments to the City.

Cost Estimates - A detailed estimate of probable construction costs will be prepared and will be submitted for review along with the construction plans.

Review Submittals - Our scope includes two submittals (65% and 95%) of the construction plans, specifications, and cost estimates to the City for review and comment. All review submittals will be made electronically (PDF format) and in hardcopy format (up to three (3) sets).

As part of each submittal, we will return the marked-up plans from the previous submittal along with a list of the City comments and our responses.

Design Review Meetings

After completion of the 65% and 95% plans, Hexagon and RJA will attend a meeting with City staff (two (2) meetings total) to discuss the construction documents and coordination issues.

Potholing

The design team will coordinate to identify locations that should be potholed in order to confirm the proposed traffic signal pole locations are free of utility conflicts. Our scope of work assumes that up to four (4) locations will be potholed. We will prepare pothole plans and coordinate with a potholing contractor to complete this work.

Quality Assurance Review and In-House Peer Review

Throughout all submittal stages the design team will perform in-house quality control review. Prior to completing 95% bid documents, the plans and specifications will undergo peer review by another engineer other than the designer. The purpose of this review is to provide oversight of specific project details and to review the constructability, cost-effectiveness, and completeness of the design.

6. Coordination and Permitting with Other Agencies/Entities

Coordination with Caltrans

Plan Review

It is anticipated that both the City and Caltrans will be reviewing the project plans. Upon receipt of comments from both agencies, all comments will be addressed and any conflicting comments between the agencies will be resolved to the satisfaction of each agency.

Encroachment Permit

Our scope assumes that the simplified EPOP permit process will be used for this project.

Design Exceptions

We anticipate that all applicable design standards can be met within Caltrans right-of-way. If, because of unforeseen design constraints, a Design Standard Decisions Document becomes necessary, then additional time and budget would be necessary for Hexagon to help prepare that document.

Meetings

The design team will participate in conference calls and virtual meetings with Caltrans staff, as necessary, during the design phase of the project. Our scope and budget for this task do not include attendance at any meetings at Caltrans headquarters in Oakland.

Storm Water and Water Pollution Control Plan

The anticipated site disturbance for this project is less than the amount that triggers the preparation of a SWPPP. An erosion and sediment control plan will be prepared as a plan sheet within the improvement plan set. Standard construction practice erosion and sediment control details and notes will be provided on this plan sheet.

7. Final Design (Bid Set Submittal)

100% PS&E

The design team will respond to and address plan check comments on the 95% design plans and produce final deliverables (100% construction documents) which will include PDFs and three (3) hard copies of the plan sheets.

Construction Schedule

The design team will coordinate with the City and affected utility companies to develop the construction schedule for the project.

Design Review Meeting

After completion of the 100% PS&E, Hexagon and RJA will attend one (1) meeting with City staff to discuss the construction documents and construction schedule.

8. Bid Support Services

Bid Support

We will provide support to the City during the bidding process to answer questions from prospective bidders related to the design and prepare addenda, as necessary. The design team will attend one (1) pre-bid meeting.

9. Construction Support Services

Internal Project Handoff Meeting

The design team will prepare a project summary and attend a meeting with City staff and the City's construction manager to point out potential construction risks, scheduling issues, and other constraints that the construction manager should be aware of.

Construction Meetings and Field Reviews

Hexagon and RJA will attend one (1) pre-construction meeting with the design team, City staff, and contractor prior to the start of construction.

Hexagon and RJA will attend up to three (3) progress meetings with City staff during the construction phase. Additionally, we will make a limited number of field visits, as necessary, to assist in answering design-related questions during construction and to review pole locations before foundations are set. Our scope and budget include Hexagon staff time to conduct up to three (3) site visits during construction to assist the City with design questions.

Our scope and budget do not include time and cost for performing construction inspection.

Material Submittals

We will review material submittals for general conformance with the design concept and general compliance with the plans and specifications.

Request for Information (RFIs)

We will provide the City with support during construction to respond to RFIs. Upon receipt of an RFI we will review and prepare written responses.

Proposed Changes

We will review proposed substitutions for conformance to the plans and specifications. We will review and make recommendations related to proposed changes to the contract.

Record Drawings

At the completion of construction, the design team will produce Record ("As-Built") Drawings to document the construction and installation of the traffic signal system and intersection improvements designed in the plans. The as-built drawings will be based on redline comments on the plans to be provided by the contractor and/or the project inspector and on a cursory field review performed by Hexagon staff.

2. Project Schedule

Hexagon is committed to completing projects based on the scheduling needs of our clients.

Anticipated Schedule

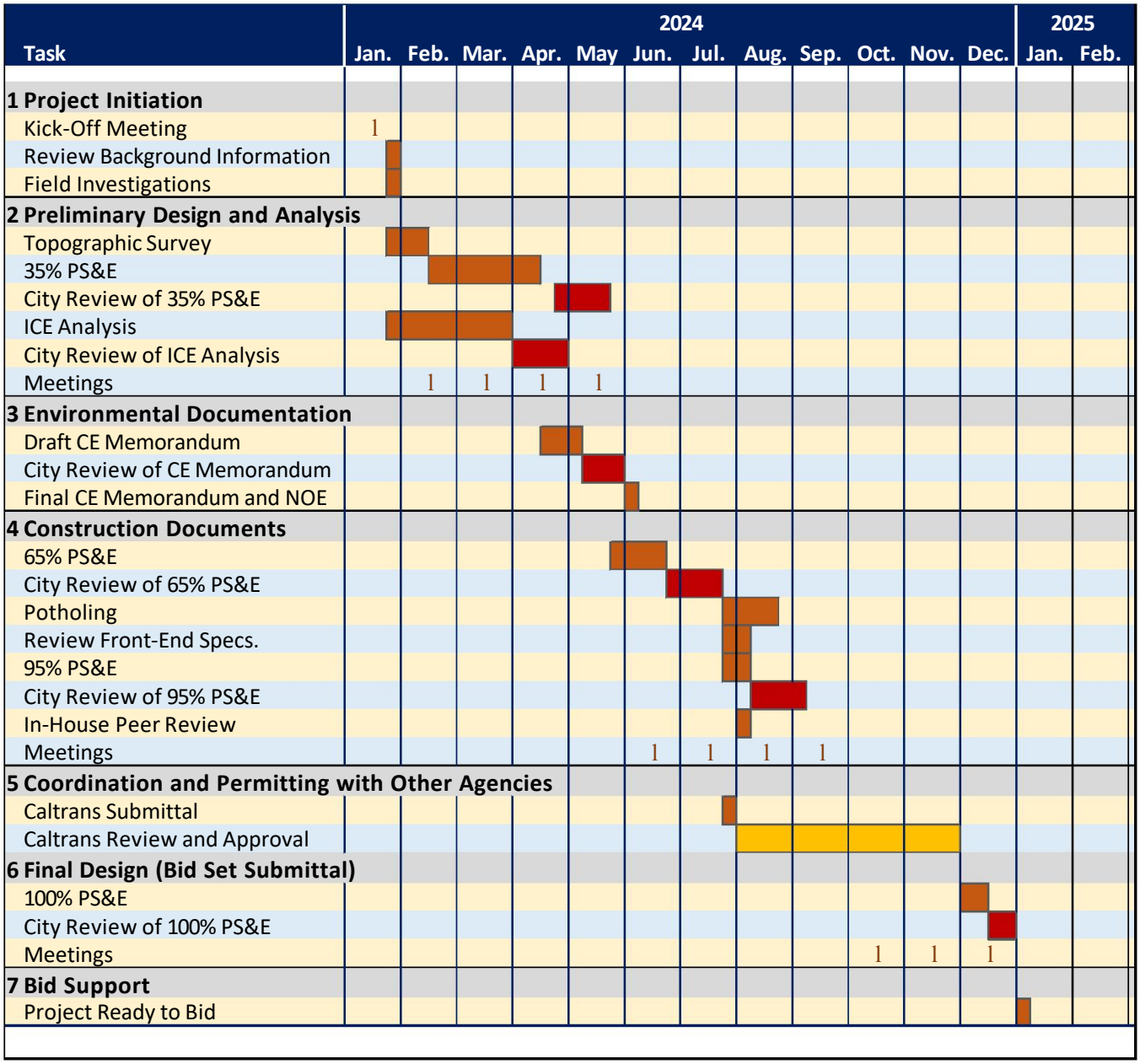
Our anticipated project schedule is summarized below. This schedule assumes a project start date of mid-January 2024. Based on this schedule, we anticipate having bid documents ready to go by January 2025. Our schedule allows for up to four weeks of City review time at each submittal level. We have factored into our schedule 16 weeks of time for the Caltrans review and approval process, recognizing that we do not have any control over the pace at which Caltrans completes its reviews and how responsive Caltrans staff will be to requests for information, meetings, clarifications, etc. With the project being very straightforward, there is a potential to reduce City and Caltrans review times beyond

EXHIBIT "C"

MILESTONE SCHEDULE

the conservative estimates in our preliminary schedule, which may help shorten the overall project schedule.

Preliminary Project Schedule



3. Key Staff and Organization Chart

We have assembled a team of qualified, well-respecting professional consultants to provide the services the City seeks. Brief statements of our team's qualifications, as well as introductions of key staff members that will work on this project, are presented below.

EXHIBIT "D"

PAYMENT SCHEDULE

HEXAGON TRANSPORTATION CONSULTANTS, INC.

November 10, 2023

Ms. Carina Baksa
City of Gilroy
7351 Rosanna Street
Gilroy, California 95020

Re: Request for Proposals Engineering Services for First Street (SR 152)/Kern Avenue Traffic Signal Design Project No. 24-RFP-PW-494

Dear Ms. Baksa,

Thank you for considering Hexagon Transportation Consultants, Inc. for engineering consulting services associated with this Request for Proposals. This proposal includes a detailed fee breakdown associated with our Scope of Work proposal submitted under separate cover. Please feel free to call if you have any questions or would like to discuss our proposal.

We appreciate the opportunity to submit this proposal for your consideration. Please do not hesitate to contact us if additional information is needed.

Sincerely,

HEXAGON TRANSPORTATION CONSULTANTS, INC.

Jeff A. Elia

Jeffrey Elia, P.E.
Vice President

Fee Schedule

The total fee for completing the tasks outlined in our Scope of Work proposal will be based on applicable hourly labor rates as shown on the attached rate schedules and the direct cost of materials.

Hexagon's cost for traffic engineering design services, project management, and bid and construction support services is a not-to-exceed amount of $100,000. RJA's cost for surveying, potholing, civil engineering design, and bid and construction support is a not-to-exceed amount of $150,000. The fee for David J. Powers and Associates to provide environmental compliance services is $14,685. The total cost for services rendered under this agreement will be billed on a time-and-expenses basis, not to exceed $264,685. A detailed breakdown of our fee by project task and project team member is summarized in the table below.

Billings will be conducted monthly. Should additional services be required, they will be performed for an additional fee to be authorized in advance by the City of Gilroy.

Proposed Not-to-Exceed Budget

Task	Description	Hexagon Staff Hours							Hexagon Task Labor Cost	Hexagon Direct Cost /a/	Hexagon Total Task Budget	Sub-Consultants		Project Grand Totals
		Principal JE	Assoc. II ET	Assoc. II TC	Eng. II TBD	Eng. I TBD	Admin AL/JG	Total				RJA Fee	DJP&A Fee	
1	Project Management and Administration	18	0	30	0	0	6	54	$12,450	$0	$12,450	$8,500	$0	$20,950
2	Project Initiation	3	0	5	1	0	0	9	$2,120	$45	$2,165	$1,500	$0	$3,665
3	Preliminary Design and Analysis	7	18	17	40	40	0	122	$21,695	$1,273	$22,968	$47,000	$0	$69,968
4	Environmental Documentation	3	1	0	0	0	0	4	$1,075	$0	$1,075	$0	$14,685	$15,760
5	Construction Documents	11	9	47	57	40	0	164	$30,260	$1,418	$31,678	$62,000	$0	$93,678
6	Coordinating and Permitting with Other Agencies/Entities	9	3	25	9	0	0	46	$10,210	$0	$10,210	$6,000	$0	$16,210
7	Final Design (Bid Set Submittal)	4	1	9	9	0	0	23	$4,825	$1,125	$5,950	$10,000	$0	$15,950
8	Bid Support Services	4	0	5	3	0	0	12	$2,735	$45	$2,780	$2,500	$0	$5,280
9	Design Support During Construction	15	0	21	10	0	0	46	$10,545	$180	$10,725	$12,500	$0	$23,225
	Project Totals	74	32	159	129	80	6	480	$95,915	$4,085	$100,000	$150,000	$14,685	$264,685

/a/ Direct costs are associated with data collection, document production costs, and mileage.

Hexagon 2024 Billing Rates

Professional Classification	Rate per Hour
President	$335
Principal	$290
Senior Associate II	$270
Senior Associate I	$250
Associate II	$225
Associate I	$200
Planner/Engineer II	$170
Planner/Engineer I	$140
Assistant Planner/Engineer	$115
Admin/Graphics	$120
Technician	$85

Direct expenses are billed at actual costs, with the exception of mileage, which is reimbursed at the current rate per mile set by the IRS.

Billing rates shown are effective January 1, 2024 and subject to change January 1, 2025.

RUGGERI-JENSEN-AZAR

ENGINEERS ■ PLANNERS ■ SURVEYORS

RATE AND EXPENSE SCHEDULES

(Effective through June 30, 2024)

HOURLY RATE SCHEDULE FOR PROFESSIONAL SERVICES

Classification	Rate
Senior Project Manager	$279.00
Project Manager	264.00
Senior: Engineer, Surveyor, Planner	251.00
Associate: Engineer, Surveyor, Planner	234.00
Engineer, Surveyor, Planner	217.00
Assistant: Engineer, Surveyor, Planner	188.00
Senior Designer/Technician	184.00
Technician	163.00
Assistant Technician	141.00
Project Coordinator	125.00
Administrative Assistant	107.00
Clerical	81.00
Field Survey Manager	232.00
1-Person Survey Crew	214.00
2-Person Survey Crew	328.00
3-Person Survey Crew	395.00
Principal	295.00
Deposition/Court Appearance	rates are available upon request

EXPENSE SCHEDULE

Bond Copy (24"x36")	$1.50 each
Color/mylar plot (small, medium)	$10.00 each
Color/mylar plot (large)	$50.00 each
Xerox copy	$0.15 each
Color xerox copy (8½ x 11 or 11 x 17)	$0.50 each
Client-Requested Overtime	Hourly Rate plus 25%

All other expenses, including:	Actual Cost plus 15%
Delivery Service	Travel & Expenses
Outside Reproduction	Filing or Permit Fees
Mileage - Auto	Conference Call Expenses
Outside Consultants	

DAVID J. POWERS & ASSOCIATES, INC.
ENVIRONMENTAL CONSULTANTS & PLANNERS

CHARGE RATE SCHEDULE[1]

Title	Hourly Rate
Senior Principal	$ 330.00
Principal Project Manager	$ 304.00
Senior Environmental Specialist	$ 258.00
Senior Project Manager	$ 237.00
Environmental Specialist	$ 221.00
Project Manager	$ 211.00
Associate Project Manager	$ 185.00
Assistant Project Manager	$ 155.00
Researcher	$ 134.00
Graphic Artist	$ 124.00

Materials, outside services and subconsultants include a 15% administration fee.
Mileage will be charged per the current IRS standard mileage rate at the time costs occur.

