

# Attachment H

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**AMENDMENT NO. 2  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN COUNTY OF MONTEREY AND  
WOOD RODGERS, INC.**

**THIS AMENDMENT NO. 2** to the Professional Services Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and WOOD RODGERS, INC. (hereinafter, "CONTRACTOR") is hereby entered into between the County and the CONTRACTOR.

**WHEREAS**, CONTRACTOR entered into a Professional Services Agreement with County on October 27, 2008 (hereinafter, "Agreement"); and

**WHEREAS**, Agreement was amended by the parties on December 3, 2009 (hereinafter, "Amendment No.1"); and

**WHEREAS**, as a result of Caltrans changed requirements for the environmental documentation and plans, specifications and engineer's estimate for the Monterey Bay Sanctuary Scenic Trail – Moss Landing Segment have not been completed and continuing work is necessary for the project; and

**WHEREAS**, the County and the CONTRACTOR wish to further amend the Agreement to include additional project management, alternative engineering studies, additional cultural resources studies, shore protection work south of Elkhorn Slough and retaining wall or embankment/shore protection on the north side of Moss Landing Road as required by Caltrans and/or requested by the County.

**NOW, THEREFORE**, the parties agree to amend the Agreement as follows:

1. Amend Paragraph 1, "Services to Be Provided", to read as follows:

The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibits A, A-1 and A-2 in conformity with the terms of this Agreement. The services are generally described as follows: provide environmental documentation and plans, specifications, and engineer's estimate; and additional environmental documentation and plans, specifications, and engineer's estimate associated with the extension of the trail along the north edge of Moss Landing Road across Moro Cojo Slough by approximately 300 feet for the Monterey Bay Sanctuary Scenic Trail – Moss Landing Segment. The additional services to be included by this Amendment No. 2 are generally described in the attached Exhibit A-2.

2. Amend Paragraph 2, "Payments by County", to read as follows:

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibits A, A-1 and A-2, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement is amended to increase the total amount payable to CONTRACTOR by \$139,359.75, for a total not to exceed the sum of \$1,203,955.79.

3. Amend Paragraph 4, "Additional Provisions/Exhibits", by adding "Exhibit A-2, Scope of Services/Payment Provisions".
4. All other terms and conditions of the Agreement remain unchanged and in full force.
5. This Amendment No. 2 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 to the Professional Services Agreement as of the day and year written below:

**COUNTY OF MONTEREY**

By: [Signature]  
Contracts/Purchasing Officer

Date: 9-29-10

**Approved as to Form and Legality  
Office of the County Counsel**

By: [Signature]  
Deputy County Counsel

Date: 8-19-10

**Approved as to Fiscal Provisions**

By: [Signature]  
Auditor/Controller

Date: 8-10-10

**Approved as to Indemnity and Insurance Provisions**

By: \_\_\_\_\_  
Risk Management

Date: \_\_\_\_\_

**CONTRACTOR\***

Wood Rodgers, Inc.  
Contractor's Business Name

By: [Signature]  
(Signature of Chair, President or Vice President)

Its: Ali A. Hemmati, Vice President  
(Name and Title)

Date: 8/6/2010

By: [Signature]  
(Signature of Secretary, Asst. Secretary, CFO,  
Treasurer or Assistant Treasurer)

Its: Timothy R. Crush, Secretary  
(Name and Title)

Date: 8/6/2010

ENTERED  
SEP 28 2010  
CCC

\*INSTRUCTIONS: IF CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. IF CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. IF CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.



WOOD RODGERS

June 1, 2010

County of Monterey  
 Department of Public Works  
 Attn: Mr. Stephen Leiker, PE  
 168 West Alisal Street, 2<sup>nd</sup> Floor  
 Salinas, California 93901

*SL*  
 6/20/10

Re: Request for Amendment #2 to Professional Engineering Services Agreement A-11286  
 Monterey Bay Sanctuary Scenic Trail – Moss Landing Segment

Dear Mr. Leiker:

As a result of changed requirements, this letter is to request an augmentation to the budget in our consultant services agreement to compensate Wood Rodgers for additional services associated with the environmental clearance and design of the Moss Landing Segment of the Monterey Bay Sanctuary Scenic Trail. This supercedes our request of March 22, 2010. The areas of additional work include:

**A. Project Management:** Due to factors beyond the control of Wood Rodgers, the time required for the environmental process has expanded. This is primarily due to Caltrans requests for additional cultural studies, including additional Native American consultation meetings and evaluation of cultural site 229 under Criterion A. The original project schedule called for public circulation of the MND to begin in early July 2010, but that is now expected to occur in early May 2011. Since the environmental process is on the critical path of the project schedule, this results in an additional 10 months in the overall project schedule. Wood Rodgers will expend additional labor in managing the project for an additional 10 months, including additional coordination and preparation of 10 additional progress reports. This is estimated to require the following additional budget:

Principal Engineer (Proj Mgr)	3 hr/mo x 10 mo x \$185.00/hr =	\$ 5,550.00
Engineer III (Proj. Engr)	5 hr/mo x 10 mo x \$125.00/hr =	\$ 6,250.00
<b>Additional PM Budget for Wood Rodgers:</b>		<b>\$ 11,800.00</b>

**B. Alternative Engineering Studies:** The County of Monterey requested that Wood Rodgers prepare engineering studies of the signalization of the Dolan Road intersection with SR-1, and for the previously-rejected alternative alignment of the trail to the east of the knoll. The project budget did not include preparation of these alternative studies. Preparation of these studies was accomplished as requested, and requires the following additional budget:

Engineer III (Project Engineer)	8 hr x \$125.00/hr =	\$ 1,000.00
Engineer II (Design Engineer)	32 hr x \$115.00/hr =	\$ 3,680.00
<b>Additional Engineering Budget for Wood Rodgers:</b>		<b>\$ 4,680.00</b>

## EXHIBIT A-2 – SCOPE OF SERVICES/PAYMENT PROVISIONS

MBSST Moss Landing Amendment #2

June 1, 2010

Page 2

**C. Additional Cultural Resources Studies:** As detailed in the attached letter from LSA Associates to Wood Rodgers dated May 28, 2010, LSA has had to perform additional cultural resources studies, including additional correspondence with Native American representatives and members of the archeological academic community, additional coordination with Caltrans, additional on-site meetings, additional research and preparation of an additional evaluation of site CS-MNT-229. Wood Rodgers has participated in additional coordination, review of draft documents, and additional field meetings. The additional effort is estimated to require the following additional budget:

<b>Additional Budget for LSA Associates</b> (See LSA letter for details):	<b>\$38,809.75</b>
<b>Additional Budget for Wood Rodgers</b> Engineer III (Project Engineer) 40 hr x \$125.00/hr =	<b><u>\$ 5,000.00</u></b>
<b>Total Additional Cultural Resources Budget:</b>	<b>\$43,809.75</b>

**D. Shore Protection Work south of Elkhorn Slough:** This project was commenced under the assumption that existing shore protection systems in the project area were adequate and design of shore protection revetments would not be required. However, waves due to winter storms in conjunction with high tides in the winter of 2009/2010 have caused significant erosion on the western shoreline of the peninsula on the south side of Elkhorn Slough on which the trail is to be constructed. It has become apparent that the broken concrete shore protection that was placed by Caltrans prior to the relocation of State Route 1 (from that peninsula to the current SR-1 bridge over Elkhorn Slough) in the mid-1980s is not adequate to protect that section of shoreline from erosion. Erosion of the shoreline would remove the foundation soils from under the planned trail pavement, so the trail would not be maintainable without improved shore protection.

Wood Rodgers proposes to subcontract the design of rip-rap shore protection to Sea Engineering, Inc. (SEI). The attached letter proposal from SEI to Wood Rodgers dated March 16, 2010 details the scope of work to be undertaken by SEI in preparing the design of the shore protection. Wood Rodgers would determine the finished grades, coordinate the design of the shore protection with the design of the other features of the trail design and incorporate the shore protection design prepared by SEI into the plans, specifications and estimate for the overall project. Wood Rodgers will select the Standard Special Provisions applicable to the shore protection work and transmit them to Sea Engineering for editing. LSA Associates would update the environmental technical reports and environmental document to include that additional shore protection work. LSA would also include the permitting of the shore protection work with the permitting of the other project features. The attached letter proposal from LSA to Wood Rodgers dated March 12, 2010 details the scope of work to be undertaken by LSA in conjunction with the addition of the shore protection work. This is expected to require the following additional budget:

<b>Additional Budget for Sea Engineering:</b> (See attached letter proposal)	<b>\$40,000.00</b>
<b>Additional Budget for LSA Associates:</b> (See attached letter proposal of 3/12/10)	<b>\$11,830.00</b>
<b>Additional Budget for Wood Rodgers:</b> Engineer III (Project Engineer) 16 hr x \$125.00/hr =	<b>\$ 2,000.00</b>
Engineer II (Design Engineer) 16 hr x \$115.00/hr =	<b><u>\$ 1,840.00</u></b>
	<b><u>\$ 3,840.00</u></b>
<b>Total Shore Protection Budget:</b>	<b>\$55,670.00</b>

