

**RENEWAL AND AMENDMENT NO. 2 TO AGREEMENT BETWEEN
MONTEREY COUNTY WORKFORCE DEVELOPMENT BOARD AND
PAT DAVIS DESIGN GROUP FOR COMMUNICATION MATERIALS DEVELOPMENT**

This Renewal and Amendment No. 2 is made to the Professional Services Agreement for the provision of outreach and other communications-related materials compliant with the requirements of the Workforce Innovation and Opportunity Act (WIOA), by and between Pat Davis Design Group, Inc., hereinafter "Contractor," and the Monterey County Workforce Development Board, hereinafter "MCWDB," both of which are collectively referred to as "the parties."

WHEREAS, effective July 1, 2022, the MCWDB and Contractor entered into an Agreement in the amount of \$44,975 to provide WIOA-compliant outreach and communications materials ("the Agreement"); and

WHEREAS, effective July 1, 2023, the MCWDB and Contractor entered into Amendment No. 1 to increase the total amount of the Agreement by \$35,000, for a total aggregate amount not to exceed \$79,975, and extend the term for an additional year for the total aggregate term of July 1, 2022 through June 30, 2024; and

WHEREAS, effective July 1, 2024, the Agreement between the MCWDB and Contractor expired; and

WHEREAS, the MCWDB and Contractor wish to renew and amend the Agreement, pursuant to this Renewal and Amendment No. 2, to increase the total amount of the Agreement by \$87,973, for a total aggregate amount not to exceed \$167,948, and extend the term for one (1) additional year, for the total aggregate term of July 1, 2022 through June 30, 2025;

NOW THEREFORE, the MCWDB and Contractor hereby agree:

- A. That the Agreement between the MCWDB and Contractor for outreach and communications materials, effective July 1, 2022, is hereby renewed retroactive to July 1, 2024, and
- B. That the Agreement shall be amended, pursuant to this Renewal and Amendment No. 2, in the following manner:
 1. Section IV (A) shall be amended by removing the language, "This Agreement shall be effective retroactive to July 1, 2022 and remain in full force and effective through June 30, 2024," and replacing it with "**This Agreement shall be effective July 1, 2022 and remain in full force and effective through June 30, 2025.**"
 2. Section IV (C) (1) shall be amended by removing the language, "Funding available for the project term of July 1, 2022 to June 30, 2024 is \$79,975," and replacing it with "**Funding available for the project term of July 1, 2022 to June 30, 2025 is \$167,948.**"
 3. Exhibit A, "Scope of Services," shall be amended by replacing it with Exhibit A-1, "Amended Scope of Services, Collateral Materials Development Services, July 1, 2022 through June 30, 2025," attached to this Renewal and Amendment No. 2.
 4. Exhibit B-1, "Amended Budget Summary," shall be amended by replacing it with Exhibit B-2, "Amended Budget Summary, WIOA Communications Collateral Development, July 1, 2022 through June 30, 2025," attached to this Renewal and Amendment No. 2.
 5. Exhibit C, "General Conditions, Assurances and Certifications," shall be amended by replacing it with Exhibit C-1, "Amended General Conditions, Assurances and Certifications, Workforce Innovation and Opportunity Act (WIOA)," attached to this Renewal and Amendment No. 2.

Any individual executing this Renewal and Amendment No. 2 on behalf of the MCWDB or Contractor represents and warrants that he or she has the requisite authority to enter into this Renewal and Amendment No. 2 on behalf of such party and bind the party to the terms and conditions of Renewal and Amendment No. 2.

Except as provided herein, all remaining terms, conditions and provisions of the Agreement are unchanged and unaffected by this Renewal and Amendment No. 2 and shall continue in full force and effect as set forth in the Agreement.

A copy of this Renewal and Amendment No. 2, including attachments, shall be attached to the original Agreement dated July 1, 2022.

IN WITNESS WHEREOF, the parties have executed this Renewal and Amendment No. 2 on the day and year written below.

MONTEREY COUNTY WORKFORCE
DEVELOPMENT BOARD

PAT DAVIS DESIGN GROUP, INC.



Chris Donnelly, Executive Director



George Dimotakis, President

Dated 9/10/2024

Dated SEPTEMBER 3, 2024



Ronald DeForest, Project Manager

Dated September 3, 2024

Approved as to Form:

DocuSigned by:



Deputy County Counsel

Dated 9/10/2024 | 4:18 PM PDT

EXHIBIT A-1

AMENDED SCOPE OF SERVICES

Collateral Materials Development Services

July 1, 2022, through June 30, 2025

- I. **PROJECT OVERVIEW:** The purpose of this agreement is to formalize the working relationship and establish the roles and responsibilities of the Monterey County Workforce Development Board (MCWDB) and Pat Davis Design Group (hereinafter, "Contractor") for the provision of high-quality outreach/marketing collateral and other communications-related materials to create a common theme in support of the various activities of the local workforce system.
- II. **PROJECT PERIOD:** July 1, 2022 through June 30, 2025.
- III. **DUTIES AND RESPONSIBILITIES:**

A. Contractor Role and Responsibilities:

Contractor shall design, develop content and layout, and produce appropriate outreach/marketing information in consultation with MCWDB staff. Contractor shall produce communications materials and templates in English and Spanish that are specific to different projects and customer groups in consultation and coordination with designated MCWDB staff.

1. Contractor will implement the following Internal Communications Plan and External Communications/Outreach Plan on behalf of MCWDB:
 - a. Internal Communications Plan
 - 1) Goal: Align Employees with Business Goals
 - a) Communicate the Board's vision and mission, ensuring employees understand the Board's direction and purpose.
 - b) Share strategic objectives, clearly outlining the organization's goals and how individual roles contribute to them.
 - c) Build employee engagement, motivating employees to be invested in the Board's success.
 - 2) Elevator Pitch
 - a) Define the Board's value proposition
 - i. Clearly articulate what unique value the career centers and Monterey County Works services offer to customers.
 - b) Craft core message
 - 3) Other Internal Messaging Development
 - a) Define key messages that align with the Board's goals.
 - b) Ensure messages are clear, concise, and relevant.
 - c) Channel Selection
 - i. Choose appropriate channels for delivering messages (email, intranet, internal newsletter, etc.).
 - d) Communication Calendar

- i. Create a schedule for delivering messages.
 - ii. Coordinate with other County departments and events.
 - e) Measurement and Evaluation
 - i. Regularly evaluate the internal communications plan and adjust as needed.
- b. External Communications/Outreach Plan
 - 1) The goals of the external communications/outreach plan are:
 - a) Enhance brand awareness and increase visibility and recognition.
 - b) Build brand reputation by developing a positive and consistent brand image.
 - c) Drive customer engagement, and foster relationships and loyalty.
 - 2) Audience Analysis
 - a) Identify the target audience(s): customers, employers, community, etc.
 - b) Understand target audience needs, interests, and communication preferences.
 - 3) Message Development
 - a) Craft key messages that align with the Board's brand and resonate with its audience.
 - b) Ensure messages are clear, concise, and compelling.
 - 4) Channel Selection
 - a) Choose the most effective channels to reach the Board's target audiences (website, social media, press releases, advertising, public relations, etc.).
 - b) Consider channel strengths and weaknesses based on audience preferences and message type.
 - 5) Collateral Assessment
 - a) Identify all existing marketing materials, including print, digital, and audiovisual formats.
 - b) Perform evaluation and assessment of each piece of collateral based on the following criteria:
 - i. Alignment with brand identity and messaging
 - ii. Effectiveness in communicating key selling points
 - iii. Visual appeal and design quality
 - iv. Target audience relevance
 - v. Overall impact and return on investment
 - c) Perform a gap analysis, identifying any missing collateral pieces or areas where existing materials are lacking.
 - 6) Collateral Creation
 - a) Develop high-quality collateral that is informative, engaging, and relevant to MCWDB's audience.
 - b) Ensure content aligns with MCWDB's brand voice and messaging.
 - c) Examples of collateral to be produced:
 - i. Job seeker-targeted collateral
 - 1. Program flyers
 - 2. Automated Chatbot on website
 - 3. Monthly eNewsletter
 - ii. Business-targeted collateral
 - 1. Business Resources Guide (Micro-Website)

2. Monthly eNewsletter
 3. Year-End Report
- 7) Measurement and Evaluation
 - a) Establish key performance indicators (KPIs) to measure the success of MCWDB's communications efforts.
 - b) Regularly track and analyze metrics to identify areas for improvement.
2. Contractor will provide graphic design, layout, production, and other services as needed to support implementation of MCWDB's Internal Communications Plan and External Communications/Outreach Plan.

B. MCWDB Role and Responsibilities:

The MCWDB shall:

1. Meet with Contractor to provide information and content on priorities and projects to be supported through the development and production of outreach/marketing collateral and other communication-related materials.
2. Designate MCWDB staff as Contractor's point of contact to facilitate information exchange and provision of feedback.

EXHIBIT B-2**AMENDED BUDGET SUMMARY**

Communications Collateral Development
July 1, 2022 through June 30, 2025

The budget below pertains to the period from July 1, 2024 through June 30, 2025.

Task	Description	Cost Per Hour	Estimated Hours	Total Cost
1	Assessment of Current Collateral and Communications Materials	\$ 95	96	\$ 9,120
2	Graphic Design for Communications Templates (Digital Media, Print, etc.)	\$ 95	504	\$ 47,880
3	Monthly and Annual Reports	\$ 95	96	\$ 9,120
4	Project Management	\$ 95	120	\$ 11,400
5	Misc. (Stock Photos, Fonts, etc.)	Variable		\$ 10,453
	TOTAL			\$ 87,973

EXHIBIT C-1

GENERAL CONDITIONS, ASSURANCES AND CERTIFICATIONS WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)

The following applies to all programs and/or projects funded under the Workforce Innovation and Opportunity Act (WIOA) conducted by Pat Davis Design Group, Inc., hereinafter referred to as "Contractor."