[1] David J. Powers & Associates, Inc. (DJP&A) provides regular, clear, and accurate invoices, in accordance with normal company billing procedures. The cost estimate prepared for this project does not include special accounting or bookkeeping procedures, nor does it include preparation of extraordinary or unique statements or invoices. If a special invoice or accounting process is requested, the service can be provided on a time and materials basis. Any fees charged to DJP&A for Client's third-party services related to invoicing, insurance certificate maintenance, or other administrative functions will be billed as a reimbursable expense.

8.3. Award a Contract to HydroScience Engineers, Inc. for the Design of Water Utility Improvements Project No. 24-RFP-PW-497 in the amount of $842,790, Approve a Project Contingency of $126,419, and Approve a Total Project Expenditure of $969,209 for Design Services

1. Staff Report:
2. Public Comment
3. Possible Action:

   Adopt a resolution of the City Council of the City of Gilroy to increase the Fiscal Year 2023-2024 (FY24) and decrease the 2024-2025 (FY25) budget by $605,038 in the Water Fund (Fund 705); and

   Award a contract to HydroScience Engineers, Inc. in the amount of $842,790 and approve a project contingency of $126,419 for a total project expenditure of $969,209 for the design and preparation of bid documents for Water Utility Improvements Project No. 24-RFP-PW-497 and authorize the City Administrator to execute the contract and associated documents.

City of Gilroy

STAFF REPORT

Agenda Item Title:	**Award a Contract to HydroScience Engineers, Inc. for the Design of Water Utility Improvements Project No. 24-RFP-PW-497 in the amount of $842,790, Approve a Project Contingency of $126,419, and Approve a Total Project Expenditure of $969,209 for Design Services**
Meeting Date:	February 5, 2024
From:	Jimmy Forbis, City Administrator
Department:	Public Works
Submitted By:	Karl Bjarke, Interim Public Works Director
Prepared By:	Julie Oates, Engineer II

STRATEGIC PLAN GOALS Maintain and Improve City Infrastructure

RECOMMENDATION

a) Adopt a resolution of the City Council of the City of Gilroy to increase the Fiscal Year 2023-2024 (FY24) and decrease the 2024-2025 (FY25) budget by $605,038 in the Water Fund (Fund 705); and

b) Award a contract to HydroScience Engineers, Inc. in the amount of $842,790 and approve a project contingency of $126,419 for a total project expenditure of $969,209 for the design and preparation of bid documents for Water Utility Improvements Project No. 24-RFP-PW-497 and authorize the City Administrator to execute the contract and associated documents.

EXECUTIVE SUMMARY

The Water Utility Improvements Project No. 24-RFP-PW-497 (Project) includes the design and preparation of bid documents for six individual water utility projects. These projects are included in the Fiscal Year 2024-2028 Capital Improvement Program (CIP), adopted by the City Council on June 5, 2023. The proposed not-to-exceed contract amount is $842,790. Staff requests authorization for an additional $126,419 for contingency, for a total project expenditure of $969,209 for design services. Staff

recommends the City Council award a contract to HydroScience, of San Jose, CA, to design and prepare the bid documents for the Project.

BACKGROUND

The Project includes the design and preparation of bid documents for the following six individual water utility projects. These projects are included in the Fiscal Year 2024-2028 Capital Improvement Program (CIP), adopted by the City Council on June 5, 2023.

1. Casey and Swanston Water Line Replacement (800250)
2. Broadway and Sargent Water Line Replacement (800590)
3. Church and Gurries Water Line Replacement (800600)
4. Church Street – Welburn to First Water Line Replacement (800610)
5. Murray at Burke Water Line Reroute (800660)
6. Monterey – Leavesley to Ronan Water Line Replacement (800890)

These water lines have reached the end of their useful life and require replacement or upgrades to avoid pipe failures, reduce water leaks and staff repair time, increase capacity, or improve fire flow pressure to nearby commercial land uses. Some of these individual projects are relatively small. These six projects have been bundled together to provide time and cost savings in the design and in the future construction of the improvements.

The scopes of work for the six individual water utility projects include various combinations of the following improvements:

- Replacing deteriorating cast iron pipes with ductile iron pipes
- Upgrading service laterals
- Replacing associated valves and fire hydrants
- Upgrading water lines to ensure adequate water pressure for fire protection
- Abandoning existing water lines
- Reconnecting service laterals
- Pavement restoration

ANALYSIS

On December 15, 2023, a Request for Proposals (RFP) was issued to the eight consultants on the City's prequalified list of design consultants (from a previous Request for Qualifications) for the design of utility infrastructure improvements.

The City received three proposals from the following consultant teams:

1. Bellecci & Associates
2. HydroScience Engineers, Inc.
3. Ruggeri-Jensen-Azar

The proposals were evaluated by a scoring committee and ranked per the criteria identified in the RFP. HydroScience was ranked the highest and was selected based on their local knowledge, experience, project understanding, and project approach.

ALTERNATIVES

The alternative to the staff recommendation is not to award the contract. Staff does not recommend this option because it would delay the design and ultimately the construction of the water utility improvements.

FISCAL IMPACT/FUNDING SOURCE

The proposed cost for the design services is $842,790. Staff recommends a contingency of $126,419 to address any unanticipated changes or requests from outside agencies. Therefore, the total expenditure allocation request is $969,209.

The Project will be funded by the Water Fund (705). Two of the six individual projects are included in the FY24 budget. The remaining four projects are included in the FY25 budget. Staff recommends the City Council adopt a resolution to increase the FY24 and reduce the FY25 budget by $605,038 in the Water Fund (705) to fully fund the design and preparation of bid documents for the Project in FY24.

PUBLIC OUTREACH

There is no public outreach planned during the design phase of the project. Appropriate public outreach will be conducted for the construction phase of the project.

NEXT STEPS

If Council approves the proposed contract with HydroScience Engineers, Inc., staff will direct the consultant to begin the design process. Final design and bid documents are anticipated to be completed in March 2025. Bidding and construction would begin soon after the design and bid documents are completed.

Attachments:

1. Draft Resolution
2. HydroScience - Agreement

RESOLUTION 2024-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GILROY AMENDING THE BUDGET FOR THE CITY OF GILROY FOR 2023-2024 AND APPROPRIATING PROPOSED EXPENDITURE AMENDMENTS

WHEREAS, the City Administrator prepared and submitted to the City Council a budget for the City of Gilroy for Fiscal Years 2023-2024 and 2024-2025, and the City Council carefully examined, considered, and adopted the same on June 5, 2023; and

WHEREAS, City Staff has prepared and submitted to the City Council proposed amendments to said budget for Fiscal Year 2023-2024 for the City of Gilroy in the staff report dated February 5, 2024, for the Design of Water Utility Improvements, City Project No. 24-RFP-PW-497.

NOW, THEREFORE, BE IT RESOLVED THAT the appropriations for Fiscal Year 2023-2024 for Water Fund 705 shall be increased by $605,038 and decreased for Fiscal Year 2024-2025 in the equal amount.

PASSED AND ADOPTED by the City Council of the City of Gilroy at a regular meeting duly held on the 5th day of February 2024 by the following roll call vote:

AYES:	**COUNCIL MEMBERS:**
NOES:	**COUNCIL MEMBERS:**
ABSTAIN:	**COUNCIL MEMBERS:**
ABSENT:	**COUNCIL MEMBERS:**

APPROVED:

_____
Marie Blankley, Mayor

ATTEST:

_____
Thai Nam Pham, City Clerk

AGREEMENT FOR SERVICES
(For design professional contracts over $5,000)

This AGREEMENT made this 5th day of February, 2024 between:

CITY: City of Gilroy, having a principal place of business at 7351 Rosanna Street, Gilroy, California

and CONSULTANT: HydroScience Engineers, Inc., having a principal place of business at 90 E. Taylor St, Suite 200, San Jose, CA 95112.

ARTICLE 1. TERM OF AGREEMENT

This Agreement will become effective on February 26, 2024 and will continue in effect through December 31, 2026 unless terminated in accordance with the provisions of **Article 7** of this Agreement.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

It is the express intention of the parties that CONSULTANT is an independent contractor and not an employee, agent, joint venturer or partner of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT or any employee or agent of CONSULTANT. Both parties acknowledge that CONSULTANT is not an employee for state or federal tax purposes. CONSULTANT shall not be entitled to any of the rights or benefits afforded to CITY'S employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement benefits or any other employment benefits. CONSULTANT shall retain the right to perform services for others during the term of this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONSULTANT

A. Specific Services

CONSULTANT agrees to: perform the services as outlined in **Exhibit "A"** ("Specific Provisions") and **Exhibit "B"** ("Scope of Services") within the time periods described in and **Exhibit "C"** ("Milestone Schedule").

B. Method of Performing Services

CONSULTANT shall determine the method, details and means of performing the above-described services. CITY shall have no right to, and shall not, control the manner or determine the method of accomplishing CONSULTANT'S services.

C. Employment of Assistants

CONSULTANT may, at the CONSULTANT'S own expense, employ such assistants as CONSULTANT deems necessary to perform the services required of CONSULTANT by this Agreement, subject to the prohibition against assignment and subcontracting contained in **Article 5** below. CITY may not control, direct, or supervise CONSULTANT'S assistants in the performance of those services. CONSULTANT assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholding.

D. Place of Work

CONSULTANT shall perform the services required by this Agreement at any place or location and at such times as CONSULTANT shall determine is necessary to properly and timely perform CONSULTANT'S services.

ARTICLE 4. COMPENSATION

A. Consideration

In consideration for the services to be performed by CONSULTANT, CITY agrees to pay CONSULTANT the amounts set forth in **Exhibit "D"**. In no event however shall the total compensation paid to CONSULTANT exceed $842,790.

B. Invoices

CONSULTANT shall submit invoices for all services rendered.

C. Payment

Payment shall be due according to the payment schedule set forth in **Exhibit "D"**. No payment will be made unless CONSULTANT has first provided City with a written receipt of invoice describing the work performed and any approved direct expenses (as provided for in **Exhibit "A"**, **Section IV**) incurred during the preceding period. If CITY objects to all or any portion of any invoice, CITY shall notify CONSULTANT of the objection within thirty (30) days from receipt of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute. It shall not constitute a default or breach of this Agreement for CITY not to pay any invoiced amounts to which it has objected until the objection has been resolved by mutual agreement of the parties.

D. Expenses

CONSULTANT shall be responsible for all costs and expenses incident to the performance of services for CITY, including but not limited to, all costs of equipment used or provided by CONSULTANT, all fees, fines, licenses, bonds or taxes required of or imposed against CONSULTANT and all other of CONSULTANT'S costs of doing business. CITY shall not be responsible for any expenses incurred by CONSULTANT in performing services for CITY, except for those expenses constituting "direct expenses" referenced on Exhibit "A."

ARTICLE 5. OBLIGATIONS OF CONSULTANT

A. Tools and Instrumentalities

CONSULTANT shall supply all tools and instrumentalities required to perform the services under this Agreement at its sole cost and expense. CONSULTANT is not required to purchase or rent any tools, equipment or services from CITY.

B. Workers' Compensation

CONSULTANT agrees to provide workers' compensation insurance for CONSULTANT'S employees and agents and agrees to hold harmless, defend with counsel acceptable to CITY and indemnify CITY, its officers, representatives, agents and employees from and against any and all claims, suits, damages, costs, fees, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, arising out of any injury, disability, or death of any of CONSULTANT'S employees.

C. Indemnification of Liability, Duty to Defend

1. As to professional liability, to the fullest extent permitted by law, CONSULTANT shall defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, to the extent arising or resulting directly or indirectly from any willful or negligent acts, errors or omissions of CONSULTANT or CONSULTANT'S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

2. As to other liability, to the fullest extent permitted by law, CONSULTANT shall defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, arising or resulting directly or indirectly from any act or omission of CONSULTANT or CONSULTANT'S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

D. Insurance

In addition to any other obligations under this Agreement, CONSULTANT shall, at no cost to CITY, obtain and maintain throughout the term of this Agreement: (a) Commercial Liability Insurance on a per occurrence basis, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of $1,000,000 per occurrence for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof; and (b) Professional Liability Insurance (Errors & Omissions) with a minimum coverage of $1,000,000 per occurrence or claim, and $2,000,000 aggregate; provided however, Professional Liability Insurance written on a claims made basis must comply with the requirements set forth below. Professional Liability Insurance written on a claims made basis (including without

limitation the initial policy obtained and all subsequent policies purchased as renewals or replacements) must show the retroactive date, and the retroactive date must be before the earlier of the effective date of the contract or the beginning of the contract work. Claims made Professional Liability Insurance must be maintained, and written evidence of insurance must be provided, for at least five (5) years after the completion of the contract work. If claims made coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the earlier of the effective date of the contract or the beginning of the contract work, CONSULTANT must purchase so called "extended reporting" or "tail" coverage for a minimum of five (5) years after completion of work, which must also show a retroactive date that is before the earlier of the effective date of the contract or the beginning of the contract work. As a condition precedent to CITY'S obligations under this Agreement, CONSULTANT shall furnish written evidence of such coverage (naming CITY, its officers and employees as additional insureds on the Comprehensive Liability insurance policy referred to in (a) immediately above via a specific endorsement) and requiring thirty (30) days written notice of policy lapse or cancellation, or of a material change in policy terms.

E. Assignment

Notwithstanding any other provision of this Agreement, neither this Agreement nor any duties or obligations of CONSULTANT under this Agreement may be assigned or subcontracted by CONSULTANT without the prior written consent of CITY, which CITY may withhold in its sole and absolute discretion.

F. State and Federal Taxes

As CONSULTANT is not CITY'S employee, CONSULTANT shall be responsible for paying all required state and federal taxes. Without limiting the foregoing, CONSULTANT acknowledges and agrees that:

- CITY will not withhold FICA (Social Security) from CONSULTANT'S payments;
- CITY will not make state or federal unemployment insurance contributions on CONSULTANT'S behalf;
- CITY will not withhold state or federal income tax from payment to CONSULTANT;
- CITY will not make disability insurance contributions on behalf of CONSULTANT;
- CITY will not obtain workers' compensation insurance on behalf of CONSULTANT.