## EXHIBIT A-2 – SCOPE OF SERVICES/PAYMENT PROVISIONS

MBSST Moss Landing Amendment #2

June 1, 2010

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**E. Retaining Wall or Embankment & Shore Protection on north side of Moss Landing Road:** The 300-foot-long section of trail along the north side of Moss Landing Road was added to the trail design contract by Amendment #1. At the time Amendment #1 was scoped and budgeted, topographic mapping was not available, but Monterey County provided plans showing that the trail could be accommodated adjacent to curb and gutter to be constructed by a separate project. Amendment 1 was based on the assumption that little or no retaining wall would be required to retain the trail section, and design effort would be similar to design of sidewalk adjacent to an existing curb. After topographic mapping for the additional project area was prepared it became clear that either extensive retaining wall or an embankment that would extend into Moss Landing Harbor (and therefore require shore protection) would be required to support the north edge of the trail. In an effort to minimize the impacts to the shoreline and Moss Landing Harbor, Wood Rodgers proceeded in 2009 with planning studies, draft retaining wall plans, and design cross sections for the construction of a retaining wall. Wood Rodgers prepared preliminary cross-sections and retaining wall layout plans, and coordinated with LSA Associates to include the retaining wall in the project description for environmental studies. However, it was discovered that a 51" seawater outfall pipeline from the former National Refractories plant across SR-1 had the potential to interfere with the construction of a retaining wall. Wood Rodgers coordinated with Monterey County regarding potholing to determine the location of the pipeline, including preparing an exhibit to show locations where pothole surveys should be performed (s) along the north side of Moss Landing Road so that the design constraints can be determined. Monterey County provided pothole survey data to Wood Rodgers on April 8, 2010. It is now clear that the seawater outfall pipeline will preclude construction of a retaining wall, so an embankment slope will be required with slope protection that extends into the harbor. Since the slope to be specified will not be steeper than the existing slope (2:1), we assume that geotechnical exploration and analysis will not be required. Since the existing slope protection is informal and incomplete, yet has performed adequately due to the benign wave environment, we assume that light rock slope protection will be acceptable without detailed design analysis. Wood Rodgers proposes to detail the RSP using "Backing No. 2" on RSP fabric. LSA Associates has advised that they can modify the NES environmental technical study to include the design change and complete environmental clearance and permitting work within their existing scope and budget if that work is done at the same time that the RSP work on the shoreline just south of Elkhorn Slough is done. The additional effort is estimated to require the following additional budget:

Engineer III (Project Engineer)	40 hr x \$125.00/hr =	\$ 5,000.00
Engineer II (Design Engineer)	120 hr x \$115.00/hr =	\$13,800.00
Assist. Engineer/CAD Technician	40 hr x \$115.00/hr =	<u>\$ 4,600.00</u>
<b>Additional Engineering Budget for Wood Rodgers:</b>		<b>\$23,400.00</b>

### RECAP OF CHANGES

<b>A. Additional Project Management</b>	<b>\$ 11,800.00</b>
<b>B. Alternative Engineering Studies</b>	<b>\$ 4,680.00</b>
<b>C. Additional Cultural Resources Studies:</b>	<b>\$ 43,809.75</b>
<b>D. Shore Protection Work S. of Elkhorn Slough:</b>	<b>\$ 55,670.00</b>
<b>E. Retaining Wall or Embankment/RSP at ML Rd</b>	<b><u>\$ 23,400.00</u></b>
<b>TOTAL ADDITIONAL BUDGET</b>	<b>\$139,359.75</b>



**EXHIBIT A-2 – SCOPE OF SERVICES/PAYMENT PROVISIONS**

MBSST Moss Landing Amendment #2  
June 1, 2010

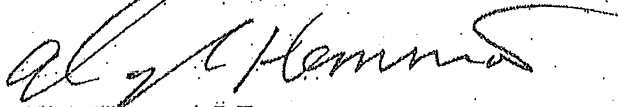
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Wood Rodgers requests authorization for additional budget in the amount of \$139,359.75, changing the not-to-exceed contract amount from \$1,064,596.04 to a new total of \$1,203,955.79. We are looking forward to successful completion of this much-needed project and recommend your authorization.

If you require additional information regarding this request, please do not hesitate to contact me at 916-440-9519.