1. COMPLIANCE

In performance of this Agreement, Contractor will fully comply with:

- a. The provisions of the Workforce Innovation and Opportunity Act (WIOA), (29 U.S.C. §§ 3101- 3361 (2014), WIOA Final Regulations, and all legislation, regulations, directives, policies, procedures and amendments issued pursuant thereto.
- b. All State legislation and regulations to the extent permitted by federal law and all policies, directives and/or procedures, which implement WIOA.
- c. Title 2, Code of Federal Regulations (C.F.R.) part 200 (Office of Management and Budget Guidance) [OMB Guidance].
- d. Title 2, C.F.R. Part 2900 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) [Uniform Requirements].
- e. The provisions of the Jobs for Veterans Act (Pub. L. No. 107-288), including the requirement to provide priority service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the DOL.
- f. Contractor will ensure diligence in managing programs under this subgrant agreement, including performing appropriate monitoring activities and taking prompt corrective action against known violations of WIOA.

2. CERTIFICATIONS / ASSURANCES

Except as otherwise indicated, the following certifications apply to all Contractors.

- a. **Corporate Registration:** Contractor, if it is a corporation, certifies it is registered with the Secretary of State of the State of California.
- b. **Contracting with Corporations with Felony Criminal Convictions Prohibited:** The Monterey County Workforce Development Board (MCWDB) and its subrecipients may not knowingly enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months.
- c. **Contracting with Corporations with Unpaid Tax Liabilities Prohibited:** The MCWDB and its subrecipients may not knowingly enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a

timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

- d. **Expatriate Corporations:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code §§ 10286 and 10286.1, and is eligible to contract with the State of California.
- e. **Americans Disabilities Act (ADA):** Contractor agrees to comply with the Americans with Disabilities Act (ADA) of 1990, which, prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C.12101 et seq.)
- f. **False Claims Act:** Contractor, by signing this Agreement, agrees to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets. Contractor shall assure that all annual, final fiscal reports, monthly claims, invoices, and vouchers, it submits for the purpose of requesting payment will include a certification, signed by an official who is authorized to legally bind Contractor, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise." (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).
- g. **Authority to Bind Contractor:** Contractor shall furnish the MCWDB in writing, a list of persons authorized to execute on behalf of Contractor: Agreements, modifications to Agreements, invoices or other documents as may be required by the MCWDB.
- h. **Sectarian Activities:** Contractor certifies that this Agreement does not provide for the advancement or aid to any religious sect, church or creed, or sectarian purpose nor does it help to support or sustain any school, college, university, hospital or other institution controlled by any religious creed, church, or sectarian denomination whatsoever, as specified by Article XVI, Section 5, of the Constitution, regarding separation of church and state.
- i. **Domestic Partners:** For contracts over \$100,000 executed or amended after January 1, 2007, the Contractor certifies that it is in compliance with Public Contract Code § 10295.3.
- j. **National Labor Relations Board:** Contractor (if not a public entity), by signing this Agreement, does swear under penalty of perjury, that no more than one final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board (PCC10296).
- k. **Prior Findings:** Contractor, by signing this Agreement, does swear under penalty of perjury, that it has not failed to satisfy any major condition in a current or previous Agreement with the DOL or the State of California and has not failed to satisfy conditions relating to the resolution of a final finding and determination, including repayment of debts.
- l. **Excluded Parties List:** The MCWDB will not contract with any entity listed on the Excluded Parties List System in the federal System for Award Management. Contractor hereby represents and warrants that it is not so listed.
- m. **Drug-Free Workplace Certification:** By signing this Agreement, Contractor hereby certifies under penalty of perjury under the laws of the State of California that Contractor will comply with

the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - (2) Establish a Drug-Free Awareness Program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The person's or organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
 - (3) Every Contractor employee who works on this Agreement will:
 - a. Receive a copy of the Contractor's drug-free policy statement; and
 - b. Agree to abide by the terms of the Contractor's drug-free policy statement as a condition of employment on the Agreement.
 - (4) The Contractor must notify the MCWDB if an employee of the Contractor is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for suspension or debarment.
 - (5) Failure to comply with these requirements may result in suspension of payments under this Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future agreements if it is determined that any of the following has occurred: the Contractor has made false certification; or violated the certification by failing to carry out the requirements as noted above. (Gov. Code § 8350 et seq.)
- n. **Child Support Compliance Act:** In accordance with the Child Support Compliance Act, Contractor recognizes and acknowledges: The importance of child and family support obligations and shall fully comply with the applicable State and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and that to the best of its knowledge Contractor is fully complying with the earnings assignment orders of all Contractor's employees and is providing the names of all new Contractor's employees to the New Employee Registry maintained by the State of California Employment Development Department (EDD).
- o. **Debarment and Suspension Certification:** By signing this Agreement, Contractor hereby certifies under penalty of perjury under the laws of the State of California that Contractor will comply with regulations implementing Executive Orders 12549 and 12689, Debarment and Suspension and OMB Guidance 2 CFR Part 180, that the Contractor, to the best of its knowledge and belief, that it and its principals:
- (1) Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
 - (2) Have not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract. Nor shall Contractor have, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.

- (3) Are not presently indicted for, or otherwise criminally or civilly charged by a government entity (Federal, State or local), with commission of any of the offenses enumerated in Section 2 of this Debarment and Suspension Certification.
 - (4) Have not, within a three-year period preceding this Agreement, had one or more public transactions (Federal, State or local) terminated for cause or default. Where Contractor is unable to certify to any of the statements in this Debarment and Suspension Certification, it shall attach an explanation to this Agreement.
- p. **Mandatory Disclosures:** All WIOA and Wagner-Peyser recipients of Federal awards must disclose, as required at 2 CFR 200.113, in a timely manner, in writing to the Federal awarding agency or the MCWDB, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 (Remedies for noncompliance), including suspension or debarment.
- q. **Lobbying Certification:** By signing this AGREEMENT, Contractor hereby assures and certifies to compliance with the lobbying restrictions which are codified in Title 31 of the United States Code, section 1352, as implemented by DOL regulations at 2 CFR Part section 200.208, as follows:
 - (1) No Federal appropriated funds have been paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant loan, or cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress, in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
 - (3) Contractor shall require that the language of the lobbying restrictions be included in the award documents for Agreement transactions over \$100,000 (per OMB) at all tiers (including AGREEMENTs, contracts, and subcontracts, under grants, loan, or cooperative Agreements), and that all subrecipients shall certify and disclose accordingly.
 - (4) This certification is a material representation of fact upon which reliance is placed when this transaction is executed. Submission of the Lobbying Certification is a prerequisite for making or entering into this transaction imposed by United States Code, section 1352, Title 31. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.
- r. **Priority Hiring Considerations:** If this AGREEMENT includes services in excess of \$200,000, Contractor shall give priority consideration in filling vacancies in positions funded by the Agreement to qualified recipients of aid under Welfare and Institutions Section Code 11200 in accordance with Public Contract Code §10353.
- s. **Sweatfree Code of Conduct:** All Contractors that contract for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or

supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, or supplies furnished to the State pursuant to the contract have been laundered or produced, in whole or in part, by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that it will adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the MCWDB, State of California EDD, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements of the Sweatfree Code of Conduct.

t. **Unenforceable Provision:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected hereby.

u. **Non-discrimination Clause / Affirmative Action / Equal Employment Opportunity:**

(1) The conduct of the parties to this Agreement will be in accordance with Title VI of the Civil Rights Act of 1964, and the Rules and Regulations promulgated hereunder and the provisions of WIOA Section 188 and 29 CFR Part 38.

a. As a condition to the Agreement of financial assistance from the DOL under WIOA, Contractor assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the Agreement:

- i. Section 188 of the WIOA, which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or against beneficiaries on the basis of either citizenship/status or participation in any WIOA financially assisted Title I program or activity;
- ii. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
- iv. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
- v. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

b. Contractor also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR Part 38 and all other regulations implementing the laws listed above. This assurance applies to Contractor's operation of the WIOA financially assisted program or activity, and to all Agreements that Contractor makes to carry out the WIOA financially assisted program or activity. Contractor understands that the United States

has the right to seek judicial enforcement of this assurance.

- c. This Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
 - d. These assurances are binding on Contractor for the term of this Agreement, as specified in 29 CFR section 38.26(b).
- (2) Contractor will take affirmative action to assure that no individual will be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration or in connection with any services or activities authorized under the WIOA in violation of any applicable nondiscrimination law, including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation or belief. All complaints alleging discrimination must be filed and processed according to the procedures in the applicable DOL nondiscrimination regulations.
 - (3) Contractor will assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ). See, generally, 42 U.S.C. 2000(e)–2(e), 29 CFR parts 1604, 1606, 1625. (3)
 - (4) Contractor will assure that employment testing programs will comply with 41 CFR part 60–3 and 29 CFR part 32 and 29 CFR 1627.3(b)(iv).
 - (5) Contractor agrees to conform to non-discrimination and equal opportunity requirements and procedures, including the discrimination complaint procedures in compliance with the WIOA, the Uniform Guidance 2 CFR Part 200, DOL Exceptions 2 CFR Part 2900, Federal regulations and State statutes, regulations and policy. (Reference MCWDB Policy 2018-1 – Nondiscrimination and Equal Opportunity Procedures, accessible at: <http://www.montereycountywib.org/policies/policies/>).
 - (6) Contractor will be governed by WIOA procedures relating to complaints alleging violations of the WIOA, regulations, other Agreements under the WIOA including terms and conditions of employment. Participants will be notified in writing, upon enrollment into employment or training, of the WIOA complaint procedures including notification of their right to file a complaint and instructions on how to do so. Complaint procedures include: (1) the right to file a complaint, (2) the opportunity to resolve complaints informally, (3) written notice of hearings, and (4) a final decision within sixty (60) days of the date of filing.
 - (7) Contractor will comply with Executive Order 11246, “Equal Employment Opportunity” (30 CFR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, DOL.”
 - (8) Contractor shall ensure equal employment opportunity based on objective personnel policies and practices for recruitment, selection, promotion, classification, compensation, performance evaluation, and employee management relations.

v. Indemnification:

- (1) The following provision applies only if Contractor is a governmental entity: Pursuant to Section 895.4 of the California Government Code, each party agrees to indemnify and hold the other party harmless from all liability for damage to persons or property arising out of or resulting from acts or omissions of the indemnifying party.