G. Prevailing Wage

CONTSULTANT agrees and acknowledges that it is its obligation to determine whether, and to what extent, any work performed is or any workers employed relative to any construction to be performed under this Agreement are subject to any Codes, Ordinances, Resolutions, Rules and other Regulations and established policies of CITY and the laws of the State of California and the United States, including, without limitation, the California Labor Code and Public Contract Code relating to public contracting and prevailing wage requirements ("Prevailing Wage Laws"). To the extent Prevailing Wage Laws apply to work performed or workers employed for the purpose of performing work under this Agreement, CONTSULTANT shall fully comply with and ensure that all workers and/or subcontractors are informed of and comply with all Prevailing Wage Laws and specifically any applicable requirement of California Labor Code Sections 1720 et seq. and 1770 et seq. and the regulations thereunder, which require the payment of prevailing wage rates based on labor classification, as determined by the State of California, and the performance of other requirements on certain "public works" or "maintenance" projects. It is the duty of CONTRACTOR to post a copy of applicable prevailing wages at the job site. Prevailing wage information may be obtained at www.dir.ca.gov.

No CONSULTANT or Subconsultant may be awarded an Agreement containing Public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code 1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.

ARTICLE 6. OBLIGATIONS OF CITY

A. Cooperation of City

CITY agrees to respond to all reasonable requests of CONSULTANT and provide access, at reasonable times following receipt by CITY of reasonable notice, to all documents reasonably necessary to the performance of CONSULTANT'S duties under this Agreement.

B. Assignment

CITY may assign this Agreement or any duties or obligations thereunder to a successor governmental entity without the consent of CONSULTANT. Such assignment shall not release CONSULTANT from any of CONSULTANT'S duties or obligations under this Agreement.

ARTICLE 7. TERMINATION OF AGREEMENT

A. Sale of Consultant's Business/ Death of Consultant.

CONSULTANT shall notify CITY of the proposed sale of CONSULTANT's business no later than thirty (30) days prior to any such sale. CITY shall have the option of terminating this Agreement within thirty (30) days after receiving such notice of sale. Any such CITY termination pursuant to this **Article 7.A** shall be in writing and sent to the address for notices to CONSULTANT set forth in **Exhibit A, Subsection V.I.**, no later than thirty (30) days after CITY' receipt of such notice of sale.

If CONSULTANT is an individual, this Agreement shall be deemed automatically terminated upon death of CONSULTANT.

B. Termination by City for Default of Consultant

Should CONSULTANT default in the performance of this Agreement or materially breach any of its provisions, CITY, at CITY'S option, may terminate this Agreement by giving written notification to CONSULTANT. For the purposes of this section, material breach of this Agreement shall include, but not be limited to the following:

1. CONSULTANT'S failure to professionally and/or timely perform any of the services contemplated by this Agreement.

2. CONSULTANT'S breach of any of its representations, warranties or covenants contained in this Agreement.

CONSULTANT shall be entitled to payment only for work satisfactorily completed through the date of the termination notice, as reasonably determined by CITY, provided that such payment shall not exceed the amounts set forth in this Agreement for the tasks described on Exhibit C" which have been fully, competently and timely rendered by CONSULTANT. Notwithstanding the foregoing, if CITY terminates this Agreement due to CONSULTANT'S default in the performance of this Agreement or material breach by CONSULTANT of any of its provisions, then in addition to any other rights and remedies CITY may have, CONSULTANT shall reimburse

CITY, within ten (10) days after demand, for any and all costs and expenses incurred by CITY in order to complete the tasks constituting the scope of work as described in this Agreement, to the extent such costs and expenses exceed the amounts CITY would have been obligated to pay CONSULTANT for the performance of that task pursuant to this Agreement.

C. Termination for Failure to Make Agreed-Upon Payments

Should CITY fail to pay CONSULTANT all or any part of the compensation set forth in Article 4 of this Agreement on the date due, then if and only if such nonpayment constitutes a default under this Agreement, CONSULTANT, at the CONSULTANT'S option, may terminate this Agreement if such default is not remedied by CITY within thirty (30) days after demand for such payment is given by CONSULTANT to CITY.

D. Transition after Termination

Upon termination, CONSULTANT shall immediately stop work, unless cessation could potentially cause any damage or harm to person or property, in which case CONSULTANT shall cease such work as soon as it is safe to do so. CONSULTANT shall incur no further expenses in connection with this Agreement. CONSULTANT shall promptly deliver to CITY all work done toward completion of the services required hereunder, and shall act in such a manner as to facilitate any the assumption of CONSULTANT's duties by any new consultant hired by the CITY to complete such services.

ARTICLE 8. GENERAL PROVISIONS

A. Amendment & Modification

No amendments, modifications, alterations or changes to the terms of this Agreement shall be effective unless and until made in a writing signed by both parties hereto.

B. Americans with Disabilities Act of 1990

Throughout the term of this Agreement, the CONSULTANT shall use due professional care to comply fully with all applicable provisions of the Americans with Disabilities Act of 1990 ("the Act") in its current form and as it may be amended from time to time. CONSULTANT shall also require such compliance of all subcontractors performing work under this Agreement, subject to the prohibition against assignment and subcontracting contained in Article 5 above. The CONSULTANT shall defend with counsel acceptable to CITY, indemnify and hold harmless the CITY OF GILROY, its officers, employees, agents and representatives from and against all suits, claims, demands, damages, costs, causes of action, losses, liabilities, expenses and fees, including without limitation attorneys' fees, that may arise out of any violations of the Act by the CONSULTANT, its subcontractors, or the officers, employees, agents or representatives of either.

C. Attorneys' Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable

attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

D. Captions

The captions and headings of the various sections, paragraphs and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

E. Compliance with Laws

The CONSULTANT shall keep itself informed of all State and National laws and all municipal ordinances and regulations of the CITY which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Without limiting the foregoing, CONSULTANT agrees to observe the provisions of the Municipal Code of the CITY OF GILROY, obligating every contractor or subcontractor under a contract or subcontract to the CITY OF GILROY for public works or for goods or services to refrain from discriminatory employment or subcontracting practices on the basis of the race, color, sex, religious creed, national origin, ancestry of any employee, applicant for employment, or any potential subcontractor.

F. Conflict of Interest

CONSULTANT certifies that to the best of its knowledge, no CITY employee or office of any public agency interested in this Agreement has any pecuniary interest in the business of CONSULTANT and that no person associated with CONSULTANT has any interest that would constitute a conflict of interest in any manner or degree as to the execution or performance of this Agreement.

G. Entire Agreement

This Agreement supersedes any and all prior agreements, whether oral or written, between the parties hereto with respect to the rendering of services by CONSULTANT for CITY and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

No other agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Such other agreements or conversations shall be considered as unofficial information and in no way binding upon CITY.

H. Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflict of laws provisions of any jurisdiction. The exclusive jurisdiction and venue with respect to any and all disputes arising hereunder shall be in state and federal courts located in Santa Clara County, California.

I. Notices

Any notice to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in **Exhibit "A"**, **Section V.I.** but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed delivered as of actual receipt; mailed notices will be deemed delivered as of three (3) days after mailing.

J. Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

K. Time of the Essence

All dates and times referred to in this Agreement are of the essence.

L. Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

Executed at Gilroy, California, on the date and year first above written.

CONSULTANT:	**CITY:**
HYDROSCIENCE ENGINEERS, INC.	CITY OF GILROY
By: _____	By: _____
Name: Mary Hoang, PE	Name: Jimmy Forbis
Title: Principal	Title: City Administrator
Social Security or Taxpayer Identification Number 94328891	
Approved as to Form	ATTEST:
_____	_____
City Attorney	City Clerk

EXHIBIT "A"

SPECIFIC PROVISIONS

I. PROJECT MANAGER

CONSULTANT shall provide the services indicated on the attached **Exhibit "B"**, Scope of Services ("Services"). (All exhibits referenced are incorporated herein by reference.) To accomplish that end, CONSULTANT agrees to assign Robert Le, PE, who will act in the capacity of Project Manager, and who will personally direct such Services.

Except as may be specified elsewhere in this Agreement, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the Services required herein.

II. NOTICE TO PROCEED/COMPLETION OF SERVICE

A. NOTICE TO PROCEED

CONSULTANT shall commence the Services upon delivery to CONSULTANT of a written "Notice to Proceed", which Notice to Proceed shall be in the form of a written communication from designated City contact person(s). Notice to Proceed may be in the form of e-mail, fax or letter authorizing commencement of the Services. For purposes of this Agreement, Jorge Duran, PE shall be the designated City contact person(s). Notice to Proceed shall be deemed to have been delivered upon actual receipt by CONSULTANT or if otherwise delivered as provided in the **Section V.I.** ("Notices") of this **Exhibit "A"**.

B. COMPLETION OF SERVICES

When CITY determines that CONSULTANT has satisfactorily completed all of the Services, CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has satisfactorily completed all of the Services and, if so requested, CITY shall make this determination within two (2) weeks of such request, or if CITY determines that CONSULTANT has not satisfactorily completed all of such Services, CITY shall so inform CONSULTANT within this two (2) week period.

III. PROGRESS SCHEDULE

The schedule for performance and completion of the Services will be as set forth in the attached **Exhibit "C"**.

IV. PAYMENT OF FEES AND DIRECT EXPENSES

Payments shall be made to CONSULTANT as provided for in **Article 4** of this Agreement.

Direct expenses are charges and fees not included in **Exhibit "B"**. CITY shall be obligated to pay only for those direct expenses which have been previously approved in writing by CITY. CONSULTANT shall obtain written approval from CITY prior to incurring or billing of direct expenses.

Copies of pertinent financial records, including invoices, will be included with the submission of billing(s) for all direct expenses.

V. OTHER PROVISIONS

A. CONSULTANT'S SERVICES TO BE APPROVED BY A REGISTERED PROFESSIONAL ENGINEER

All civil (including structural and geotechnical) engineering plans, calculations, specifications and reports shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary" or "for review only." All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping.

B. STANDARD OF WORKMANSHIP

CONSULTANT represents and warrants that it has the qualifications, skills and licenses necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT'S representations and warranties regarding its skills, qualifications and licenses. CONSULTANT shall perform such Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

Any plans, designs, specifications, estimates, calculations, reports and other documents furnished under this Agreement shall be of a quality acceptable to CITY. The minimum criteria for acceptance shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar purposes.

C. RESPONSIBILITY OF CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of the Services furnished by it under this Agreement. The CITY'S review, acceptance or payment for any of the Services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and CONSULTANT shall be and remain liable to CITY in accordance with applicable

law for all damages to CITY caused by CONSULTANT'S negligent performance of any of the services furnished under this Agreement.

D. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

CITY, through its authorized employees, representatives or agents, shall have the right, at any and all reasonable times, to audit the books and records (including, but not limited to, invoices, vouchers, canceled checks, time cards, etc.) of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years (from the date of final payment to CONSULTANT), or for any longer period required by law, sufficient books and records in accordance with standard California accounting practices to establish the correctness of all charges submitted to CITY by CONSULTANT, all of which shall be made available to CITY at the CITY's offices within five (5) business days after CITY's request.

E. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data (including, but not limited to, computer data and source code), drawings, descriptions, documents, discussions or other information developed or received by or for CONSULTANT and all other written and oral information developed or received by or for CONSULTANT and all other written and oral information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY, be used for any purposes other than the performance of the Services, nor be disclosed to an entity not connected with the performance of the such Services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry (other than that which becomes generally known as the result of CONSULTANT'S disclosure thereof) shall be deemed confidential. CONSULTANT shall not use CITY'S name or insignia, or distribute publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

F. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

G. OWNERSHIP OF MATERIAL.

All material including, but not limited to, computer information, data and source code, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared (or caused to be prepared) under this Agreement shall be the property of CITY, but CONSULTANT may retain and use copies thereof subject to **Section V.E** of this **Exhibit "A"**.

CITY shall not be limited in any way in its use of said material at any time for any work, whether or not associated with the City project for which the Services are performed.

H. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

I. NOTICES.

Notices are to be sent as follows:

CITY:	Jorge Duran, PE City of Gilroy 7351 Rosanna Street Gilroy, CA 95020
CONSULTANT:	Robert Le, PE HydroScience Engineers, Inc. 90 E. Taylor St, Suite 200 San Jose, CA 95112

J. FEDERAL FUNDING REQUIREMENTS.

☐ If the box to the left of this sentence is checked, this Agreement involves federal funding and the requirements of this **Section V.J.** apply.

☒ If the box to the left of this sentence is checked, this Agreement does not involve federal funding and the requirements of this **Section V.J.** do not apply.

1. DBE Program

CONSULTANT shall comply with the requirements of Title 49, Part 26, Code of Federal Regulations (49 CFR 26) and the City-adopted Disadvantaged Business Enterprise programs.

2. Cost Principles

Federal Acquisition Regulations in Title 48, CFR 31, shall be used to determine the allowable cost for individual items.

3. Covenant against Contingent Fees

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Local Agency shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

EXHIBIT "B"

SCOPE OF SERVICES

January 12, 2024

HydroScience
Strategic Water Solutions

Carina Baksa – carina.baksa@cityofgilroy.org
Julie Oates – julie.oates@cityofgilroy.org

HydroScience Engineers, Inc.
90 E. Taylor Street, Suite 200
San Jose, CA 95112

SUBJECT: Proposal for Engineering Services for Water Utility Improvement Design
Project No. 24-RFP-PW-497

Dear Ms. Baksa and Ms. Oates,

HydroScience has been designing water system infrastructure in Northern California since our incorporation in 1997. Our proposal presents a unified team of experts who are uniquely qualified to meet the City of Gilroy's performance, schedule, and budget expectations. The specific benefits of the Hydroscience team include:

Extensive experience in pipeline design. Nearly all of HydroScience's design projects include some sort of pipeline design upgrades or rehabilitation. Our potable water pipeline designs have ranged from 4 to 54 inches in diameter and have included all types of trenchless construction, Caltrans and railroad agency permitting, and difficult crossings. We have prepared numerous plans and specifications for projects with objectives similar to the City's, as described in our proposal.

An in-depth understanding of applicable regulations and permitting agencies. We are very familiar with the Waterworks Standards that govern the design criteria for public water systems. I was significantly involved in the development of these standards, and this familiarity will ultimately save the City time and money. In addition, we have obtained numerous permits from Caltrans for various infrastructure projects, including the First Street Waterline Improvements for the City of Gilroy.

A focus on operations and maintenance. Key staff members hold water treatment and distribution operator certifications. Our O&M experience helps us prepare and review drawings with long-term operations and maintenance in mind. The facilities we design are easy and affordable to operate and maintain. In some cases, we have developed solutions that provide operators with greater flexibility than the utility originally proposed.

We look forward to working on this project and continuing our relationship with City staff. We take no exception to the Agreement for Professional Services attached to the RFP. We will not substitute out any personnel identified in this proposal, and we intend to complete this work on an accelerated schedule. Should you have any questions about our proposal, please feel free to contact me at (408) 595-9019 or at mhoang@hydroscience.com.