(2) The following provision applies only if the Contractor is a non-governmental entity: The Contractor agrees to the extent permitted by law, to indemnify, defend and hold harmless the MCWDB, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materials persons, laborers and any other persons, firms or corporations, furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any persons, firms or corporations which may be injured or damaged by the Contractor in the performance of this Agreement.

- w. **Salary and Bonus Limitations:** Pursuant to P.L. 117-328, Division H, Title I, Section 105, award recipients and subrecipients shall not use funds to pay the salary and bonuses of an individual, either as direct costs or as indirect costs, at a rate in excess of Executive Level II. The Executive Level II salary may change yearly and is located on the [OPM.gov](https://www.opm.gov) website. The salary and bonus limitation does not apply to contractors (vendors) providing goods and services as defined in 2 CFR 200.331. Where States are recipients of such funds, States may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from subrecipients, taking into account factors including the relative cost-of- living in the State, the compensation levels for comparable State or local government employees, and the size of the organizations that administer Federal programs involved including DOL programs. See [TEGL 5-06](#) for further clarification.

The incurrence of costs and receiving reimbursement for these costs under this Agreement certifies that Contractor has read the above special condition and is in compliance.

- x. **Federal Funding Accountability and Transparency Act (FFATA):** As required by FFATA, recipients of Federal awards are required to report sub-award and executive compensation information. By signing this Agreement, Contractor hereby assures and certifies to comply with the provisions of FFATA, which includes requirements referenced in Uniform Guidance 2 CFR Part 200, DOL Exceptions 2 CFR Part 2900, and requirements implementing FFATA at 2 C.F.R. part 25 and 2. C.F.R. part
- y. **Clean Air Act:** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387).
- z. **Air or Water Pollution Violation:** Under State laws, Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to any cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of Federal law relating to air or water pollution.

3. STANDARDS OF CONDUCT

Contractor hereby assures that in administering this Agreement, it shall comply with the standards of conduct hereinafter set out, for maintaining the integrity of the Agreement and avoiding any conflict of interest in its administration.

- a. **General Assurance:** Every reasonable course of action will be taken by Contractor in order to maintain the integrity of the expenditure of public funds and to avoid favoritism and questionable or improper conduct. This Agreement will be administered in an impartial manner, free from efforts to gain personal, financial, or political gain. Contractor agrees to conform to the non-discrimination requirements as referenced in WIOA Section 188.

- b. Conflict of Interest:** An executive or employee of Contractor, an elected official in the area or a member of the MCWDB will not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed, in whole or in part, by Contractor or the MCWDB: supplies, materials, equipment or services purchased with Agreement funds will be used solely for purposes allowed under this Agreement. No member of Contractor or the MCWDB will cast a vote on the provision of services by that member (or any organization, which that member represents) or vote on any matter which would provide direct financial benefit to that member (or immediate family of the member) or any business or organization which the member directly represents. For the purpose of this Agreement, a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein has a financial interest in or a tangible personal benefit from a firm considered for a contract, subcontract, or Agreement. (Reference 2 CFR Part 200.318(c)(1)(2) – Conflict of Interest) If a non-Federal entity, has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears unable to be impartial in conducting a procurement action involving a related organization. (Reference 2 CFR Part 200.318(c)(2))
- c. Buy-American:** Contractor agrees that, as stated in sec. 502 of WIOA, all funds authorized in WIOA and the Wagner-Peyser Act must be expended on only American made equipment and products, as required by the Buy American Act (41 U.S.C. 8301–8305). For the purposes of this award, the Contractor is required to maximize the use of goods, products, and materials produced in, and services offered in, the United States, in accordance with the Made in America Laws. No funds may be made available to any person or entity (including as a contractor or subrecipient of the award recipient) that has been found to be in violation of any Made in America Laws.
- d. Nepotism:** Contractor certifies that it shall not hire nor permit the hiring of any person in a position funded under this Agreement if a member of the person's immediate family is employed in an administrative capacity. For the purpose of this Agreement, the term "immediate family" means spouse (common law or otherwise), child, mother, father, brother, sister, brother/sister-in-law, son/daughter-in-law, mother/father-in-law, aunt, uncle, niece, nephew, step-parent, step-child, or such other relationship which would give rise to a substantial appearance of impropriety if the person were to be hired by Contractor. The term "administrative capacity" means persons who have overall administrative responsibility for a program, including but not limited to, selection, hiring, or supervisory responsibilities.
- e. Procurement:** As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of 2 CFR 200.322 must be included in all subawards including all contracts and purchase orders for work or products under this award. Contractor must additionally comply with the MCWDB procurement policy and procedures which reflect applicable local, State and Federal laws and regulations, and the standards identified in Uniform Guidance 2 CFR Part 200.318 – General Procurement Standards. (Reference MCWDB Policy 2019-02 – Procurement Standards and policy attachments; <https://www.montereycountywdb.org/policy-procedures/>).
- f. Flood Insurance:** The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001 *et seq.*, provides that no Federal financial assistance to acquire, modernize, or construct property may be provided in communities in the United States identified as flood-prone, unless the

community participates in the National Flood Insurance Program and flood insurance is purchased within 1 year of the identification. The flood insurance purchase requirement applies to both public and private applicants for the DOL support.

- g. **Architectural Barriers:** The Architectural Barriers Act of 1968, 42 U.S.C. 4151 et seq., as amended, the Federal Property Management Regulations (see 41 CFR 102-76), and the Uniform Federal Accessibility Standards issued by the U.S. General Services Administration (GSA) (see 36 CFR 1191, Appendixes C and D) set forth requirements to make facilities accessible to, and usable by, the physically handicapped and include minimum design standards. All new facilities designed or constructed with grant support must comply with these requirements.
- h. **Promoting Equitable Delivery of Government Benefits and Equal Opportunity:** The Department of Labor (Labor) seeks to affirmatively advance equity, civil rights and equal opportunity in the policies, programs, and services it provides. Therefore, consistent with Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, Contractors must execute the terms and conditions of their funding award in a manner that advances equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. This extends to all award activities including, but not limited to, service delivery, selection of subrecipients and contractors, and procurement of goods and services. Government programs are designed to serve all eligible individuals. As an expectation, Contractors should make the goods and services they provide widely available with the goal of effectively serving a diverse population of eligible individuals; fairly, justly, and impartially in administering the funding award. Contractors are encouraged to engage in contracting and subcontracting for goods and services related to performing the terms and conditions of their agreements in such a way to achieve equity.
- i. **Publicity:** Pursuant to P.L. 117-328, Division H, Title V, Section 503, the Contractor is not authorized to use any funds provided under this award—other than for normal and recognized executive–legislative relationships—for publicity or propaganda purposes, for the preparation, distribution or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation, designed to support or defeat legislation pending before the Congress or any state or local legislature or legislative body, except in presentation to the Congress or any state or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any state or local government, except in presentation to the executive branch of any state or local government itself.
- j. **Telecommunications Prohibition:** Contractors must adhere to 2 CFR 200.216 - Prohibition on certain telecommunications and video surveillance services or equipment (effective August 13, 2020). Contractors are prohibited from obligating or expending loan or grant funds to: procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, any use of video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) is prohibited, including telecommunications or video surveillance services

provided by such entities or using such equipment and telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- k. **Waste, Fraud, and Abuse:** No entity receiving federal funds may require employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- l. **Whistleblower Protection:** All employees working for contractors, grantees/ grant recipients, subcontractors, subgrantees/ subrecipients, and recipients of cooperative agreements working on this Federal award are subject to the whistleblower rights and remedies established at 41 U.S.C. 4712. The award recipient shall inform its employees and applicable contractors and subrecipients, in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation. The Contractor shall insert the substance of this clause in all subawards and contracts over the Simplified Acquisition Threshold.
- m. **Historically Black Colleges and Universities, Other Minority Institutions:** Pursuant to Executive Order (EO) 12928, the Contractor is strongly encouraged to provide subcontracting opportunities to Historically Black Colleges and Universities and other Minority Institutions such as Hispanic-Serving Institutions and Tribal Colleges and Universities; and to Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals.
- n. **Improving Access to Services for Persons with Limited English Proficiency:** As clarified by EO 13166, Improving Access to Services for Persons with Limited English Proficiency, dated August 11, 2000, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, Contractor must take reasonable steps to ensure that LEP persons have meaningful access to programs in accordance with DOL's Policy Guidance on the Prohibition of National Origin Discrimination as it Affects Persons with Limited English Proficiency, 68 FR 32289 (May 29, 2003). Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.
- o. **Harassment Prohibited:** The Contractor is prohibited from engaging in harassment of an individual based on race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, based on citizenship status or participation in any WIOA Title I-financially assisted program or activity. Harassing conduct of this type is a violation of the nondiscrimination provisions of WIOA and of 29 CFR Part 38.
 - (1) Unwelcome sexual advances, requests for sexual favors, or offensive remarks about a person's race, color, religion, sex, national origin, age, disability, political affiliation or belief, or citizenship or participation, and other unwelcome verbal or physical conduct based on one or more of these protected categories constitutes unlawful harassment on that basis(es) when:
 - (2) Submission to such conduct is made either explicitly or implicitly a term or condition of accessing the aid, benefit, service, or training of, or employment in the administration of or in connection with, any WIOA title I-financially assisted program or activity; or
 - (3) Submission to, or rejection of, such conduct by an individual is used as the basis for limiting that individual's access to any aid, benefit, service, training, or employment

from, or employment in the administration of or in connection with, any WIOA Title I financially assisted program or activity; or