Very truly yours,
HydroScience Engineers, Inc.

Mary Hoang, P.E.
Principal

PROJECT UNDERSTANDING

The City of Gilroy (City) is seeking professional design services for six water utility improvement projects to address existing deficiencies and meet current and future water demands. Five of the six projects will replace small diameter distribution pipelines with upsized ductile iron pipelines meeting the requirements of the City's pipeline technical specifications. Specific project details are presented below.

- **Project 800250 – Casey and Swanston Water Line Replacement:** This project will replace approximately 2,400 LF of 4 and 6-inch CIP with 10-inch DIP. This line has experienced numerous leaks and has reached the end of its useful life. The upsizing will increase fire flow. It is desired to have the pavement on Casey Lane be fully reconstructed, while Swanston Lane was identified for a grind and overlay.
- **Project 800590 – Broadway and Sargent Water Line Replacement:** This project will replace approximately 1,500 LF of 4 and 6-inch pipeline with 8-inch pipeline to increase fire flow.
- **Project 800600 – Church and Gurries Water Line Replacement:** This project will upgrade approximately 400 LF of 4-inch pipeline to 6-inch to increase fire flow.
- **Project 800610 – Church Street – Welburn to First Water Line Replacement:** This project would upgrade approximately 2,000 LF of 6-inch CIP to 8-inch DIP. This existing pipeline has experienced a large number of failures, and replacement would increase system reliability.
- **Project 800660 – Murray at Burke Water Line Reroute:** Murray Avenue has parallel 4 and 12-inch pipelines. This project would abandon the 4-inch pipeline, relocate approximately 12 services to the 12-inch pipeline, and interconnect the 12-inch pipeline to a 6-inch pipeline on Burke Drive. The relocation of the services will increase system pressures and fire flow, while facilitating new construction.
- **Project 800890 – Monterey – Leavesley to Ronan Water Line Replacement:** This project would replace approximately 2,450 LF of 4-inch CIP with 12-inch DIP. The pipeline replacement is required due to both the condition and small diameter of the existing 4-inch pipeline, which connects to 12-inch pipelines.

All of the projects would be constructed to comply with the City's current technical specifications and water system standards. These specifications include pipeline construction per AWWA C104/ ANSI A 21.4 with asphaltic coating per AWWA C151. Services would also be relocated from the existing pipeline to the new pipelines and reconstructed per the City Standard Details. New valves, hydrants, and fittings as required would be constructed, and the existing pipeline would be abandoned in place.

The RFP states that where the road above the water pipelines is in poor condition, the design scope will include repaving the entire road within the project limits. The Casey and Swanston Water Line project specifically identifies the roadway as being in failed to poor condition. HydroScience will work with the City to identify which road segments may require full reconstruction or grind and overlay during the field assessment and utility locating work, which will occur during the 35% submittal phase. During a site walk, we expect that the pavement condition will be visually assessed, documented, and options discussed with the City. HydroScience will work with the City to include pavement restoration in the scope of work for subsequent submittals as appropriate. The survey work performed at the project outset will collect enough information to allow HydroScience to design pavement improvements as part of the water project for any work included in the design scope and fee.

Design Approach

This $12.3M project will result in the replacement of approximately 8,750 LF of pipeline at six different locations in the City. HydroScience regularly assists clients throughout Northern California to implement these same types of projects. Based on our project understanding and experience executing similar projects, we have pinpointed several key elements worthy of discussion.

Records Review. At the project outset, we will gather and review City as-built drawings and existing CCTV inspection records to identify the existing improvements and help define the existing utility occupation in the area. This will help us decide which facilities need to be replaced, the locations of services, valves, and hydrants, and how and where to make utility connections.

Utility Occupation. At the project outset, HydroScience will contact all known utility providers in the area to obtain their maps. These will be plotted on the base maps, and their locations will be adjusted based on surveyed manhole, valve, and vault locations. During the 65% Submittal phase, critical crossing and parallel utilities will be potholed to confirm their true location and depth. Potholing will be performed by BESS Testlab, who have worked with HydroScience in a similar capacity for dozens of past projects. Finally, HydroScience will perform a field inspection to confirm valves, vaults, trench cuts, USA marks, power drops, and other surface evidence.

Confirm Design Criteria. The City's 2023 Water System Master Plan identified minimum pressures during max day and peak hour, minimum pressure for new development, maximum velocities, as well as fire flow and pressure requirements for different types of land use. During the 35% Submittal phase, HydroScience will review the Infowater hydraulic model prepared for the Master Plan, include the pipeline upsizing at each of the six locations, and confirm that the proposed pipeline upsizing approach is appropriate to meet the City's pressure and fire flow modeling criteria. The intent is to confirm that the upsized pipelines meet the City's long-term objectives. This verification will be performed quickly and efficiently by our team of in-house modeling experts.

Geotechnical. HydroScience proposes a stepwise approach for conducting a geotechnical investigation. HydroScience's geotechnical subconsultant, Geo-Logic, will first review available geotechnical information in the area to characterize the soil conditions anticipated to be encountered and develop a tailored investigation scope. The requirements for geotechnical engineering will depend on the method of pipeline construction, whether pavement reconstruction may be required, the depth to groundwater, and the permitting requirements of external agencies, all of which will be clarified during the 35% submittal stage.

Geo-Logic will collect and analyze available geotechnical data and drill bore holes at a frequency and depth that is suitable for the project components. Samples that are collected will be analyzed and tested, and the outcome of the work will be documented in a Geotechnical Design Report. Geo-Logic will also test the soil borings to confirm what type of landfill the soil can be disposed to.

CEQA Compliance. David J. Powers and Associates (DJP&A) will work with the City to determine if the projects are statutorily exempt under CEQA Guidelines Section 15282, which includes exemptions for installing new pipelines or maintenance, repair, restoration, removal, or demolition of existing pipelines. If the projects are not statutorily exempt, DJP&A will work with the City to determine if the projects qualify for a Categorical Exemption (CE). Examples of these projects include the replacement and reconstruction of utilities involving negligible or no capacity expansion. Documentation of a CE includes preparing an Archaeological Sensitivity Assessment to determine the sensitivity of the project area for Native American or historic era archaeological resources. If it is determined that none of the exceptions apply, DJP&A will prepare and file the Notice of Exemption (NOE).

Once confirmed by the City that the project is statutorily or categorically exempt, DJP&A will prepare a draft NOE per Section 15062 of the CEQA Guidelines and submit the NOE to City staff for one round of review. Upon project approval, DJP&A will file the NOE at the State Clearinghouse and Santa Clara County Clerk's office. The NOE will not require circulation to the public. Filing the NOE will begin the 35-day statute of limitations on legal challenges to the City's decision that the project is exempt.

Stakeholder Coordination. Key stakeholders for this project include residents, St. Mary's School, and businesses on Monterey Highway, Church Street, Swanston Lane, and Casey Lane. HydroScience will review existing conditions for these locations during a site walk, and evaluate facilitating the operation of these services during construction, and the sequencing of work to minimize downtime for each location. The contract documents will identify allowable work hours and maximum amount of time that access to any property can be interrupted. Requirements for critical facilities (for example, maintaining at least one access to businesses at all times) will be specified on the drawings.

Minimizing Water Service Interruptions. HydroScience will design the facilities in such a way as to minimize downtime during construction and enhance system operability. During the hydraulic modeling analysis, HydroScience will evaluate water main valves that can potentially be isolated for construction. We will use the model to determine distribution system impacts. We will provide the City with a map depicting closed valves and impacted hydrants so that City staff can exercise the valves to ensure proper closure prior to construction. If mains need to be jumped to maintain service, City staff will know which hydrants can be used.

In addition, the design may specify installation of the replacement pipeline in parallel with the existing alignment and hot tapping to connecting mains if adequate isolation valves are available on the connecting main. The parallel pipeline will be equipped with new service connections that have been pressure tested, disinfected, and tested negative for total coliform before existing service laterals are disconnected and the meter is reconnected to the new service. The existing alignment would then be abandoned in place after successful transition to the new pipeline. Other operational considerations may include additional valves or service relocation for better accessibility. Operational features will be developed in consultation with City staff.

Traffic control. Traffic control measures will be prepared by HydroScience to allow for a sequence of work with typical MUTCD traffic control measures in place, with the Contractor being ultimately responsible for submitting their traffic control plan to the City for approval prior to beginning work in the public right-of-way.

We will locate the pipelines to comply with the Waterworks separation standards while also minimizing traffic impacts. The intent would be to only have to close one lane or shoulder, and to not locate the pipeline where it would require multiple lane shutdowns for construction or long-term operations and maintenance. Work hours will also be identified for lane closures and specific traffic control measures.

Operations and Maintenance. HydroScience's operations and maintenance expertise will be a key benefit to the City. Isolation valves, blow-offs, air relief valves, hydrants, meters, and sampling stations will be included in our design with consideration for accessibility, safety, and reliability. As part of our utility investigation, we will walk the alignment with City staff to identify appurtenances to include in the replacement, and discuss optimum placement of those appurtenances to facilitate operations and future maintenance. We will document the conditions of the facilities and take note of areas that may impact property owners.

Caltrans Coordination. A review of the right-of-way mapping from the Caltrans D4 ArcGIS site shows that Leavesley Road and First Street (Road 152) are Caltrans right-of-way. The following projects will require Caltrans permitting as a result:

- Church and Gurries (at First Street)
- Monterey Highway (at Leavesley)
- Swanston Lane (at Leavesley)

HydroScience will take an "early and often" approach to managing the schedule and cost risks associated with Caltrans coordination to avoid unforeseen issues. A key Caltrans concern is the potential for subsidence. While Caltrans typically specifies a fixed review period for encroachment permit applications, this duration can grow significantly if Caltrans believes the subsidence risk is significant enough to warrant review by their geotechnical division. We will work with Geo-Logic to address these concerns.

Our approach to preparing plans and specifications that meet the City's objects and that Caltrans can comfortably approve is summarized as follows:

- Incorporate the latest Caltrans standard specifications and details into the contract documents. These must be followed exactly to gain Caltrans approval. We may be required to specify overgrinding of the trench lift, installation of fabric between backfill lifts, etc. The trench overgrinding may trigger additional traffic control and restriping work.
- Identify the lead Caltrans contact for the project areas. HydroScience will contact this person early to outline the scope of the project and get on the same page with respect to requirements, anticipated concerns, and optimal timelines.
- Develop a design that minimizes subsidence risk. Minimize pipe depth and maintain clearances from other utilities and surface features.
- Submit plans and specifications to Caltrans that are thorough, complete, and fully compliant with Caltrans standards.
- Maintain frequent contact throughout the Caltrans review process to make sure the review is on-track and answer any questions along the way.

Project Management. As project manager, Robert Le will be responsible for managing work efforts for HydroScience and our subconsultants. Robert's responsibilities will start with making sure that the City's interests are always paramount in our efforts, that the City is regularly informed of key project issues and our progress, and that our work is being completed in accordance with the City's expectations, budget, and schedule.

This work will start with Robert leading the project kickoff meeting and progress review meetings. We will be meticulous in preparing action item logs, meeting agendas, and minutes. We will document our progress and inform the City monthly regarding our progress on key tasks. At the project outset, we will complete a Project Management Plan (PMP). This PMP will identify key project objectives, project schedule and budget, QA/QC activities, and lines of communication within HydroScience's team and with the City. This will be shared with the project team at the kickoff meeting, so that all team members work in concert from the very beginning of the project.

Crucially, HydroScience has a deep bench of personnel with the type of experience required to execute this project. We have the resources and flexibility to add or replace personnel to accelerate project schedule, and add more resources. Such decisions would be made in consultation with **Mary Hoang**, our Principal-in-Charge for this project and your secondary point of contact.

Scope of Work

HydroScience intends to design the six projects as one set of Contract Documents, but structure the scope and fee in a manner that allows the costs for the different locations to be individually tracked. The following tasks generally apply to each project, except where noted.

- Task 1 – Project Management
- Task 2 – Preliminary Engineering
- Task 3 – Detailed Design/Bid Package
- Task 4 – Engineering Services During the Bidding Phase
- Task 5 – Construction Engineering Support Services

Task 1 – Project Management. HydroScience will prepare for, coordinate, and facilitate one kickoff meeting with the City. During the kickoff meeting, HydroScience will confirm the scope of work, schedule, budget, and availability of project documents and electronic files; review project goals, priorities, and conceptual design requests; review unique project features, discuss format of deliverables; review regulatory items, approval processes, and administrative procedures; and clarify responsibilities of each party.

HydroScience will provide general project management activities, including team coordination, project budget tracking and reporting, managing subconsultants, invoicing, and maintaining the project schedule. The project schedule will identify tasks, subtasks, design development milestones, critical path designation, and progress meetings.

HydroScience will prepare for, coordinate, and facilitate the design review workshops at the 35%, 65%, 95%, and Bid Package level of design. The intent of the workshops is to help facilitate the City's review of the design progress. Following the workshops, City will provide a set of consolidated review comments to HydroScience. HydroScience will maintain a tracking log of comments and outstanding items, which will be returned to the City with responses/action taken.

A peer review of the plans will occur at the 95% stage. This peer review will be performed by Eric Petrel, who has over 36 years of experience designing pipelines all over California. Eric will review the plans and prepare the Certification of Peer Review on HydroScience Letterhead for submittal with the 95% Submittal.

Deliverables

- *Project schedule in Gantt chart format (Microsoft Project)*
- *Monthly progress reports included with each invoice*
- *Response to comments (PDF/Excel)*
- *Peer Review Submittal (PDF)*
- *Meeting agendas and minutes (PDF)*

Task 2 – Preliminary Engineering. Under this task, HydroScience will gather and evaluate existing design documents for the existing infrastructure, including but not limited to: easements, design documents, AutoCAD files, City as-builts/record drawings, and available utility maps. Details of this task include the following.

Site Walk. HydroScience will conduct an initial walkthrough along the project sites to determine the accuracy of existing connection points identified from existing documents, document the existing visible infrastructure, and note where existing road pavement within Project limits is in poor condition. Locations of existing valves, services, and appurtenances will be noted, and potential alignments for the replacement pipeline identified. A Request for Information (RFI) will be prepared and submitted to the City to verify if replacement of infrastructure is desired and should be added to the Project scope.

Topographic field survey/Record Boundary Mapping. Our subconsultant, HMH, will provide topographic surveying and mapping to support the design of the Project. After setting up survey control for the projects, HMH will perform field topographic surveying to obtain the following information for the project extents and up to 300 feet beyond:

- Location, rim, invert, pipe size, and direction of flow of accessible SSMH, SDMH, and drop inlets.
- Surface features from back of walk to back of walk, including utility vaults, boxes, hydrants, and valves.
- Water valves will be located and the rim and top of nut surveyed to determine depth to top of pipe.
- Street monuments and trees.
- USA marked utilities.