- (4) Such conduct has the purpose or effect of unreasonably interfering with an individual's participation in a WIOA Title I-financially assisted program or activity creating an intimidating, hostile or offensive program environment.
- (5) Harassment because of sex includes harassment based on gender identity or sexual orientation; harassment based on failure to comport with sex stereotypes; and harassment based on pregnancy, childbirth, and related medical conditions. Sex-based harassment may include harassment that is not sexual in nature but that is because of sex or where one sex is targeted for the harassment.

p. Health Benefits Coverage for Contraceptives: Federal funds may not be used to enter in to or renew a contract which includes a provision for prescription drug coverage unless the contract also includes a provision for contraceptive coverage. This requirement does not apply to contracts with 1) the religious plan's Personal Care's HMO and OSF Health Plans, Inc. and 2) any existing or future plan if the carrier for the plan objects to such coverage on the basis of religious beliefs.

q. Health Benefits Coverage for Abortions Restricted: Pursuant to P.L. 117-328, Division H, Title V, Section 506 and 507, Federal funds may not be expended for health benefits coverage that includes coverage of abortions, except when the pregnancy is the result of rape or incest, or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself that would, as certified by a physician, place the women in danger of death unless an abortion is performed. This restriction does not prohibit a contractor from providing health benefits coverage for abortions when all funds for that specific benefit do not come from a Federal source. Additionally, no funds made available through this grant award may be provided to a State or local government if such government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

r. Fair Labor Standards Act Amendment for Major Disasters: Pursuant to P.L. 117-328, Division H, Title I, Section 108, the Fair Labor Standards Act of 1938 (FLSA) will apply as if the following language was added to Section 7 (the Maximum Hours Worked Section). This language specifically relates to occurrences of a major disaster (as declared or designated by the state or federal government) and are applied for a period of two years afterwards. The language is as follows:

“(s)(1) The provisions of this section [maximum hours worked] shall not apply for a period of 2 years after the occurrence of a major disaster to any employee—

(A) employed to adjust or evaluate claims resulting from or relating to such major disaster, by an employer not engaged, directly or through an affiliate, in underwriting, selling, or marketing property, casualty, or liability insurance policies or contracts;

(B) who receives from such employer on average weekly compensation of not less than \$591.00 per week or any minimum weekly amount established by the Secretary, whichever is greater, for the number of weeks such employee is engaged in any of the activities described in subparagraph (C); and (C) whose duties include any of the following:

(i) interviewing insured individuals, individuals who suffered injuries or other damages or losses arising from or relating to a disaster, witnesses, or physicians;

(ii) inspecting property damage or reviewing factual information to prepare

damage estimates;

(iii) evaluating and making recommendations regarding coverage or compensability of claims or determining liability or value aspects of claims;

(iv) negotiating settlements; or

(v) making recommendations regarding litigation.

(2) The exemption in this subsection shall not affect the exemption provided by section 13(a)(1) [of the FLSA].

- s. **Lobbying/Advocacy Restricted:** Pursuant to P.L. 117-328, Division H, Title V, Section 503, no federal funds may be used to pay the salary or expenses of any grant recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or executive order proposed or pending before the Congress or any state government, state legislature or local legislature or legislative body, other than for normal and recognized executive–legislative relationships or participation by an agency or officer of a state, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- t. **Blocking Pornography Required:** Pursuant to P.L. 117-328, Division H, Title V, Section 520, no Federal funds may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.
- u. **Privacy Act:** No funds can be used in contravention of 5 U.S.C. 552a (the Privacy Act) or regulations implementing the Privacy Act.
- v. **Procuring Goods Obtained through Child Labor Prohibited:** Pursuant to P.L. 117-328, Division H, Title I, Section 103, no Federal funds may be obligated or expended for the procurement of goods mined, produced, manufactured, or harvested or services rendered, in whole or in part, by forced or indentured child labor in industries and host countries identified by the DOL prior to December 29, 2022. DOL has identified these goods and services at ILAB's List of Products Produced by Forced or Indentured Child Labor webpage.
- w. **Promotion of Drug Legalization Restricted:** Pursuant to P.L. 117-328, Division H, Title V, Section 509, no Federal funds shall be used for any activity that promotes the legalization of any drug or other substance included in Schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive-congressional communications or where there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- x. **Purchase of Sterile Needles or Syringes Restricted:** Pursuant to P.L. 117-328, Division H, Title V, Section 526, no Federal funds shall be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug. This limitation does not apply to the use of funds for elements of a program other than making such purchases if the relevant State or local health department, in consultation with the Centers for Disease Control and Prevention, determines that the State or local jurisdiction, as applicable, is experiencing, or is at risk for, a significant increase in hepatitis infections or an HIV outbreak due to injection drug use, and such program is operating in accordance with State and local law.
- y. **Text Messaging While Driving:** Contractors are strongly encouraged to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or when performing any work for or on behalf of the Monterey County Workforce Development Board (MCWDB).

- z. Restrictions Against the Creation or Research of Embryos:** Pursuant to P.L. 117-328, Division H, Title V, Section 508, no Federal funds shall be used for (1) the creation of a human embryo or embryos for research purposes; or (2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.204(b) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)). For purposes of this section, the term “human embryo or embryos” includes any organism, not protected as a human subjected under 45 CFR 46 as of December 29, 2022, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

aa. Trafficking in Persons Prohibited:

- (1) This part establishes a government-wide award term for grants and cooperative agreements to implement the requirement in regard to Trafficking in persons.

a. Provisions applicable to a recipient that is a private entity.

- I. The award recipient, the award recipient's employees, subrecipients under this award, and subrecipients' employees may not—

- (A). Engage in severe forms of trafficking in persons during the period of time that the grant award is in effect; or
- (B). Procure a commercial sex act during the period of time that the award is in effect; or
- (C). Use forced labor in the performance of the award or subawards under the award.

- II. DOL/ETA as the Federal awarding agency may unilaterally terminate this award, without penalty, if the award recipient or a subrecipient that is a private entity —

- (A). Is determined to have violated a prohibition in paragraph a.I of this award term; or
- (B). Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.I of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR Part 2998.

- b. Provision applicable to a recipient other than a private entity.* DOL/ETA as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- I. Is determined to have violated an applicable prohibition in paragraph a.I of this grant award term; or

- II. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a. I of this grant award term through conduct that is either—

- (A). Associated with performance under this award; or
- (B). Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as

implemented by our agency at 29 CFR Part 98.

c. Provisions applicable to any recipient.

- I. The award recipient must inform DOL/ETA immediately of any information the award recipient receives from any source alleging a violation of a prohibition in paragraph a.1 of this grant award term.
- II. DOL/ETA right to terminate unilaterally that is described in paragraph a. II or b of this section:
 - (A). Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (B). Is in addition to all other remedies for noncompliance that are available to DOL/ETA under this grant award.
- III. The award recipient must include the requirements of paragraph a. I of this award term in any subaward the award recipient makes to a private entity.

4. COORDINATION

- a. Contractor will, to the maximum extent feasible, coordinate all programs and activities supported under this part with other core programs under the WIOA, including the WIOA (Adult, Dislocated Worker and Youth formula programs); Wagner-Peyser Act employment services; Adult Education and Literacy Act programs; Rehabilitation Act Title I programs; Job Corps program, YouthBuild program, Native American programs, Migrant and Seasonal Farmworker programs, and other employment and training programs at the local level. In addition to the core programs, for individuals with multiple needs to access services, Contractor will, to the maximum extent feasible, coordinate with the following partner programs required to provide access through the America's Job Center of California or One-Stop Career Center: Career and Technical Education (Perkins), Community Development Block Grants, Indian and Native American programs, HUD Employment and Training programs, Local Veterans' Employment Representatives and Disabled Veterans' Outreach program, National Farmworker Jobs program, Senior Community Service Employment program, Temporary Assistance for Needy Families (TANF), Trade Adjustment Assistance programs, and Unemployment Compensation programs.
- b. Contractor shall not accept referrals for participant positions funded under this Agreement from any agency which charges a fee to either the individual being referred or the employing agency for the services rendered. Charges incurred in violation of this clause shall be the sole responsibility of Contractor and shall not be charged to either this AGREEMENT or the participant under this Agreement.

5. SUBCONTRACTING

- a. Contractor will not assign a contract resulting from this Agreement or any portion thereof to a third party without the prior written consent of the MCWDB, and any attempted assignment or subcontract without such prior written consent may cause immediate termination of the Agreement.
- b. Upon approval from the MCWDB, any of the work or services specified in this AGREEMENT which will be performed by other than Contractor will be evidenced by a written Agreement specifying the terms and conditions of such performance.
- c. Contractor will maintain and adhere to an appropriate system, consistent with Federal, State and local law, for the award and monitoring of contracts which contain acceptable standards for insuring accountability.
- d. The system for awarding contracts will contain safeguards to insure Contractor does not contract

with any entity whose officers have been convicted of fraud or misappropriation of funds within the last two years.

6. CONSULTANTS

Fees paid to a consultant who provides services under a program, shall be limited to \$815 per day (representing an 8 hour work day). Any fees paid in excess of this amount cannot be paid without prior approval from the Grant Officer.

7. RESOLUTION

A county, city, district or other local public body must provide the MCWDB and the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an AGREEMENT, authorizing execution of this Agreement. Preferably resolutions should authorize a designated position rather than a named individual.

8. FUNDING

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional and legislative appropriation of funds. The parties hereby enter into this Agreement in advance of confirmation of the availability of funds for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the AGREEMENT was executed after that determination was made.
- b. This AGREEMENT is valid and enforceable only if (1) sufficient funds are made available by the State Budget Act of the appropriate State fiscal years covered by this Agreement for the purposes of this program and; (2) sufficient funds are made available to the State by the United States Government for the fiscal years covered by this AGREEMENT for the purposes of the programs described in the scope of services. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress and Legislature or any statute enacted by the Congress and Legislature which may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- c. At the expiration of the terms of this Agreement or upon termination prior to the expiration of this Agreement, funds not obligated for the purpose of this Agreement will be immediately remitted to the MCWDB and shall no longer be available to Contractor.
- d. The MCWDB retains the right to suspend financial assistance, in whole or in part, to protect the integrity of the funds or to ensure proper operation of the program, providing Contractor is given prompt notice and the opportunity for an informal review of the MCWDB's decision. The Executive Director of the MCWDB or his/her designee will perform this informal review and will issue the final administrative decision within 60 days of receiving the written request for review. Failure on the part of Contractor to comply with the provisions of this Agreement, or with the WIOA or regulations, when such failure involves fraud or misappropriation of funds, may result in immediate withholding of funds.

9. FISCAL ACCOUNTABILITY

- a. Contractor shall establish and maintain a sound financial management system, based upon generally accepted accounting principles. An integral part of the required financial management system is a system of internal accounting controls that will provide reasonable assurance that WIOA assets are safeguarded against loss from unauthorized use or disposition, and that accounting transactions affecting WIOA fund accountability are properly charged and recorded by administrative and program cost categories to permit the preparation of accurate and supportable

financial reports.

- b. Contractor will comply with controls, record keeping and fund accounting procedure requirements of WIOA, Federal and State regulations, and directives to ensure the proper accounting for program funds paid to Contractor by the MCWDB through a cost reimbursement process.
- c. This Agreement provides for the reimbursement of allowable costs that are identified and approved in the AGREEMENT budget, and incurred in the operation of the programs specified in the scope of services. Back-up documentation is required from Contractor to justify reimbursement payments made under this AGREEMENT.
- d. All expenditures must be reported on an accrual basis of accounting.
- e. No cost shall be allowed under this AGREEMENT which is not specifically identified in Contractor's approved budget. Contractor shall not transfer funds between cost categories or adjust designated "total budget" line items without prior written approval by the MCWDB (applicable to cost reimbursement contracts only). Invoices for reimbursement submitted by Contractor that include designated total line item expenditures above the total budget for that designated line item will not be paid until the cost overrun is reconciled. All limitations on expenditures specified in Federal and State fiscal requirements shall apply to this AGREEMENT.
- f. Contractor shall not charge nor receive compensation under this AGREEMENT for any services or expenses unless said services or expenses are directly and exclusively related to the purpose of this AGREEMENT. In addition, payment may not be received by Contractor from any other source for said services or expenses. Moreover, funds shall not be allowed for cost incurred before or after the effective dates of this AGREEMENT. Contractor shall not use WIOA funds as security or payment for obligations or as loans for activities of other funded programs.
- g. Contractor's personnel whose time is charged to the budget under this AGREEMENT shall be paid on a pro-rata basis commensurate with the percentage of time devoted to the programs specified in the scope of services. Personnel costs including salary shall be reasonable. Employees of Contractor shall be compensated using WIOA funds under this AGREEMENT only for work performed under the terms of this AGREEMENT.
- h. The MCWDB shall not pay, and Contractor shall not request, payment for any accrued employee fringe benefits (including vacation and sick time), which were not accrued by Contractor's employees during the term of this AGREEMENT.
- i. In accordance with the requirements at 2 CFR 200.400(g), Contractor may not earn or keep any profit resulting from WIOA funds paid under this AGREEMENT, or other federal financial assistance.
- j. Any excess of revenue over costs incurred for services provided by Contractor must be included in program income. (WIOA secs. 194(7)(A)–(B)). Interest income earned on funds received under WIOA and Wagner-Peyser Act must be included in program income. (WIOA sec.194(7)(B)(iii)) Accordingly, these funds may be retained by Contractor to underwrite additional training or training related services pursuant to the project or program that generated them, consistent with the purposes of WIOA. When Contractor ultimately discontinues the provision of all WIOA training and/or services described in this AGREEMENT, program income remaining shall be returned to the MCWDB.
- k. Contractor shall make available to the MCWDB, upon request, a complete and detailed record or cost allocation of any expenses that are, in whole or in part, supported with program funds. This

detailed account shall include percentages and total contributions from both WIOA and non-WIOA sources. Shared expenses may include, but are not necessarily limited to the following: staff salaries, facilities, equipment, etc.

- I. Travel expenses when permitted should be made at the agency rate per mile, but the rate cannot exceed the Agreement allowed by the Monterey County travel expense reimbursement policy, located online at: <http://www.co.monterey.ca.us/auditor/policies.htm>.

10. PAYMENT OF AUTHORIZED EXPENDITURES

- a. Subject to receipt of funds from the State, the MCWDB agrees to reimburse Contractor for expenditures authorized in the AGREEMENT budget. Financial reports and invoices are due to the fiscal unit of the MCWDB by the 15th working day of each month and shall include all obligations, expenditures and accruals incurred during the previous month, unless otherwise specified by the MCWDB. Late submission of financial reports and invoices are subject to withholding of payment due to non-compliance with Contractor's AGREEMENT to submit timely and accurate reports and invoices. The MCWDB's Fiscal Unit shall pay the certified invoice within 45 days of receiving the certified invoice. Financial information reported on claims must be directly linked to records maintained by Contractor which support actual delivery of services as outlined in the existing AGREEMENT between Contractor and the MCWDB. The MCWDB shall be the sole judge of what constitutes adequate supporting documentation.
- b. Contractor shall be paid in accordance with the AGREEMENT and budget, not to exceed the maximum Agreement specified. Any cost incurred by Contractor over and above the maximum Agreement obligated by the AGREEMENT and budget shall be at the sole risk and expense of Contractor.

11. REQUIRED FUNDING INFORMATION IN PUBLIC COMMUNICATIONS

Pursuant to Public Law 117-328, Division H, Title V, Section 505, when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all non-Federal entities receiving Federal funds shall clearly state:

- a. The percentage of the total costs of the program or project which will be financed with Federal money;
- b. The dollar amount of Federal funds for the project or program; and
- c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources. The requirements of this term are separate from those in 2 CFR Part 200 and, when applicable, both must be complied with.

12. PERFORMANCE ACCOUNTABILITY

- a. Contractor, commencing as of the date of execution of this AGREEMENT by both parties, shall perform all the functions set forth in the AGREEMENT scope of services. Adequate performance under this AGREEMENT is essential and Contractor shall measure its performance results against goals and performance standards provided by this AGREEMENT. Measured performance below goals standards will constitute noncompliance with the terms of this AGREEMENT.
- b. It is the responsibility of Contractor to bring to the attention of the MCWDB areas of performance which are below goals and standards and, with respect to each such area, prepare a corrective action plan or a statement justifying modification of operational plans. In addition, upon receipt of any monitoring report or other communication identifying areas of concern, a corrective action plan must be submitted to the MCWDB within the time frame identified in the report. A corrective

action plan shall consist of the following:

- (1) Specific Actions to be taken
 - (2) The objective of each action
 - (3) Completion dates
 - (4) Person(s) responsible
 - (5) Result(s) to be accomplished
- c. Contractor shall submit all corrective plans to the MCWDB for written approval. If approved, Contractor shall keep the MCWDB aware of progress, on a continuing basis, until the corrective action plan results are accomplished. The MCWDB reserves the right to require modifications to the corrective action plan, satisfactory to the MCWDB, in the event of failure by Contractor to achieve the specified results.
- d. Failure of Contractor to satisfy administrative standards and/or performance goals may result in the immediate reduction of service levels to new applicants and/or enrollees by MCWDB. Such reduction will be accompanied by a proportionate decrease in obligated AGREEMENT funds.

13. MAINTENANCE OF EFFORT

Contractor shall comply with the following maintenance of effort requirements:

- a. Contractor warrants that participant positions funded through this AGREEMENT are in addition to those that would otherwise be financed by Contractor without assistance under WIOA.
- b. Participant positions funded through this AGREEMENT shall: (1) result in an increase in employment opportunities over those that would otherwise be available; (2) not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-over time work, wages or employment benefits; (3) not impair existing contracts for service or result in a substitution of Federal funds for other funds in connection with work that would otherwise be performed; (4) not substitute public service and/or work experience positions for existing jobs.
- c. Contractor will not terminate, layoff or reduce the working hours of an employee for the purpose of hiring an individual with funds available under WIOA.
- d. Contractor will not hire any person using funds available under WIOA when any other person is on layoff for the same or substantially equivalent job.

14. AMENDMENTS

This AGREEMENT may be unilaterally modified by the MCWDB, under the following circumstances:

- a. There is a decrease in Federal or State funding levels.
- b. Funds awarded to Contractor have not been expended in accordance with the budget included in the approved Contractor's plan. This will occur if, after consultation with Contractor, the MCWDB has determined, in a manner consistent with State and Federal law, regulations and policies, that funds will not be spent in a timely manner.
- c. There is a change in State and Federal law or regulation requiring a change in the provisions of this AGREEMENT.

Except as provided above, the AGREEMENT may be amended only in writing by the mutual AGREEMENT of both parties.

15. REPORTING

- a. Contractor will compile and submit reports of activities, performance and expenditures by the specified dates prescribed by the MCWDB. All expenditure reports must be submitted upon the accrual basis of accounting. Failure to adhere to the reporting requirements of this AGREEMENT will result in funds not being paid to Contractor by the MCWDB.
- b. Contractor shall submit to the MCWDB all required reports on a timely basis as delineated by the MCWDB. Contractor shall submit written monthly status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken or other reports determined to be necessary by the MCWDB. These reports are due to the MCWDB, as requested in writing. Contractor also shall submit on a timely basis all required AGREEMENT supplemental documents.