The information will be used to develop a 3D TIN surface with contours. This topographic survey will form the basis for the work associated with Task 3.

A Record Boundary Survey will also be prepared by HMH. Using Assessor's Parcel Maps, recorded maps, and publicly available maps from the County of Santa Clara, HMH will prepare the record boundary survey showing the right-of-way lines and property lines shown on County records. Title reports are not expected to be required, and information on Title Reports will be included if provided by the City.

Utility Locating. HydroScience will send utility research/as-built plans request letters to local utility companies that may have facilities within the project limits. A map of the approximate utility locations (including underground utilities) will be created based on data provided by the utility companies and surface utility features as identified during the topographic survey. When the existing data allows, the drawing will indicate utility type, diameter, material, approximate cover, and the horizontal location of the utility. HydroScience will review utility information provided by the City and other utility providers. If information provided by the utility providers does not match information collected during the site walk and information in the previous design drawings, HydroScience will identify potential candidates for utility potholing.

Potholing. This is an optional task based on the ultimate needs of the project and the recommendations of the City.

BESS Testlab will perform up to 10 utility potholes using air-vacuum excavation methods at locations specified by HydroScience within the Project limits. Potholing will be performed to identify the precise horizontal and vertical position of existing utilities that need to be located to complete the pipeline design. Data collected as a result of potholing activities will be presented in a report that will include utility type, size, material, depth and pictures of the exposed utility. Pothole locations (in the field) will be marked with wooden lath and ribbon, with the pothole number, utility size and depth or MAG nail with pertinent utility data annotated on the ground surface.

Potholing will require a Road Encroachment Permit from the City, which is assumed to be provided for no cost to BESS Testlab. Once the utility data has been collected the pothole will be restored per City standard details. BESS will prepare a Traffic Control Plan that is stamped and signed by a P.E. or T.E. for the potholing work.

Geotechnical. This is an optional task based on the ultimate needs of the project and the recommendations of the City.

Geo-Logic will perform a geotechnical study for the project sites. The geotechnical study will include subsurface exploration at selected locations, performing engineering analysis of data, developing geotechnical recommendations for the project design, and analytical testing of selected soil samples (up to 10) that may be disposed during construction for hazardous material. The analytical testing will include testing for CAM 17 metals, total hydrocarbons, VOC (8260B), and pesticides.

Geo-Logic will perform a site reconnaissance to observe surface site conditions, plan and perform up to 18 exploratory borings by means of a tract or truck-mounted drilling rig to a depth of 10 feet below ground surface, prepare traffic control plans, and obtain an encroachment permit from the City for planned borings. Soil sampling and penetration testing will be performed at about 5-foot intervals. Laboratory testing of soil samples will include natural

moisture content and unit weight, Atterberg Limits, unconfined compressive strength, percent passing a No. 200 sieve, and sieve analysis. Borings will be backfilled with cement grout, and in existing pavement areas the borings will be capped at the top with cold-patch asphalt or cement with black dye.

CEQA Compliance. DJP&A will initially determine if the projects are statutorily exempt from the provisions of CEQA. If it is determined the projects are statutorily exempt, DJP&A will prepare a memorandum supporting the use of a Statutory Exemption and the draft Notice of Exemption(s) (NOE).

If the project do not qualify for a Statutory Exemption DJP&A would determine if the projects qualify for a Categorical Exemption. A key consideration in determining if the projects are categorically exempt is whether the projects result in negligible or no expansion of capacity. DJP&A would work with the City and HydroScience to demonstrate that the projects would have negligible or no expansion of capacity. If it is determined the projects are categorically exempt, DJP&A will prepare a memorandum supporting the use of a CE and the draft NOE(s).

DJP&A will prepare a memorandum documenting why the project is eligible for a SE or CE. Upon completion of the administrative draft memorandum, DJP&A will provide an electronic copy in Microsoft Word for the City's review. At this point, if it is determined that none of the exceptions apply, DJP&A will prepare and file a NOE(s), as described below.

Once confirmed by the City that the project is statutorily or categorically exempt, DJP&A will prepare a draft NOE(s) and submit the NOE(s) to City staff for review. Upon project approval, DJP&A will file the NOE(s) at the State Clearinghouse and Santa Clara County Clerk's office and pay the $50 filing fee on behalf of the City. The NOE(s) will not require circulation to the public. Filing the NOE(s) will begin the 35-day statute of limitations on legal challenges to the City's decision that the project is exempt.

Deliverables

- *Geotechnical Investigation (Draft and Final) – Optional*
- *Utility Potholing Report CEQA Exemption memorandum Notice of Exemption*

Assumptions

- *Borings are located within City right-of-way and will be completed during the daytime.*
- *Disposal of excess soil cuttings from borings will be placed in 55-gallon drums and disposed of. Disposal of hazardous materials is not included in this task.*
- *No-fee encroachment permits for surveying, geotechnical, and utility locating will be issued by the City for this task.*
- *Title reports are excluded, and Right-of-way acquisition is not necessary.*

Task 3 – Detailed Design/Bid Package. The detailed design will include three interim submittals and the stamped and final Bid Package. The scope of work for each submittal is as follows:

35% Submittal. This submittal will include the topographic survey, utility information collected from the utilities, the visual observations collected during the site walk, the right-of-way limits and boundaries from the record boundary survey, and the proposed plan location and tie-in locations for the new pipeline. Valves will also be preliminarily located, and preliminary details and references to City standards included as appropriate. Where utility information may be lacking or require verification, proposed pothole locations will be identified.

Additional components of the 35% Submittal will include a table of contents for technical specifications and a construction cost estimate based on the likely bid items for each project segment. Where required, a list of expected permits will be identified.

65% Submittal. Comments on the 35% Submittal will be reviewed and the responses incorporated into the 65% Submittal. The 65% Submittal will also include construction details, a water service schedule, pipeline connection details, erosion

control plans, traffic control, and a service connection map. An updated estimate of probable construction costs, as well as a draft of the technical and special provisions will be prepared.

95% Submittal. Comments on the 65% Submittal will be reviewed and the responses incorporated into the 95% Submittal. The 95% Submittal will also include all of the elements required to have a complete set of contract documents suitable for advertisement, pending final City review. The submittal will be peer reviewed per the scope in Task 1, and will include front end specifications, including the City's agreement, using the City's standard front-end specifications. An updated estimate of probable construction costs, as well as a draft of the technical and special provisions will be prepared.

The 95% Submittal will be used to submit to Caltrans for permit review and approval. The portions going to Caltrans will be stamped and formatted in accordance with their requirements. The City will be responsible for any permit fees Caltrans requires for their review and permitting of the project.

Bid Package. The Bid Package will incorporate all comments on the 95% Submittal, and be a stamped set of contract documents that are suitable for advertisement.

Deliverables

- *35% Submittal, PDF/Word/Excel*
- *Response to Comments, 35%, 65%, 95%, Excel*
- *65% Submittal, PDF/Word/Excel*
- *95% Submittal, PDF/Word/Excel*
- *Caltrans Permit Application (PDF)*
- *Bid Package, one full size and PDF set of stamped plans (bond), one hard copy and electronic set of the specifications (Word/PDF), and estimate (Excel/PDF)*

Assumptions

- *City will pay any costs for the Caltrans Permit Application*

Task 4 – Engineering Services During the Bidding Phase. HydroScience will assist the City during bid solicitation and bid phase services as needed and requested up to the allowance outlined in the proposed budget. Services may include:

- Response to prospective bidder inquiries during the bidding period
- Preparation of up to two addenda
- Attending the pre-bid meeting
- Review and evaluation of bids
- Preparing conformed contract document package that incorporates all addenda to issue for bid award

Deliverables

- *Responses to inquiries and addenda in PDF format*

Assumptions

- *The City is responsible for bid advertisement and any costs associated with advertisement*
- *The City is responsible for preparing for, coordinating, and hosting pre-bid meetings*
- *Addenda prepared during bidding will be based on relatively minor comments or clarification to the design, not requiring significant design revisions*

Task 5 – Construction Engineering Support Services. HydroScience will provide engineering support services in support of the City's Construction Management efforts. It is expected that HydroScience will provide engineering services during construction up to the proposed budget. Services may include the following:

- Attend an internal handoff meeting from the design team to the City's construction management team. HydroScience will brief the City on key issues, permit requirements, possible construction risks, construction sequencing, or other items of concern.
- HydroScience will attend selected construction meetings as directed by the City. We have assumed attending one pre-construction meeting and up to five on-site construction progress meetings.

- HydroScience will respond to up to 20 RFIs generated by the Contractor. RFI reviews will be provided in the same format as the RFI was submitted.
- We expect that the City will require HydroScience to review up to 20 separate submittals, and their corresponding resubmittals. Submittal reviews will be returned to the City in the format utilized by the construction manager. It is expected that any potential product substitutions will be included in submittals from the Contractor.
- HydroScience will prepare a final punch list of incomplete and/or unacceptable items of construction work for the City's review and approval. HydroScience will attend a final close-out walk through with the City when all punch list items have been corrected by the Contractor.
- Prepare Record Drawings. Based on red-lines developed and provided by the Contractor, HydroScience will prepare Record Drawings and provide the AutoCAD and PDF drawings to the City.

Deliverables:

- *Responses to RFIs, submittals, and potential change orders, using the cloud based software provided by the City's Construction Manager*
- *Punch List, Excel*
- *Record Drawings, AutoCAD and PDF*

Assumptions

- *City to provide Construction Management services. HydroScience is not responsible for providing construction quality control testing.*
- *City to prepare for and run all construction meetings.*

Schedule

The anticipated project schedule is on the following page. This project schedule was developed based on the scope, submittals, and project elements identified in the RFP. Among the schedule assumptions are the following:

- *Notice to Proceed.* We have assumed that NTP will be issued to HydroScience on February 26, 2024.
- *Project confirmation.* As a first phase of work, HydroScience will walk the site with City staff, initiate surveying, and begin utility mapping and conceptual layout of the new pipelines and appurtenances.
- *35% Submittal.* This initial submittal include all mapped utility information, a plan view of the alignment, and identify potential permitting or utility conflicts. Based on the 35% Submittal, potholing needs will be identified and then scheduled to occur during the 65% Submittal stage. The 35% Submittal will also be used to define the project for the purposes of CEQA.
- *Utility Potholing*. Following the 35% Submittal, we will initiate potholing at locations identified as part of the 35% Submittal.
- *CEQA.* CEQA work will be initiated following the 35% Submittal. We expect that the projects will require a NOE, and have based our schedule assumptions on that level of environmental documentation. Should a MND be required, we have enough float in our schedule to accommodate that change without causing a project delay.
- *Geotechnical.* We have assumed that the geotechnical work will occur in locations where it is required for the purpose of design. Based on the proposed type of construction for each project design, we will identify whether borings are required to complete that design, and initiate work during summer 2024 for this effort.
- *Design period.* We have assumed that the overall design period, including Caltrans permitting, will be approximately 13 months. This period includes four submittals, with three weeks for the City to review each submittal. Additionally, we have allowed 60 days for Caltrans to review the stamped plans, and then to issue the encroachment permit.

Bidding period. We have assumed three months for bidding, contracting, and project award.

- *Construction period.* We assumed that the total construction schedule will require about nine months to construct. This will result in construction completion during March 2026.

EXHIBIT "C"

MILESTONE SCHEDULE

PROJECT SCHEDULE

Engineering Services for the Water Utility Improvement Design - Project No. 24-RFP-PW-497

ID	Task Name	Duration	Start	Finish
0	**Engineering Services for the Water Utility Improvement Design Project No. 24-RFP-PW-497**	**538 days**	**Mon 2/26/24**	**Wed 3/18/26**
1	**Project Administration and Coordination**	**538 days**	**Mon 2/26/24**	**Wed 3/18/26**
2	Notice to Proceed	0 days	Mon 2/26/24	Mon 2/26/24
3	Project Administration and Coordination	538 days	Mon 2/26/24	Wed 3/18/26
4	Kickoff Meeting	1 day	Mon 3/4/24	Mon 3/4/24
5	**Preliminary Engineering**	**73 days**	**Mon 3/11/24**	**Thu 6/20/24**
6	Site Walk	0 days	Mon 3/11/24	Mon 3/11/24
7	Obtain Encroachment Permit for Surveying	5 days	Tue 3/12/24	Mon 3/18/24
8	Topographic Survey and Utility Mapping	25 days	Tue 3/19/24	Mon 4/22/24
9	Utility Potholing	15 days	Fri 5/31/24	Thu 6/20/24
10	**Detailed Design/Bid Package**	**264 days**	**Tue 3/12/24**	**Fri 3/14/25**
11	**Geotechnical Engineering**	**45 days**	**Fri 6/7/24**	**Thu 8/8/24**
16	**Hydraulic Modeling**	**6 days**	**Wed 3/13/24**	**Wed 3/20/24**
17	**35% Design**	**58 days**	**Tue 3/12/24**	**Thu 5/30/24**
18	Develop 35% Submittal	40 days	Tue 3/12/24	Mon 5/6/24
19	City Review of 35% Submittal	15 days	Tue 5/7/24	Mon 5/27/24
20	35% Design Review Workshop	0 days	Thu 5/30/24	Thu 5/30/24
21	**CEQA Notice of Exemption**	**40 days**	**Fri 5/31/24**	**Thu 7/25/24**
22	Administrative Draft of NOE	15 days	Fri 5/31/24	Thu 6/20/24
23	Final Draft of NOE & Public Notice	5 days	Fri 7/19/24	Thu 7/25/24
24	**65% Design**	**48 days**	**Fri 7/26/24**	**Tue 10/1/24**
25	Develop 65% Submittal	30 days	Fri 7/26/24	Thu 9/5/24
26	City Review of 65% Submittal	15 days	Fri 9/6/24	Thu 9/26/24
27	65% Design Review Workshop	0 days	Tue 10/1/24	Tue 10/1/24
28	**95% Design**	**108 days**	**Wed 10/2/24**	**Fri 2/28/25**
29	Develop 95% Submittal	30 days	Wed 10/2/24	Tue 11/12/24
30	Caltrans Encroachment Permit Application (Construction	60 days	Wed 11/13/24	Tue 2/4/25
31	City Review of 95% Submittal	15 days	Wed 2/5/25	Tue 2/25/25
32	95% Design Review Workshop	0 days	Fri 2/28/25	Fri 2/28/25
33	**Develop Bid Set**	**10 days**	**Mon 3/3/25**	**Fri 3/14/25**
34	**Engineering Services During Bidding**	**58 days**	**Mon 3/24/25**	**Wed 6/11/25**
35	Advertise Project	30 days	Mon 3/24/25	Fri 5/2/25
36	Attend Pre-Bid	0 days	Thu 4/10/25	Thu 4/10/25
37	Bid Opening	0 days	Fri 5/2/25	Fri 5/2/25
38	Notice of Intent to Award	0 days	Fri 5/16/25	Fri 5/16/25
39	Council Package and Approval	25 days	Mon 5/5/25	Fri 6/6/25
40	Prepare Conformed Drawings	15 days	Mon 5/5/25	Fri 5/23/25
41	Construction Notice to Proceed	0 days	Wed 6/11/25	Wed 6/11/25
42	**Construction Engineering Support Services**	**200 days**	**Thu 6/12/25**	**Wed 3/18/26**