16. TERMINATION

In the event of early termination of this AGREEMENT, the MCWDB's liability to Contractor is limited to the value of services and/or goods provided to the date of termination. This AGREEMENT may be terminated, in whole or in part, for either of the two following circumstances:

- a. **Termination for Convenience:** The MCWDB may, in its sole discretion, terminate this Agreement for convenience, including but not limited to, insufficient funding, lack of program participants, change in focus of WIOA program priorities, and similar. The MCWDB shall provide Contractor with ninety (90) days advance notice of termination of this Agreement for convenience.
- b. **Termination for Cause:** The MCWDB may terminate this Agreement, in whole or in part, if it determines that Contractor has substantially breached this agreement or violated WIOA, WIOA regulations, the Uniform Guidance, implementing state legislation, and/or guidance and directives issued by the State Employment Development Department or the federal Department of Labor. In the event of Contractor's breach of this Agreement or in the event of Contractor's violation of WIOA and related laws, regulations, guidance and directives, the MCWDB may pursue all legal remedies available to it under federal and state law, including injunctive relief and restitution of WIOA funds previously disbursed to Contractor.
 - (1) In the event of breach of this Agreement by Contractor or in the event of Contractor's violation of WIOA and related laws, regulations, guidance and directives, the MCWDB may also seek to impose administrative sanctions such as, but not limited to, a bar on Contractor's future receipt of WIOA funds and/or a bar on Contractor's future provision of WIOA program services.
 - (2) The MCWDB may, in its sole discretion, afford Contractor the opportunity to take corrective action prior to terminating this Agreement and/or pursuing legal remedies/administrative sanctions.

All notices of termination must be in writing and be delivered personally or by deposit in the U.S. Mail postage prepaid, "Certified Mail-Return Receipt Requested", and will be deemed to have been given at the time of personal delivery or of the date of postmark by the U.S. Postal Service.

Notices to the MCWDB will be addressed to:

Executive Director
Workforce Development Board (MCWDB)
344 Salinas Street, Suite 101
Salinas, CA 93901

Notices to Contractor will be addressed to:

President George Dimotakis
Pat Davis Design Group, Inc.
333 University Avenue, Suite 200
Sacramento, CA 95825

17. RECORDS MAINTENANCE & RETENTION

- a. If participants are served under this AGREEMENT, Contractor will use CalJOBS <https://www.caljobs.ca.gov>, online case management systems as prescribed by the County of Monterey.
- b. Contractor will retain all records pertinent to this AGREEMENT for a period of three (3) years from the date of final payment of this AGREEMENT. If, at the end of three (3) years, there is litigation or an audit involving those records, Contractor will retain the records until the resolution of such litigation or audit. (Refer to Uniform Guidance, Subpart D, Part 200.333-200.337.)
- c. The MCWDB, the State of California, and/or the U.S. DOL, or their designee (refer to Uniform Guidance, Subpart F, Part 200.500-200.521) will have access to and right to examine, monitor and audit all records, documents, conditions and activities related to programs funded by this AGREEMENT. For purposes of this section, "access to" means that Contractor shall at all times maintain within the State of California a complete set of records and documents related to programs funded by this AGREEMENT. Contractor shall comply with this requirement regardless of whether it ceases to operate or maintain a presence within the State of California before the expiration of the AGREEMENT. Contractor's performance under the terms and conditions herein specified will be subject to an evaluation by the MCWDB of the adequacy of the services performed, timeliness of response and a general impression of the competency of Contractor's organization and its staff.
- d. Portable Document Format (PDF), electronic, machine readable information or paper documentation is allowed for the purpose of records maintenance and retention, as long as there are appropriate and reasonable internal controls in place to safeguard against any inappropriate alteration of records. (Reference Uniform Guidance 2 CFR 200.335 – Methods for Collection, Transmission and Storage of Information) To the extent possible, Contractors should use the Virtual Job Center and/or CalJOBS systems as prescribed by the MCWDB, as both a reporting and a case management tool.

18. AUDITS

- a. If Contractor expends \$750,000 or more in a year in federal funds, CONTRACTOR shall submit an audit report that conforms to the requirements of 2 CFR part 200.501, subpart F (Single Audit.) OMB's approved DOL exception at 2 CFR 2900.2 expands the definition of 'non-Federal entity' to include for-profit entities and foreign entities. As such, for-profit and foreign entities that are recipients/subrecipients of a DOL award must adhere to the Uniform Guidance at 2 CFR 200, including Subpart F. Funds may be set aside in Contractor's budget in an amount equal to MCWDB'S fair share of the Contractor's cost of an A-133 independent audit, if required.

- b. The audit report shall ascertain and determine that no services provided by the Contractor under this AGREEMENT are duplicative of services provided to another agency from which Contractor receives funding and are not being reimbursed from funding received from another agency.
- c. Contractor shall enter into an agreement with an outside auditor no later than sixty (60) days before the end of each Fiscal Year calling for the financial and compliance audit of the Fiscal Years that are covered by this AGREEMENT. The written agreement may be in the form of an engagement letter prepared by the auditor and approved by Contractor.
- d. The audit report must be completed and sent to the MCWDB within six months of the end of each Fiscal Year covered by this AGREEMENT. Acceptable forms include: (i) an original, bound copy signed by the certified public accountant responsible for the work, OR (ii) a protected document file format (.pdf) emailed from the certified public accountant. If this AGREEMENT expires or is terminated on a date that occurs after the period covered by the foregoing audit, the Contractor shall deliver an audit report within two hundred and fifty (250) days after the expiration or termination of this AGREEMENT auditing the period not covered by the prior audit.
- e. Should Contractor not enter into an agreement with an outside auditor or should an audit not be performed on a timely basis, the MCWDB, at its discretion, may enter into an agreement with an independent auditor to perform the audit at Contractor's expense.
- f. The Contractor shall submit to the MCWDB copies of management letters the auditor prepares for the Contractor as part of the audit engagement.
- g. All audits must be performed by Certified Public Accountants currently certified and licensed to practice in the State of California. Contractor must have auditor's proof of current licensing on file in Contractor's office. Contractor must submit a copy of the auditor's certification to practice in California to the MCWDB.
- h. Contractor will maintain and make available to auditors, at all levels, accounting and program records including supporting source documentation and cooperate with all auditors. Contractor must follow the audit requirements (single audit or program-specific audit requirement) of Uniform Guidance 2 CFR, Part 200 and DOL Exceptions 2 CFR Part 2900.
- i. Auditors performing monitoring or audits of Contractor will immediately report to the MCWDB any incidents of fraud, abuse or other criminal activity in relation to this AGREEMENT, the WIOA or its regulations.

19. DISALLOWED COSTS

- a. Except to the extent that the State determines it will assume liability, Contractor will be liable for and will repay the MCWDB, any sums expended under this AGREEMENT found not to be in compliance with the WIOA including, but not limited to, disallowed costs. Such repayment will be from funds (Non-Federal), other than those received under the WIOA. Payment of any disallowed costs must be made within 30 days of notification of the disallowed costs, unless otherwise specified by the MCWDB.
- b. Contractor shall be notified of all final determinations made by the MCWDB regarding audit reports, independent monitoring reports, and MCWDB administrative findings by a final determination letter.
- c. If Contractor fails to refund any disallowed cost within 30 days, the MCWDB may, at its sole discretion, terminate any and all AGREEMENTs with Contractor effective immediately thereon.

20. CONFLICTS

- a. Contractor will cooperate in the resolution of any conflict with the MCWDB that may occur from the activities funded under this AGREEMENT.
- b. In the event of a dispute between the MCWDB and Contractor over any part of this AGREEMENT, the dispute may be submitted to non-binding arbitration upon the consent of both the MCWDB and Contractor. An election for arbitration pursuant to this provision will not preclude either party from pursuing any remedy for relief otherwise available.

21. PROPERTY

- a. The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for federal purposes: the copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and any rights of copyright to which the grant award recipient, subrecipient or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise.

- (1) Federal funds may not be used to pay any royalty or license fee for use of a copyrighted work, or the cost of acquiring by purchase a copyright in a work, where the DOL/ETA has a license or rights of free use in such work, although they may be used to pay costs for obtaining a copy which is limited to the developer/seller costs of copying and shipping.
- (2) If revenues are generated by selling products developed with grant funds, including intellectual property, these revenues are considered as program income. Program income must be used in accordance with the provisions of this grant award and 2 CFR 200.307.
- (3) The following language must be on all workforce products developed in whole or in part with grant funds:

"This workforce product was funded by a grant awarded by the U.S. Department of Labor (DOL)'s Employment and Training Administration. The product was created by the recipient and does not necessarily reflect the official position of DOL/ETA. DOL/ETA makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This product is copyrighted by the institution that created it."

- (4) Additionally, pursuant to 2 CFR 2900.13, Intellectual Property developed under this subgrant will be licensed under a Creative Commons Attribution license, which allows subsequent users to copy, distribute, transmit and adapt the copyrighted work and requires such users to attribute the work in the manner specified by the Pass-through Entity.
- (5) If the Federal award meets the definition of "funding agreement" under [37 CFR § 401.2](#) (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- b. All property, whether finished or unfinished documents, data, studies and reports prepared or purchased by Contractor under this AGREEMENT, will be disposed of in accordance with the direction of the MCWDB. In addition, any tools and/or equipment furnished to Contractor by the MCWDB and/or purchased by Contractor with funds pursuant to this AGREEMENT, will be limited to the use within the activities outlined in this AGREEMENT and will remain the property of the DOL and/or the MCWDB. Upon termination of this AGREEMENT, Contractor will immediately return such tools and/or equipment to the MCWDB or dispose of them as prescribed by the MCWDB.
- c. All non-expendable property acquired with program funds provided, in whole or in part, under this AGREEMENT shall become property of the MCWDB at the time of acquisition and shall be returned to the MCWDB upon termination of the AGREEMENT and completion of the program or at such time as the MCWDB makes a request for such property. Non-expendable property is defined as property which will not be consumed or lose its identity during the AGREEMENT term, has a unit value in excess of \$1,000 at the time of purchase, and is expected to have a useful life of one year or more.
- d. Contractor shall obtain advance written approval of MCWDB for purchase of any non-expendable equipment having a unit purchase price of \$1,000 or more, and use expectancy in excess of one year.
- e. Property records for non-expendable property shall be accurately maintained by Contractor and shall reflect the following:
 - (1) a description of the property;
 - (2) acquisition date and costs;
 - (3) supplier; and
 - (4) percentage of the cost of the property purchased with funds from this AGREEMENT.
- f. Contractor shall insure that adequate safeguards are provided to prevent loss, damage or theft of the property. In the case of all suspected thefts and if there is any possibility of a criminal cause of the loss or damage, Contractor shall report the loss, damage, or theft to the police, unless the possible crime occurred in another jurisdiction, in which case Contractor shall report it to the law enforcement authorities with that jurisdiction and Contractor shall provide a copy of the law enforcement report to the MCWDB.

22. CONFIDENTIALITY REQUIREMENTS

The MCWDB and Contractor will exchange various kinds of information pursuant to this AGREEMENT. That information will include data, applications, program files, and databases. These data and information are confidential when they define an individual or an employing unit. Confidential information requires special precautions to protect it from unauthorized use, access, disclosure, modification, and destruction. The sources of information may include, but are not limited to, the County of Monterey, State of California EDD, California Department of Social Services, California Department of Education, California Department of Corrections and Rehabilitation, County Welfare Department(s), County IV-D Directors Office of Child Support, Office of the District Attorney, California Department of Mental Health, California Office of Community Colleges and Department of Alcohol and Drug Programs.

The MCWDB and Contractor agree that:

- a. Each party must recognize and safeguard personally identifiable information (PII) and information designated as sensitive in accordance with Uniform Guidance 2 CFR 200.303 – Safeguarding Personally Identifiable Information, except where disclosure is allowed by prior written approval of

the Grant Officer or by court order. Contractor must take reasonable measures to safeguard protected PII, as well as any information that the MCWDB designates as sensitive. Both Contractor and the MCWDB must meet the requirements in Training and Employment Guidance letter (TEGL) 39-11, Guidance on the Handling and Protection of Personally Identifiable Information, located at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7872.

- b. Each party shall keep all information that is exchanged between them in the strictest confidence and make sure information available to their respective employees is only on a “need-to-know” basis.
- c. Each party shall provide security sufficient to ensure protection of confidential information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect this information from reasonable unanticipated threats to the security or confidentiality of the information.
- d. Contractor agrees that information obtained under this AGREEMENT will not be reproduced, published, sold or released in original or in any other form for any purpose other than those specifically identified in this AGREEMENT.
 - (1) Aggregate Summaries: All reports and/or publications developed by Contractor based on data obtained under this AGREEMENT shall contain confidential data in aggregated or statistical summary form only. “Aggregated” refers to a data output that does not allow identification of an individual or employer unit.
 - (2) Publication: Prior to publication, Contractor shall carefully analyze aggregated data outputs to ensure the identity of individuals and/or employer units cannot be inferred pursuant to Unemployment Insurance Code Section 1094(c). Personal identifiers must be removed. Geographic identifiers should be specified only in large areas and as needed, and variables should be recorded in order to protect confidentiality.
 - (3) Minimum Data Cell Size: The minimum data cell size or derivation thereof shall be three participants for any data table released to outside parties or to the public.
- e. Each party agrees that no disaggregate data, identifying individuals or employers, shall be released to outside parties or the public.
- f. Contractor shall notify the MCWDB of any actual or attempted information security incidents, within 24 hours of initial detection, by telephone at (831) 759-6644 or (831) 796-6434. Information security incidents include, but are not limited to, any event (intentional or unintentional), that causes the loss, damage, or destruction, or unauthorized access, use, modification, or disclosure of information assets. Contractor shall cooperate with the MCWDB in any investigation of security incidents. The system or device affected by an information security incident and containing confidential data obtained in the administration of this program shall be immediately removed from operation upon confidential data exposure or a known security breach. It shall remain removed from operation until correction and mitigation measures are applied. If Contractor learns of a breach in the security of the system which contains confidential data obtained under this AGREEMENT, then Contractor must provide notification to individuals pursuant to Civil Code Section 1798.82.
- g. Contractor shall provide for the management and control of physical access to information assets (including personal computer systems, computer terminals, mobile computing devices, and various electronic storage media) used in performance of this AGREEMENT. This shall include, but is not limited to, security measures to physically protect data, systems, and workstations from unauthorized access and malicious activity; the prevention, detection, and suppression of fires;

and the prevention, detection, and minimization of water damage.

- h. At no time will confidential data obtained pursuant to this AGREEMENT be placed on a mobile computing device or on any form of removable electronic storage media of any kind unless the data are fully encrypted.
- i. Each party shall provide its employees with access to confidential information with written instructions fully disclosing and explaining the penalties for unauthorized use or disclosure of confidential information found in Section 1798.55 of the Civil Code, Section 502 of the Penal Code, Section 2111 of the Unemployment Insurance Code, Section 10850 of the Welfare and Institutions Code and other applicable local, State and Federal laws.
- j. Each party shall (where it is appropriate) store and process information in electronic format, in such a way that unauthorized persons cannot reasonably retrieve the information by means of a computer.
- k. Each party shall promptly return to the other party confidential information when its use ends, or destroy the confidential information utilizing an approved method of destroying confidential information: shredding, burning, or certified or witnessed destruction. Magnetic media are to be degaussed or returned to the other party.
- l. If the MCWDB or Contractor enters into an AGREEMENT with a third-party to provide WIOA services, the MCWDB and Contractor agree to include these data and security and confidentiality requirements in the AGREEMENT with that third-party. In no event, shall said information be disclosed to any individual outside of that third-party's authorized staff, subcontractor(s), service Contractors, or employees.
- m. Contractor may, in its program operations, allow an individual to register for resume-distribution services at the same time the individual enrolls in the Virtual Job Center or CalJOBS. Contractor shall ensure that it and all subcontractors comply with the confidentiality requirements of this AGREEMENT and any other terms of this AGREEMENT that may be applicable. In addition, the following requirements must be adhered to by Contractor and its subcontractors:
 - (1) All client information submitted over the Internet to Contractor and/or subcontractor(s) databases must be protected, at a minimum, by 128-bit Secure Socket Layer (SSL) encryption. Client's social security numbers must be stored in a separate database within Contractor and/or subcontractor(s) network of servers, and protected by a firewall and a secondary database server firewall or AES1 data encryption. If a Contractor and/or subcontractor(s) obtain confidential information, the AGREEMENT between Contractor and its subcontractor(s) must specifically state the purpose for the data collection and the term of records retention must be stated, and directly related, to the purpose and use of the information. In accordance with Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900, social security numbers and other client specific information shall not be retained for more than three years after a client completes services. Contractor and/or subcontractor(s) should extend this period, only if any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three-year retention period. In this case, the records should be maintained until completion of the action and resolution of all issues arising from it, or until the close of the three-year retention period, whichever is later.
 - (2) Client information (personal information that identifies a client such as name and social security number) and/or demographic information of a client (such as wage history, address, and previous employment) shall not be used as a basis for commercial solicitation during the

- time the client or agency is using Contractor and/or subcontractor(s) services. Client information and/or demographic information shall not be used for any purposes other than those specific program purposes set forth in Contractor and subcontractor(s) AGREEMENT scope of services.
- (3) Contractor must give an America's Job Center of California (Job Center) or One-Stop Career Center (One-Stop) client the option to use the Job Center or One-Stop services, including Virtual Job Center or CalJOBS, even if he or she chooses not to use any services of Contractor and/or subcontractor(s). This option shall be prominently, clearly, and immediately communicated to the client upon registration within the Job Center or One-Stop for the Virtual Job Center or CalJOBS. This obligation applies even if Contractor's and/or subcontractor's resume-distribution services, or any other services are offered to the client.
 - (4) Contractor and/or subcontractor(s) must clearly disclose all of its potential and intended uses of the client's personal and/or demographic information for the services the client seeks and for any other services Contractor and/or subcontractor(s) offers. Contractor and/or subcontractor(s) shall not use a client's personal and/or demographic information without the client's prior permission. A link to Contractor and/or subcontractor(s) privacy policy shall appear prominently on the registration screens that list the potential and intended uses of the client's personal and/or demographic information.
 - (5) When the MCWDB modifies State automated systems such as the CalJOBS or VOS systems, it shall provide reasonable notice of such changes to Contractor and/or subcontractor(s). Contractor shall be responsible to communicate such changes to its subcontractor(s) in the local area.
- n. Each party shall designate an employee who shall be responsible for overall security and confidentiality of its data and information systems and each party shall notify the other of any changes in that designation.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/19/2023

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

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

PRODUCER McGee & Thielen Insurance Brokers, Inc. 3840 Rosin Court, Suite 245 Sacramento, CA 95834 www.mcgeethielen.com 0633187	CONTACT NAME: PHONE (A/C, No, Ext): 916-646-1919 FAX (A/C, No): 916-646-0995 E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE NAIC # INSURER A: Sequoia Insurance Company 22985 INSURER B: Sentinel Insurance Company Ltd 11000 INSURER C: The Hanover Insurance Company 22292 INSURER D: ACE American Insurance Company 22667 INSURER E: INSURER F:
--	---

COVERAGES

CERTIFICATE NUMBER: 76383178

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	57SBABF7194	9/17/2023	9/17/2024	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		57SBABF7194	9/17/2023	9/17/2024	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$		57SBABF7194	9/17/2023	9/17/2024	EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N N/A	QWC1248741	12/31/2022	12/31/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liability/Tech E&O		LHFD770661	12/4/2022	12/4/2023	Each Claim: \$2,000,000 claim/aggregate \$2,000,000 Limit / \$5,000 Deductible
D	Cyber Liability		D9723369A	5/25/2023	5/25/2024	
B	Employee Dishonesty		57SBABF7194	9/17/2023	9/17/2024	\$10,000 Limit

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

Monterey County Workforce Development Board and the County of Monterey, and their officers, agents, and employees are additional insureds per the attached form SS 00 08 04/05. Insurance is primary and non-contributory per the attached blanket policy form SS 00 08 04/05.