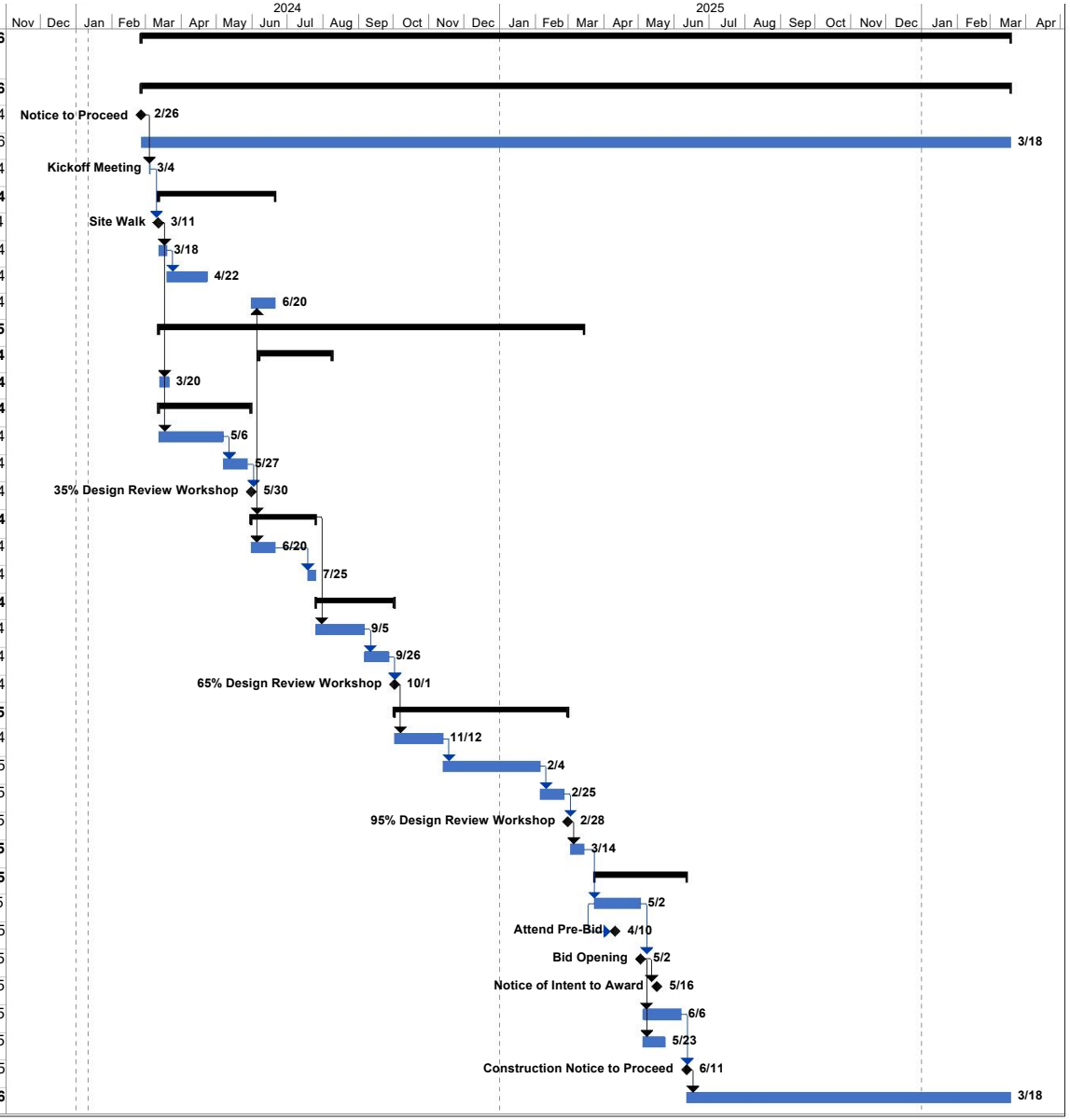


EXHIBIT "D"

PAYMENT SCHEDULE

January 12, 2024

Fee Proposal for Engineering Services for Water Utility Improvement Design, Project No. 24-RFP-PW-497

Task	Description	Mary Hoang Principal-in-Charge	Eric Petrel Peer Review	Robert Le Project Manager	Wilson Zhu Project Engineer	Angela Singer Permitting	Jonathan Machorro Hydraulic Modeling	Staff Engineer	CAD Manager	Labor Hours	Fee	HMH Surveying	Geo-Logic Geotechnical	DJP&A CEQA Compliance	BESS Testlab Utility Locating	Direct Costs	Direct Charges Markup	Expense Subtotal	Total Fee	Phase Totals
	Hourly billing rate	$305	$292	$242	$242	$280	$242	$187	$160											
1	**Project Management**																			**$27,860**
	Project Management	12		40	60					112	**$27,860**						$0	**$0**	**$27,860**	
2	**Preliminary Engineering**																			**$167,192**
	Site Walk/Review Existing Data			16	16			24		56	**$12,232**					$500	$0	**$500**	**$12,732**	
	Topographic/Record Survey			2	4				8	14	**$2,732**	$78,600					$7,860	**$86,460**	**$89,192**	
	Utility Mapping			4	12			40	40	96	**$17,752**						$0	**$0**	**$17,752**	
	CEQA Compliance			16	12			20		48	**$10,516**			$37,000			$0	**$37,000**	**$47,516**	
3	**Detailed Design/Bid Package**																			**$379,176**
	35% Submittal	8	4	96	140		20	60	124	452	**$96,620**						$0	**$0**	**$96,620**	
	65% Submittal	8	8	120	160	8		80	116	500	**$108,296**						$0	**$0**	**$108,296**	
	95% Submittal	8	16	124	120	48		96	100	512	**$113,552**					$1,000	$0	**$1,000**	**$114,552**	
	Bid Package	4	4	40	60	12		80	80	280	**$57,708**					$2,000	$0	**$2,000**	**$59,708**	
4	**Engineering Services During Bidding**																			**$17,544**
	Engineering Services During Bidding			14	36			12	20	82	**$17,544**						$0	**$0**	**$17,544**	
5	**Construction Engineering Support Services**																			**$104,782**
	Initial/Consturction Meetings			24	24					48	**$11,616**					$600	$0	**$600**	**$12,216**	
	RFIs			16	60			8		84	**$19,888**						$0	**$0**	**$19,888**	
	Submittals			20	72			12		104	**$24,508**						$0	**$0**	**$24,508**	
	Change Orders			12	30			8		50	**$11,660**						$0	**$0**	**$11,660**	
	Punch List/Close Out			20	20			10		50	**$11,550**					$300	$0	**$300**	**$11,850**	
	Record Drawings			4	8				64	76	**$13,144**					$1,000	$0	**$1,000**	**$14,144**	
	Project Coordination			8	20			20		48	**$10,516**						$0	**$0**	**$10,516**	
TOTAL - Base Services Tasks		**40**	**32**	**576**	**854**	**68**	**20**	**470**	**552**	**2612**	**$567,694**	**$78,600**	**$0**	**$37,000**	**$0**	**$5,400**	**$7,860**	**$128,860**		**$696,554**
TOTAL - Optional Tasks																				**$146,236**
	Utility Locating														$43,430		$0	**$43,430**	**$43,430**	
	Geotechnical												$93,460				$9,346	**$102,806**	**$102,806**	
OVERALL TOTAL																				**$842,790**

Note:
The percentage of the total cost assigned to individual projects was estimated, since the work will be performed as one project by both HydroScience staff and its subconsultants. The approximate fee percentage for each individual project is as follows

28% 800250: Casey and Swanston
16% 800590: Broadway and Sargent
6% 800600: Church and Gurries
18% 800610: Church - Welburn to First
4% 800660: Murray at Burke
28% 800890: Monterey - Leavesley to Ronan

HYDROSCIENCE ENGINEERS, INC.

2024 Standard Schedule of Billing Rates
Rates are subject to increase 3% annually

LABOR CLASSIFICATION	HOURLY RATE
Principal	$305
Engineer IX	$292
Engineer VIII	$280
Engineer VII	$265
Engineer VI	$253
Engineer V	$242
Engineer IV	$231
Engineer III	$215
Engineer II	$204
Engineer I	$187
Engineering Aide	$110
Construction Professional VI	$200
Construction Professional V	$190
Construction Professional IV	$180
Construction Professional III	$170
Construction Professional II	$150
Construction Professional I	$140
Cross Connection Control Specialist	$135
CAD Manager	$160
CAD Designer I	$140
Marketing Professional	$120
Administrative II	$110
Administrative	$95

Hourly billing rates include postage and telephone charges that are normal to the work authorized. Other direct costs for travel, reproduction, mail service, outside services, etc. will be invoiced at 110 percent of the actual cost. Rates for expert witness services shall be billed at the quoted rates plus $50/hour.

Geo-Logic ASSOCIATES

2024 FEE SCHEDULE

PROFESSIONAL STAFF

Staff Professional I	$138.00/Hour
Staff Professional II	153.00/Hour
Staff Professional III	168.00/Hour
Project Professional I	184.00/Hour
Project Professional II	200.00/Hour
Project Professional III	216.00/Hour
Senior Professional I	224.00/Hour
Senior Professional II	239.00/Hour
Senior Professional III	255.00/Hour
Principal Professional I	270.00/Hour
Principal Professional II	289.00/Hour
Principal Professional III	308.00/Hour
Court Appearance (Expert Witness, Deposition, etc.; four-hour minimum)	2 x HourlyRate

FIELD/LABORATORY STAFF

Technician I	97.00/Hour
Technician II	117.00/Hour
Technician III (or Minimum Prevailing Wage)	132.00/Hour
Technician IV	146.00/Hour
Laboratory Manager	176.00/Hour
Principal Technician	197.00/Hour
Managing Technician	211.00/Hour

CADD/GIS

CADD/GIS/Database Manager I	117.00/Hour
CADD/GIS/Database Manager II	138.00/Hour
CADD Designer	153.00/Hour
GIS Specialist	153.00/Hour

SUPPORT STAFF

Administrative Assistant I	117.00/Hour
Administrative Assistant II	132.00/Hour
Administrative Assistant III	135.00/Hour
Technical Editor	109.00/Hour
Senior Technical Editor	153.00/Hour

*Overtime Premium is 35% of PERSONNEL CHARGE

EQUIPMENT CHARGES

BAT Permeameter	200.00/Day
Compaction Testing Equipment & Supplies	50.00/Day
Peel & Shear Strength Apparatus (FML Seams)	900.00/Month
Portable Laboratory (8’ x 32’ trailer) with equipment	1,200/Month
Portable Laboratory (mobilization / demobilization)	1,500.00
ReMi/Refraction Seismograph	600.00/Day
Sealed Single Ring Infiltrometer (SSRI)	200.00/Day or 750.00/Month
Sealed Double Ring Infiltrometer (SDRI)	Call for Quote
Slope Inclinometer	250.00/Day
Unmanned Aerial Vehicle (Drone) Reconnaissance	250.00/Day

Schedule 2024 NorCal — Effective Through 12/31/2024

Geo-Logic ASSOCIATES

EXPENSES

Vehicle Use for Field Services..... 17.00/Hour or 500.00/week
Soil Sampling Equipment & Drilling Supplies.....7.00/Hour
Groundwater Sampling Equipment and Supplies.....17.00/Hour
Per Diem.....Lesser of (Cost +15%) or (Local Government Rate)
Outside Services (Consultants, Surveys, Chemical lab Tests, etc.).....Cost + 15%
Reimbursables (Maps, Photos, Permits, Expendable Supplies, etc.).....Cost + 15%
Outside Equipment (Drill Rig, Backhoe, Monitoring Equipment, etc.).....Cost + 15%

PERMITS, FEES AND BONDS

The costs of all permits, fees, and performance bonds required by government agencies are to be paid by the Client, unless stated otherwise in an accompanying proposal.

INSURANCE

Geo-Logic Associates, Inc. carries workers' compensation, comprehensive general liability and automobile with policy limits normally acceptable to most clients. The cost for this insurance is covered by the fees listed in this schedule. Cost of any special insurance required by the Client, including increases in policy limits, adding additional insured parties and waivers of subrogation, are charged at cost plus 15%. Unless otherwise stated, such charges are in addition to the estimated or maximum charges stated in any accompanying proposal.

TERMS

Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. Past due accounts are subject to a finance charge of one and one-half percent (1-1/2%) per month, or the maximum rate allowed by law.

PROPOSAL PERIOD

Unless otherwise stated, a proposal accompanying this schedule is effective for sixty (60) days. If authorization to proceed is not received within this period, Geo-Logic Associates, Inc. reserves the right to renegotiate the fee.