CERTIFICATE HOLDER

CANCELLATION

Monterey County
 Workforce Development Board (MCWDB)
 344 Salinas Street, Suite 101
 Salinas CA 93901

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

AUTHORIZED REPRESENTATIVE

Amber Greenberg

ACORD 25 (2016/03)

The ACORD name and logo are registered marks of ACORD

© 1988-2015 ACORD CORPORATION. All rights reserved.



344 Salinas Street, Suite 101
Salinas, CA 93901

(831) 796-6434
(831) 796-3321 Facsimile

www.montereycountywdb.org

June 25, 2024

To Whom It May Concern:

This letter pertains only to the Agreement between Monterey County Workforce Development Board and the Pat Davis Design Group, Inc. for communications collateral development for the period from July 1, 2024 through June 30, 2025.

This letter changes the referenced Agreement only insofar as it relates to Monterey County's requirement for all contractor autos to be covered by an automobile liability policy which meets all other terms and conditions as described in the referenced Agreement.

Here, the Executive Director of the Monterey County Workforce Development Board is electing to waive the requirement for all auto liability insurance as stated in the Agreement, based on the statement of the Contractor that he/she will be using only hired and non-owned autos in the performance of this Agreement and therefore only hired and non-owned auto insurance is required.

In reliance thereon, the County will not require that Contractor's automobile insurance liability policy shall cover all autos. In the event that autos other than hired and non-owned autos are used in the performance of this Agreement, the insurance requirements in the Agreement will apply.

The signatures below constitute the agreement of Contractor to use only hired and non-owned autos in the performance of the referenced Agreement.

Contractor:

A handwritten signature in black ink that reads "G Dimotakis". The signature is written in a cursive style with a large, stylized "G".

George Dimotakis, President
Pat Davis Design Group, Inc.

SEPTEMBER 3, 2024

Date

A handwritten signature in black ink that reads "Ronald M Deforest". The signature is written in a cursive style with a large, stylized "R".

Ron Deforest, Project Manager
Pat Davis Design Group, Inc.

September 3, 2024

Date

POLICY NUMBER: 57 SBA BF7194



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - PERSON-ORGANIZATION

CITY OF SANTEE
10601 MAGNOLIA AVENUE
SANTEE, CA 92071

MONTEREY WORKFORCE DEVELOPMENT BOARD AND COUNTY OF MONTEREY
344 SALINAS STREET,
APT/SUITE 101,
SALINAS, CA 93901
RE: LOC 03 BLDG 001

Form IH 12 00 11 85 T SEQ. NO. 001 Printed in U.S.A. Page 001

Process Date: 06/29/22

Expiration Date: 09/17/23

57SBABF7194



BUSINESS LIABILITY COVERAGE FORM

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

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

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

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

A. COVERAGES

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

Insuring Agreement

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

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

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

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

- b. This insurance applies:

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

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

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

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

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

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

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

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

(1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:

(a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and

(b) You are not engaged in the business or occupation of providing such services.

(2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

(1) The accident takes place in the "coverage territory" and during the policy period;

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

(3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:

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

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

BUSINESS LIABILITY COVERAGE FORM

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

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

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

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

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

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

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

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

b. Contractual Liability

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

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

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

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

BUSINESS LIABILITY COVERAGE FORM

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

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

c. Liquor Liability

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

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

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

d. Workers' Compensation And Similar Laws

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

e. Employer's Liability

"Bodily injury" to:

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

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

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

This exclusion applies:

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

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

f. Pollution

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

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

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

BUSINESS LIABILITY COVERAGE FORM

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

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

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

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

BUSINESS LIABILITY COVERAGE FORM

g. Aircraft, Auto Or Watercraft

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

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

This exclusion does not apply to:

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

h. Mobile Equipment

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

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

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

i. War

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

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

j. Professional Services

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

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

BUSINESS LIABILITY COVERAGE FORM

(8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;

(9) Any:

(a) Body piercing (not including ear piercing);

(b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and

(c) Similar services;

(10) Services in the practice of pharmacy; and

(11) Computer consulting, design or programming services, including web site design.

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

k. Damage To Property

"Property damage" to:

(1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

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

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

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

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

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

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

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

l. Damage To Your Product

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

m. Damage To Your Work

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

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

n. Damage To Impaired Property Or Property Not Physically Injured

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

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

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

BUSINESS LIABILITY COVERAGE FORM**o. Recall Of Products, Work Or Impaired Property**

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

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

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

p. Personal And Advertising Injury

"Personal and advertising injury":

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

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

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

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of web sites for others; or
- (c) An Internet search, access, content or service provider.

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

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

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

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

(12) Arising out of:

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

BUSINESS LIABILITY COVERAGE FORM

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

q. Electronic Data

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

r. Employment-Related Practices

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

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

This exclusion applies:

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

s. Asbestos

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

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

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

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

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

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

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

BUSINESS LIABILITY COVERAGE FORM**2. Applicable To Medical Expenses Coverage**

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

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

c. Injury On Normally Occupied Premises

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

d. Workers' Compensation And Similar Laws

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

e. Athletics Activities

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

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED**1. If you are designated in the Declarations as:**

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

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

2. Each of the following is also an insured:**a. Employees And Volunteer Workers**

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

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

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

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

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

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

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

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

(2) "Property damage" to property:

- (a) Owned, occupied or used by,

BUSINESS LIABILITY COVERAGE FORM

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

b. Real Estate Manager

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

c. Temporary Custodians Of Your Property

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

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

d. Legal Representative If You Die

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

e. Unnamed Subsidiary

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

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

3. Newly Acquired Or Formed Organization

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

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

- b. Coverage under this provision does not apply to:

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

4. Operator Of Mobile Equipment

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

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

5. Operator of Nonowned Watercraft

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

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

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

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

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

BUSINESS LIABILITY COVERAGE FORM

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

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

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

a. Vendors

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

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

This insurance does not apply to:

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

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

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

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

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

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

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

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

b. Lessors Of Equipment

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

BUSINESS LIABILITY COVERAGE FORM

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

c. Lessors Of Land Or Premises

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

d. Architects, Engineers Or Surveyors

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

e. Permits Issued By State Or Political Subdivisions

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

f. Any Other Party

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

BUSINESS LIABILITY COVERAGE FORM

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

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

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

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

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

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

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

2. Aggregate Limits

The most we will pay for:

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

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

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

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

3. Each Occurrence Limit

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

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

4. Personal And Advertising Injury Limit

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

5. Damage To Premises Rented To You Limit

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

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

6. How Limits Apply To Additional Insureds

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

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

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

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

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

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

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

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

a. Notice Of Occurrence Or Offense

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

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

b. Notice Of Claim

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

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

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

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

BUSINESS LIABILITY COVERAGE FORM

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

d. Obligations At The Insured's Own Cost

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

e. Additional Insured's Other Insurance

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

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

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

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

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

BUSINESS LIABILITY COVERAGE FORM

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

3. Financial Responsibility Laws

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

4. Legal Action Against Us

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

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

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

5. Separation Of Insureds

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

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

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

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

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

b. Unintentional Failure To Disclose Hazards

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

7. Other Insurance

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

a. Primary Insurance

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

b. Excess Insurance

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

(1) Your Work

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

(2) Premises Rented To You

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

(3) Tenant Liability

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

(4) Aircraft, Auto Or Watercraft

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

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

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

BUSINESS LIABILITY COVERAGE FORM

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

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

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

That is other insurance available to an additional insured.

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

(a) Primary Insurance When Required By Contract

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

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

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

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

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

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

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

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

c. Method Of Sharing

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

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

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

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

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

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

BUSINESS LIABILITY COVERAGE FORM**F. OPTIONAL ADDITIONAL INSURED COVERAGES**

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

1. Additional Insured - Designated Person Or Organization

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

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

2. Additional Insured - Managers Or Lessors Of Premises

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

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

This insurance does not apply to:

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

3. Additional Insured - Grantor Of Franchise

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

4. Additional Insured - Lessor Of Leased Equipment

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

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

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

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

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

This insurance does not apply to:

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

6. Additional Insured - State Or Political Subdivision - Permits

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

BUSINESS LIABILITY COVERAGE FORM

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

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

This insurance does not apply to:

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

7. Additional Insured – Vendors

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

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

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

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

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

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

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

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

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

8. Additional Insured – Controlling Interest

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

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

BUSINESS LIABILITY COVERAGE FORM

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

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

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

(1) In the performance of your ongoing operations for the additional insured(s); or

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

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

(1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

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

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

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

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

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

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

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

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

However, "advertisement" does not include:

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

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

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

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

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

5. "Bodily injury" means physical:

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

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

6. "Coverage territory" means:

BUSINESS LIABILITY COVERAGE FORM

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

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.
7. "Electronic data" means information, facts or programs:
- a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from
- computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. – Liability and Medical Expenses Limits of Insurance.
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement; or
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.
- However, Paragraph f. does not include that part of any contract or agreement:

BUSINESS LIABILITY COVERAGE FORM

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

BUSINESS LIABILITY COVERAGE FORM

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

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

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

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

20. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.

As used in this definition, "electronic data" is not tangible property.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

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

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

23. "Volunteer worker" means a person who:

- a. Is not your "employee";

BUSINESS LIABILITY COVERAGE FORM

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

24. "Your product":

a. Means:

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

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

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

b. Includes:

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

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

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

25. "Your work":

a. Means:

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

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

b. Includes:

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

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