Geo-Logic ASSOCIATES

2024 FEE SCHEDULE

TEST NAME	TEST METHOD	UNIT RATE
Geotechnical / Physical Properties		
Moisture Content, gravimetric	D2216/AASHTO T265	$26/Test
Moisture Content (volumetric and gravimetric) and Bulk Density	D2216/D7263	$60/Test
Porosity		$60/Test
Particle Size Analyses		
Standard Sieves and Hydrometer	D422	$225/Test
Standard Sieves; no Hydrometer	D422	$180/Test
Particle Size Analysis – Aggregate, no hydrometer	D422/C136/CT202	$180/Test
Particle Size Analysis with Gravel with hydrometer	D422	$230/Test
Percent Passing #200 Sieve	D1140/C117	$90/Test
Particle Size Analysis, #4, #40, #200 with wash		$70/Test
Atterberg Limits		
Liquid Limit, Plastic Limit, Plasticity Index (LL, PL, and PI)	D4318	$170/Test
Wet preparation, add		$55/Test
USCS Classification (included with sieve and Atterberg Limits)	D2487	$350/Test
Specific Gravity,Fine (<4.75mm diameter materials)	D854	$115/Test
Specific Gravity,Coarse (>4.75mm diameter materials)	C127	$125/Test
Dispersion Testing		
Double Hydrometer (add second hydrometer)	D4221	$150/Test
Proctor Compaction Test		
Method A or B (<25% retained on a 3/8” sieve)	D698/D1557	$250/Test
Method C (>25% retained on a 3/8” sieve)	D698/D1557	$265/Test
Moisture Density Single Point, std/mod (Proctor check point)	D698/D1557	$125/Point
Percent Organic Matter by Muffle Furnace	D2974	$105/Test
Permeability / Conductivity Testing		
Hydraulic Conductivity, Fixed Wall		
up to 8” Diameter Cell	D5856/USBR 5600-89	$380/Test
up to 12” Diameter Cell	D5856/USBR 5600-89	$540/Test
Extra Load per Test		$140/Load
Hydraulic Conductivity, Flexible Wall		
Falling Head, Rising Tail, 1” to 4” Diameter Sample	D5084	$370/Test
Falling Head, Rising Tail, 6” Diameter Sample	D5084	$665/Test
High Pressure (<1200 psi) per sample, add		$65/Test
Ksat with other permeant fluid, long term	D7100	$5,000/Test
Added machine time per day		$80/Day
Intrinsic Permeability (Calculation)	Fetter	No Charge
Strength and Consolidation Testing		
Consolidation Testing		
Consolidation Test – Method A	D2435A	$460/Test
Consolidation Test – Method B	D2435B	$560/Test
Consolidation Test (single point)	D2435	$125/Test
Consolidation Test (without rate data)	D2435	$190/Test
Test rate data per load increment	D2435	$90/Test-Load
Consolidate Test (multiple points and time rates)	D2435	$465/Test
Strength Testing		
Unconfined Compressive Strength (UC), 2-3”	D2166	$110/Test
Unconfined Compressive Strength (UC), 4 or 6”	D2166	$150/Test

Geo-Logic ASSOCIATES

Strength and Consolidation Testing, Continued

Triaxial Compression

Unconsol.-Undrained Triax. Compression (UU), 2-3", 1-pt test	D2850	$215/Test
Unconsol.-Undrained Triax. Compression (UU), 4", 1-pt test	D2850	$255/Test
Unconsol.-Undrained Triax. Compression (UU), 6", 1-pt test	D2850	$450/Test
Consolidated Undrained Triax. Compression (CU), 2-3" (3 pt. test)	D4767	$1,500/Test
Consolidated Undrained Triax. Compression (CU), 2-3" (per point)	D4767	$500/Point
Consolidated Undrained Triax. Compression (CU), 4" (3 pt. test)	D4767	$1,665/Test
Consolidated Undrained Triax. Compression (CU), 4" (per point)	D4767	$555/Point
Consolidated Undrained Triax. Compression (CU), 6" (3 pt. test)	D4767	$3,015/Test
Consolidated Undrained Triax. Compression (CU), 6" (per point)	D4767	$1,055/Point
CU – add per point for progressive (staged) test		$315/Point
Consolidated Drained Triax. Compression (CD), 2-3" (3 pt. test)	D7181	$1,890/Test
Consolidated Drained Triax. Compression (CD), 2-3" (per point)	D7181	$630/Point
Consolidated Drained Triax. Compression (CD), 4" (3 pt. test)	D7181	$2,115/Test
Consolidated Drained Triax. Compression (CD), 4" (per point)	D7181	$705/Point
Consolidated Drained Triax. Compression (CD), 6" (3 pt. test)	D7181	$3,300/Test
Consolidated Drained Triax. Compression (CD), 6" (per point)	D7181	$1,100/Point
High Pressure (>120 psi), add		$80/Point

Direct Shear

Direct Shear, 2.5" (3 pt. test)	D3080	$615/Test
Direct Shear, 2.5" (per point)	D3080	$205/Point
Additional Cycles (per load)	D3080	$55/Load
Direct Shear, 12" (3 pt. test)	D3080	$1,155/Test
Direct Shear, 12" (per point)	D3080	$385/Point
California Bearing Ratio (per point)	D1883	$350/Point
Added machine time when > 2 days of shear		$80/Day

Aggregate and Rock Testing

Dry Rodded Unit Weight	C29	$90/Test
Rock Density	D7263	$60/Test
Saturated Hydraulic Conductivity	D5084	$370/Test
Rock Point Load Index, 1-break	D5731	$55/Test
Rock Point Load Index, multiple breaks	D5731	$210/Test
Rock Joint Direct Shear, per point	D5607	$290/Point
Rock Joint Direct Shear, add per load	D5607	$105/Load
Uniaxial Strength, Peak Only	D7012	$145/Test

Geosynthetics Testing

Large Scale Direct Shear

Geosynthetic/Geosynthetic, 3-point test	D5321	$750/Test
Geosynthetic/Geosynthetic, per point	D5321	$250/Test
Soil/Geosynthetic, 3-point test	D5321	$1,005/Test
Soil/Geosynthetic, per point	D5321	$335/Test
Geosynthetic Clay Liner (GCL), 3-point test	D6243	$1,065/Test
Geosynthetic Clay Liner (GCL), per point	D6243	$355/Test
Soil/GCL, 3-point test	D6243	$1,005/Test
Soil/GCL, per point	D6243	$335/Test
Sandwich (multiple layers), 3-point test		$1,410/Test
Sandwich (multiple layers), per point		$470/Point

Large Scale Puncture

Large Scale Puncture, modified	D5514	$465/Test
Puncture Test High Pressure (>120 psi), per point		$95/Point

Geo-Logic ASSOCIATES

Soil with Amendments and Slurry Testing

Slurry Wall Soil/Bentonite Saturated Hydraulic Conductivity, Falling Head, Rising Tail

1-100 samples	D5084	$325/Test
101-200 samples	D5084	$315/Test
201-300 samples	D5084	$305/Test
301-400 samples	D5084	$294/Test
Greater than 400 samples	D5084	$290/Test
Soi/Cement/Bentonite, Unconfined Compressive (UC) Strength	D4832	$28/Test
Soil / Bentonite Mix Evaluation		$325/Test
Soil / Cement / Bentonite Mix Evaluation		$430/Test
Pocket Penetrometer		$20/Test

Soil Chemistry

pH of Soil		$25/Test

All test methods are ASTM unless otherwise noted.

Special sample preparation and laboratory testing not listed above will be charged at applicable personnel rates.

All laboratory test rates are for standard turn-around time and normal reporting procedures. Rush orders will be subject to a 50 percent premium. Manpower requirements or test protocol may preclude the granting of a rush request.

CHARGE RATE SCHEDULE

Professional & Office

	Per Hour
Principal	$270
Senior Land Development Manager	$254
Senior Civil Engineering or Land Surveying or Landscape Architect Manager	$245
Land Development Manager	$218
Civil Engineering, Land Surveying or Landscape Architect Manager	$214
Senior Planner	$234
Senior Civil Engineer, Land Surveyor, or Landscape Architect	$198
Engineering Design Specialist	$190
Design Specialist	$176
Project Planner	$212
Project Civil Engineer, Land Surveyor, or Landscape Architect	$182
Project Arborist	$170
Senior Engineer, Surveyor, or Landscape Designer	$186
Engineer, Planner, Surveyor, or Landscape Designer	$174
Assistant Engineer, Surveyor, Planner, or Landscape Designer	$154
Junior Engineer, Surveyor, Planner, or Landscape Designer	$144
Senior Technician	$156
Project Technician	$144
Technician	$134
Assistant Technician	$124
Junior Technician	$102
Intern	$ 96
Project Support Staff	$ 96

Field Services

	Per Hour
2-Person Field Crew	$290
3-Person Field Crew	$380
1-Person Field Crew	$202
Senior Field Engineer	$192
Field Engineer	$168

Printing, Reproductions & Materials at Cost, Plus 20%
Transportation at Cost, including mileage based upon IRS rates
Other Outside Services at Cost, Plus 20%
Rates are subject to Adjustment July 1, 2024

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CLIENT INITIALS
CONSULTANT INITIALS DRS

DAVID J. POWERS & ASSOCIATES, INC.
ENVIRONMENTAL CONSULTANTS & PLANNERS

CHARGE RATE SCHEDULE[1]

Title	Hourly Rate
Senior Principal	$ 340.00
Principal Project Manager	$ 313.00
Senior Environmental Specialist	$ 266.00
Senior Project Manager	$ 244.00
Environmental Specialist	$ 228.00
Project Manager	$ 217.00
Associate Project Manager	$ 191.00
Assistant Project Manager	$ 160.00
Researcher	$ 138.00
Graphic Artist	$ 128.00

Materials, outside services and subconsultants include a 15% administration fee.
Mileage will be charged per the current IRS standard mileage rate at the time costs occur.
Subject to revision January 1, 2025. Charge rates subject to annual 3% escalation.

[1] David J. Powers & Associates, Inc. (DJP&A) provides regular, clear, and accurate invoices, in accordance with normal company billing procedures. The cost estimate prepared for this project does not include special accounting or bookkeeping procedures, nor does it include preparation of extraordinary or unique statements or invoices. If a special invoice or accounting process is requested, the service can be provided on a time and materials basis. Any fees charged to DJP&A for Client's third-party services related to invoicing, insurance certificate maintenance, or other administrative functions will be billed as a reimbursable expense.

BESS UTILITY SOLUTIONS

Hayward (Corporate) | Fresno | Los Angeles | Sacramento | F. (408) 988-0101 Utility Locating - Ground Penetrating Radar (GPR) - Electromagnetic Pipe Locators Structural Concrete Scanning - Potholing Vacuum Excavation - CCTV Pipe Inspection Mobile LiDAR Scanning - 3D Scanning - 3D Utility Mapping - Gas Standy by - **www.besstestlab.com**
DBE 34267 - CSLB 817532 - DIR 1000007058 - MBE 1208095 - SBE 38052 - SLEB 18-00111 - ISN 400231830

BESS Utility Solutions Rate Schedule 2023

Services	Houlry Rate	Night/OT Rate	Emergency Rate
Project Management	$185.00		
Project Coordination	$145.00		
Utility Foreman	$185.50		
Licensed Professional (Civil / Surveyor)	$190.00		
LiDAR / UAV / Data Processing and Extraction	$125.00		
CAD Technician	$117.00		
Reports / Sketches / Clerical	$101.00		
Administrative Support	$101.00		
Data Processing and Extraction	$132.50		
Utility Location & Gas Transmission Standby			
1-Person Utility Designation w/ GPR & EM Pipe Locator	$185.50	$296.80	$371.00
2-Person Utility Designation w/ Multi Antenna GPR	$371.00	$593.60	$742.00
1-Person Gas Transmisson Stand by w/truck and equipment	$196.00	$313.60	$392.00
Potholing and Vacuum Excavation			
2-Person Utility Potholing w/ air vacuum truck	$330.00	$429.00	$528.00
1-Person Utility Potholing w/ hydro vacuum truck	$317.00	$412.10	$507.20
2-Person Utility Potholing w/ hydro vacuum truck	$397.00	$516.10	$635.20
2-Person Utility Potholing w/ Air OX vacuum truck	$444.00	$577.20	$710.40
2-Person Key Hole & Surface Restoration w/ equipment	$320.00	$416.00	$512.00
1-Person Dump Truck Crew w/equipment	$214.00	$278.20	$342.40
Traffic Control			
1-Person Traffic Control w/ arrow truck	$163.00	$211.90	$260.80
2-Person Traffic Control w/ arrow truck	$259.00	$336.70	$414.40
1-Person Flagger / TC Helper	$140.00	$182.00	$224.00
GPR Concrete Scanning and Coring			
1-Person GPR Concrete Scanning w/ equipment	$200.00	$260.00	$320.00
1-Person GPR Concrete Scanning w/ equipment Prevailing Wage	$268.00	$348.40	$428.80
1-Person Saw Cutting & Coring w/ equipment	$154.00	$200.20	$246.40
1-Person Saw Cutting & Coring w/ equipment Prevailing Wage	$175.00	$227.50	$280.00
CCTV Camera – Video Inspection			
2-Person CCTV Pipe Inspection w/ Main Line Crawler Unit	$334.00	$434.20	$534.40
2-Person CCTV Pipe Inspection w/ Lateral Line Push Unit	$323.00	$419.90	$516.80
2-Person Hydro Flushing w/ hydro vacuum truck	$397.00	$516.10	$635.20
Surveying and Mapping			
1-Person Survey Crew - GPS / Robotic / 3D Scanner	$197.00	$256.10	$315.20
2-Person Survey Crew - GPS / Robotic / 3D Scanner	$280.00	$364.00	$448.00
2-Person Survey Crew - Mobile LiDAR Scanner	$364.00	$473.20	$582.40
2-Person Survey Crew - UAV Data Collection	$289.00	$375.70	$462.40

NOTE: Rates are portal to portal from our nearst office. Mobilization may apply for distances further than 50 miles from nearest office.

Additional Cost			
1-Person Utility Support Truck	$160.00	$208.00	$256.00
1-Person General Labor Hourly Rate	$140.00	$182.00	$148.40
1-Person Operator Hourly Rate	$180.00	$234.00	$288.00
1-Person Utility Truck Mobilization Rate	$111.00		
Air/hydrovac Utility Truck Mobilization Rate	$290.00		
Hydrovac Utility Truck Mobilization Rate	$330.00		
Large Specialty Utility Truck Mobilization Rate	$370.00		
Traffic Control Plans – non-stamped (per sheet)	$400.00		
Traffic Control Plans – Stamped (per sheet)	$600.00		
Mileage, if applicable	Current IRS Rate		
Lodging and meals, applies when over 50 miles	Current GSA Rate		
Remote Hose Per 25' Section (3" 4" or 6" 10")	$27/Each		
Off site disposal of Non-Hazardous Material	$1,100/Load		
Off-Road Vehicle Rental	Cost +10%		
Outside reproductions, shipping, services and consultants	Cost +10%		
Cost of specialty field supplies,rental equipment, bridge tolls etc.	Cost +10%		

Conditions

Work site must be safe and prepared in advanced prior to scheduleing our crews (if managed by client)
Show up cost is a 4 hour minimum per our houlry rates (Per National Pipe Line agreement)
Minimum charge is 4 hours
Over time applies after eight hours of work on site and weekends Emergencies and Sundays are double time
Rates above apply to day shift (typical BESS day shift hours are 7:00 AM to 3:30 PM).
Night rate applies outside of normal shift hours.
Overtime after 8hrs on site up to 12hrs and Saturdays
Overtime after 12hrs, Emergency,Sundays and Holidays
3% escalation may apply for multi year contracts

8.4. Award a Contract to Villalobos & Associates for the FY24 Annual Citywide Curb Ramp Project No. 24-PW-286 in the amount of $104,130, Approve a Project Contingency of $10,413, and Approve a Total Project Expenditure of $114,543 for Construction

1. Staff Report:
2. Public Comment
3. Possible Action:

   Award a contract to Villalobos & Associates in the amount of $104,130, approve a project contingency of $10,413, approve a total project expenditure of $114,543 for the construction of the Fiscal Year 2024 (FY24) Annual Citywide Curb Ramp Project (No. 24-PW-286), and authorize the City Administrator to execute the contract and associated documents.

City of Gilroy

STAFF REPORT

Agenda Item Title:	**Award a Contract to Villalobos & Associates for the FY24 Annual Citywide Curb Ramp Project No. 24-PW-286 in the amount of $104,130, Approve a Project Contingency of $10,413, and Approve a Total Project Expenditure of $114,543 for Construction**
Meeting Date:	February 5, 2024
From:	Jimmy Forbis, City Administrator
Department:	Public Works
Submitted By:	Karl Bjarke, Interim Public Works Director
Prepared By:	Marco Martinez, Engineer I

STRATEGIC PLAN GOALS Maintain and Improve City Infrastructure

RECOMMENDATION

Award a contract to Villalobos & Associates in the amount of $104,130, approve a project contingency of $10,413, approve a total project expenditure of $114,543 for the construction of the Fiscal Year 2024 (FY24) Annual Citywide Curb Ramp Project (No. 24-PW-286), and authorize the City Administrator to execute the contract and associated documents.

EXECUTIVE SUMMARY

The FY24 Annual Citywide Curb Ramp Project (Project) consists of constructing 16 pedestrian curb ramps to comply with the Americans with Disabilities Act (ADA). The Public Works Department advertised the Project in the San Jose Mercury News and on the City's website on December 16, 2023, and received six bids. Staff recommends awarding a contract to the lowest bidder, Villalobos & Associates, of Gilroy, CA, in the amount of $104,130, approving a project contingency of $10,413, and approving a total project expenditure of $114,543 to construct the Project. The Project will be funded with Transportation Development Act (TDA) Article 3 Grant funds.

BACKGROUND

The City of Gilroy Fiscal Year 2024 to Fiscal Year 2028 Capital Improvement Program (FY24-FY28 CIP) was adopted by the City Council on June 5, 2023. The FY24 Annual Citywide Curb Ramp Project includes the FY24-FY28 CIP as Project #800070.

The purpose of this Project is to construct ADA-compliant pedestrian curb ramps at locations that currently have no curb ramps to improve accessibility for the City's residents and visitors. Staff have identified approximately 40 locations around the City with no pedestrian curb ramps. Based on the Engineer's Estimate and the available funding for this project, staff anticipated that 16 curb ramps could be installed.

ANALYSIS

The 16 curb ramps included in this year's project are located at the following intersections:

1. Ousley Dr/Solis Dr (2)
2. Ousley Dr/Welburn Ave (2)
3. Delta Dr/Solis Dr (2)
4. Delta Dr/Welburn Ave (4)
5. Delta Dr/Calabrese Wy (2)
6. Rosanna St/Second St (2)
7. Rosanna St/Fourth St (2)

These locations were selected based on feedback from residents and in coordination with the FY24 Annual CDBG Sidewalk/Curb Ramp Project, which will be constructing curb ramps at another 13 locations.

Staff advertised the Project in the San Jose Mercury News and on the City's website on December 15, 2023 with a bid opening date of January 9, 2024. Staff received 6 bids. A summary of the bid results is shown below:

RANK	COMPANY NAME	TOTAL BID AMOUNT
1	Villalobos & Associates	$104,130
2	JJR Construction	$128,262
3	ASG Builders	$171,160
4	McKim Corporation	$188,400
5	Kroker Inc.	$199,766
6	South Bay Grading	$208,869

The lowest responsive bidder was Villalobos & Associates, with a total bid of $104,130. The Engineer's Estimate was $214,000. The lowest bid was 50% lower than the Engineer's Estimate.

ALTERNATIVES

The alternative to the staff recommendation is to reject all bids. Staff does not recommend this option as there is a grant deadline to spend the monies by June 30, 2024.

FISCAL IMPACT/FUNDING SOURCE

Staff recommends a total spending authorization of $114,543 to complete the construction of this project. The Project will be funded with Transportation Development Act (TDA) Article 3 Grant funds and is budgeted in Fund 215 - Transportation/Mobility Grant Fund. There are sufficient budgetary appropriations available to accommodate this project's expenditure.

PUBLIC OUTREACH

The contractor will distribute public notices to nearby residents and schools two weeks and 72 hours in advance of construction.

NEXT STEPS

If the Council awards this contract, staff will work with the contractor to execute the contract and develop a final construction schedule. Construction is expected to begin in March 2024 and be completed in May 2024.

Attachments:

1. Villalobos & Associates-Agreement

SECTION 00500
AGREEMENT

FY24 ANNUAL CITYWIDE CURB RAMP PROJECT NO. 24-PW-286

THIS AGREEMENT, made this 5th day of February, 2024, by and between the **City of Gilroy**, hereinafter called the "City," and Villalobos & Associates hereinafter called the "Contractor."

WITNESSETH:

WHEREAS, the City has caused the Contract Documents to be prepared comprised of bidding and contract requirements and technical specifications and drawings for the construction of the FY24 Annual Citywide Curb Ramp Project No. 24-PW-286, as described therein, and

WHEREAS, the Contractor has offered to perform the proposed work in accordance with the terms of the Contract Documents.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the City and Contractor agree as follows:

Article 1. Work.

Contractor shall complete the Work as specified or indicated in the Contract Documents.

Article 2. Contract Time.

The Work shall be completed by the Contractor in accordance with the Contract Documents within the time period required by Paragraph 00810-2.0, Time Allowed for Completion, subject to extension as expressly provided in the Contract Documents.

Article 3. Liquidated Damages.

The city and the contractor recognize that the city will suffer substantial damages and significant financial loss as a result of the contractor's delays in performance of the work described in the contract documents. The city and the contractor hereby acknowledge and agree that the damages and financial loss sustained as a result of any such delays in performance will be extremely difficult and impractical

to ascertain. Therefore, the city and contractor hereby agree that in the event of such delays in performance, the city shall be entitled to compensation by way of liquidated damages (and not penalty) for the detriment resulting therefrom in accordance with paragraph 00700-6.5, liquidated damages, of the contract documents. The city and the contractor further agree that the amounts designated as liquidated damages are a reasonable estimate of the city's damages and financial loss in the event of any such delays in performance considering all of the circumstances existing as of the date of this agreement, including the relationship of such amounts to the range of harm to the city which reasonably could be anticipated as of the date of this agreement and the expectation that proof of actual damages would be extremely difficult and impractical.

By initialing this paragraph below, the parties hereto signify their approval and consent to the terms of this article 3.

_____ _____

City's Initials **Contractors Initials**

Article 4. Contract Price.
In consideration of the Contractors performance of the Work in accordance with the Contract Documents, the City shall pay the Contract Price set forth in the Contract Documents.

Article 5. Contract Documents.
The Contract Documents which comprise the entire agreement between City and Contractor concerning the Work consist of this Agreement (Section 00500 of the Contract Documents) and the following, all of which are hereby incorporated into this Agreement by reference with the same force and effect as if set forth in full.

Invitation to Bid
Instructions to Bidders
Bid Documents
Designation of Subcontractors
Bid Guaranty Bond
Agreement
Acknowledgements
Performance Bond
Payment Bond
General Conditions
Supplementary Conditions
General Requirements
Standard Specifications (Caltrans)
Technical Specifications

Drawings
Addenda, if any
Executed Change Orders, if any
Maintenance Bond
Notice of Award
Notice to Proceed

Article 6. Miscellaneous.
Capitalized terms used in this Agreement which are defined in Section 01090, References, of the Contract Documents will have the meanings set forth in Section 01090, References.

Contractor shall not assign any rights, obligations, duties or responsibilities under or interest in the Contract Documents without the prior written consent of the City, which consent may be withheld by the City in its sole discretion. No assignment by the Contractor of any rights, obligations, duties or responsibilities under or interests in the Contract Documents will be binding on the City without the prior written consent of the City (which consent may be withheld in City's sole discretion); and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, executed by the City, no assignment will release or discharge the assignor from any liability, duty, obligation, or responsibility under the Contract Documents.

Subject to the foregoing, the Contract Documents shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Nothing contained in the Contract Documents shall in any way constitute a personal obligation of or impose any personal liability on any employees, officers, directors, agents or representatives of the City or its successor and assigns.

In accordance with California Business and Professions Code Section 7030, the Contractor is required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against Contractors if a complaint regarding a latent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning the Contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

IN WITNESS WHEREOF, this agreement has been executed on this day of February 5, 2024.

Villalobos & Associates
Name of Contractor

Signature of Contractor

President
Title of Signator

ATTEST:

Signature

Secretary
Title of Signator

Signature of City

City Administrator
Title of Signator

Approved as to form by
City Attorney

ATTEST:

Signature

Title of Signator

END OF SECTION

11.1. Approval to Enter into an Exclusive Negotiating Agreement with BayEcotarium for Potential Uses of the (Hecker Pass) Recreation Gateway Area

1. Staff Report:
2. Public Comment
3. Possible Action:

   Approve an Exclusive Negotiating Rights Agreement between the City of Gilroy and Bay.org (BayEcotarium) and authorize the City Administrator to execute all related documents; and

   Create an ad hoc committee consisting of three Gilroy City Council members and the City Administrator to serve as members of the City's negotiating party.

City of Gilroy

STAFF REPORT

Agenda Item Title:	**Approval to Enter into an Exclusive Negotiating Agreement with BayEcotarium for Potential Uses of the (Hecker Pass) Recreation Gateway Area**
Meeting Date:	February 5, 2024
From:	Jimmy Forbis, City Administrator
Department:	Administration
Submitted By:	Jimmy Forbis, City Administrator
Prepared By:	Victoria Valencia, Economic Development Manager

STRATEGIC PLAN GOALS Promote Economic Development Activities

RECOMMENDATION

a) Approve an Exclusive Negotiating Rights Agreement between the City of Gilroy and Bay.org (BayEcotarium) and authorize the City Administrator to execute all related documents; and

b) Create an ad hoc committee consisting of three Gilroy City Council members and the City Administrator to serve as members of the City's negotiating party.

EXECUTIVE SUMMARY

The City of Gilroy is evaluating how to utilize the 536-acre property at 3050 Hecker Pass Highway, including Gilroy Gardens (the Recreation Gateway Area or RGA). The City received interest from two companies: Bay.org (BayEcotarium) with an offer to purchase the property and Select Contracts with an offer to lease the property long-term.

Staff recommends moving forward with an Exclusive Negotiating Rights Agreement (ENR Agreement) with Bay.org. However, it's essential to note that this recommendation does not rule out future discussions with Select Contracts or other interested parties. The staff recommendation does not indicate what direction the City

may want to proceed with concerning the property. It is merely an opportunity to have discussions at a very high level.

While moving forward with discussions of the prospective sale of the RGA is the staff's primary recommendation, the City should remain open to exploring the lease alternative should circumstances or preferences evolve after the ENR Agreement period ends. While both potential projects could have positive economic impacts and meet community needs, the possible deal with Bay.org is a sale transaction, which would be the quickest resolution to the disposition of the property. Should another vendor show interest in purchasing or leasing the property, staff will forward those interests for further Council deliberation.

BACKGROUND

Gilroy Gardens, open since 2001, is a theme park attraction with rides, splash parks, water features, and numerous landscaped garden attractions. The 536 acres of land the park resides on was purchased by the City of Gilroy in 2008 for $13 million. Gilroy Gardens Family Theme Park (a 501(c)(3) corporation) operates the park.

The City is considering a sale or long-term lease of the land to drive post-COVID economic recovery with direct (TOT tax) and indirect revenue, job growth, and tourism destination brand diversification.

At this time, there are two companies interested in further developing the RGA:

- BayEcotarium is a 501(c)3 non-profit organization. It is the San Francisco Bay Area's largest non-profit watershed conservation group. It is comprised of six institutions that focus on different aspects of marine education, habitat restoration, and watershed preservation, including a public aquarium known as Aquarium of the Bay located at 2 Beach St., San Francisco, CA, 94133; and the Bay Model Visitors Center, an eight-acre education facility open to the public located at 2100 Bridgeway Blvd, Sausalito, CA 94965.

- Select Contracts is a privately held company headquartered in British Columbia, Canada. They specialize in designing, building, and operating global leisure and entertainment projects. Their projects include adventure parks, bike parks, family entertainment centers, surf parks, and water parks in 71 countries.

ANALYSIS

The City of Gilroy has an opportunity to enter into an exclusivity agreement for the possible sale of the 536 acres located at 3050 Hecker Pass Hwy, Gilroy, including Gilroy Gardens, with a non-profit organization, Bay.org (dba BayEcotarium). Before the City can proceed in business discussions, it is prudent to enter into a temporary exclusivity agreement.

Exclusivity is the condition in which each party grants the other party sole rights about a particular business function or product sale and/or purchase. Put another way, exclusivity is an arrangement between two parties wherein neither will explore entering into a similar deal with other parties for a specific period.

The exclusivity agreement would allow both parties to conduct due diligence and proceed in talks without losing a potential deal immediately. During this time, staff would closely examine the proposal's details and determine if it is advantageous for the community and how best to proceed.

After conducting due diligence, the City and vendor may (or may not) pursue constructing a viable framework of deal points. The proposed framework would then be used to draft a mutually beneficial agreement. The City Council would then have the opportunity to review any potential future agreement due to these exclusive talks before execution.

While project details are still under discussion, the development would likely include opportunities for various ecotourism programs and events, as well as the continued operations of Gilroy Gardens. Having the proposed development sold to and operated by a Smithsonian Affiliated brand with a proven track record of operating visitor attractions could be an excellent opportunity for economic growth and has the potential to heighten our position in the region as a destination location and increase travel and tourism to Gilroy. Discussions during this preliminary period are non-binding and provide the opportunity to assess the potential of the proposed project in Gilroy fully.

After carefully considering the two options for the property, the staff recommends moving forward with an Exclusive Negotiating Agreement with BayEcotarium to explore a property sale.

Previously, the City entered into an ENA with Sharks Ice, LLC. That process is similar to the method proposed with BayEcotarium, which included appointing three City Council members to work with the City Administrator on an ad hoc committee.

ALTERNATIVES

Council may choose to:

- Not approve the exclusivity agreement with BayEcotarium.
  This is not recommended because it would stop further business discussions with BayEcotarium.
- Not approve the creation of the ad hoc committee.

FISCAL IMPACT/FUNDING SOURCE

No fiscal impacts are expected until the exclusivity period ends with BayEcotarium. Future staff reports will discuss any recommendations for future Council actions that

necessitate expenditures. No fiscal impacts are expected with the proposed creation of an ad hoc committee.

PUBLIC OUTREACH

This item was included on the preliminary agenda for this City Council Meeting. Any future actions related to the property will include public outreach.

NEXT STEPS

As the next step, staff proposes to enter into a one hundred twenty (120) day exclusivity agreement with BayEcotarium to continue business discussions for the potential sale and development of the Gilroy Gardens hillside property as a recreation and tourism destination.

In addition to entering into the exclusivity agreement, staff proposes creating an ad hoc committee of three (3) Councilmembers and the City Administrator who would serve as members of the City's negotiating party.

After conducting due diligence, the Committee may propose a viable framework of deal points. If a sale of the property is viable, additional studies and reports may need to be conducted. Any future agreement would be subject to the approval of both parties' respective governing bodies or executive representatives. The proposed framework would be used to draft a mutually beneficial contract.