Sincerely,

**WOOD RODGERS, INC.**



Ali A. Hemmati, P.E.  
Principal/Project Manager

cc: Keith Hallsten, Project Engineer, Wood Rodgers  
Joey Sellers, Contracts, Wood Rodgers  
8091.010, 052

**Payment Provisions:**

The total amount of services provided under Amendment No. 2 shall not exceed the amount of \$139,359.75 for a total Agreement amount not to exceed \$1,203,955.79. Payment for services shall be paid to the CONTRACTOR on a time and materials basis at the hourly rates provided and according to Provision 6 – PAYMENT CONDITIONS outlined in the Agreement.

AAH  
Contractor Initials

6/1/2010  
Date

## EXHIBIT A-2 – SCOPE OF SERVICES/PAYMENT PROVISIONS

# LSA

LSA ASSOCIATES, INC.  
1998 SANTA BARBARA STREET, SUITE 120  
SAN LUIS OBISPO, CALIFORNIA 93401  
805.782.0745 TEL  
805.782.0796 FAX

BERKELEY  
CARLSBAD  
FORT COLLINS

FRESNO  
IRVINE  
PALM SPRINGS

POINT RICHMOND  
RIVERSIDE  
ROCKLIN  
SO. SAN FRANCISCO

May 28, 2010

Keith Hallsten, Senior Civil Engineer/Project Manager  
Wood Rodgers Engineering, Inc.  
3301 C Street, Bldg. 100-B  
Sacramento, CA 95816

Subject: Proposed Modifications to the Existing Scope and Budget for the Preparation of Additional Cultural Resources Studies and Consultation Efforts Requested by Caltrans as part of the Federal Section 106 Requirements for the Moss Landing Segment of the Monterey Bay Sanctuary Scenic Trail

Dear Mr. Hallsten:

On January 22, 2010, LSA provided you with an estimate to address additional archeological analyses and Native American consultation for the Moss Landing Segment of the Monterey Bay Sanctuary Scenic Trail. This additional analysis and consultation is being required by Caltrans as part of the Proposed Project's Federal Section 106 Compliance requirements. Caltrans is in the process of applying new review and reporting standards to archeological sites for assessing their eligibility for listing in the National Register of Historic Places (National Register). Because Caltrans is just beginning to apply these new cultural standards to projects requiring Section 106 Compliance, the additional effort being put toward cultural resources analyses was neither anticipated nor required when our original scope of work and effort on cultural resources budget was prepared in March 2008.

As background, in August 2009, as part of the consultation requirements of Section 106 of the National Historic Preservation Act, LSA invited Native American representatives to a project meeting at the County of Monterey Public Works Department to discuss archeological investigations associated with the proposed Moss Landing Segment of the Monterey Bay Sanctuary Scenic Trail. At this meeting, Native Americans in attendance voiced a number of concerns about the proposed project's potential impacts on archeological site CA-MNT-229. Subsequent to the meeting, Caltrans also received individual phone calls from representatives of the Native American community expressing concerns about potential impacts to archeological site CA-MNT-229. Because of the Native American's concerns and an increasing emphasis on evaluating archeological sites under Criterion A for listing in the National Register of Historic Places, Caltrans has requested that LSA conduct additional consultation with the regional archeological community, including Native Americans, as well as conduct additional research of archeological site CA-MNT-229 for evaluation under Criterion A, and/or as a Traditional Cultural Property, for listing in the National Register of Historic Places. This additional effort was not anticipated nor budgeted in our original scope of work and budget approved in March 2008 because most archeological sites are nominated and successfully listed under Criterion D, not Criterion A, which is a criterion more often applied to the built environment.

The additional tasks and budget required as part of the cultural work and which were completed between September 1, 2009 and June 1, 2010 are as follows:

## EXHIBIT A-2 – SCOPE OF SERVICES/PAYMENT PROVISIONS

LSA ASSOCIATES, INC.

- Written correspondence, including preparation of project figures, and individual phone conversations with Native Americans inviting them to a second on-site meeting regarding CA-MNT-229 on November 18, 2009, was conducted between September 1, 2009 and November 18, 2009;
  - Karin Goetter, Cultural Resource Manager, 50 hours @ \$80/hr = \$4,000.00
  - Kathleen Kubal, Cultural Technician/Graphics preparation, 8 hours @ \$60/hr = \$480.00
  - Pam Reading, Project Manager, 5 hours @ \$95/hr = \$475.00
  - Subtotal: \$4,955.00**
  
- Preparation for and participation in a second on-site meeting with project team members, Caltrans, and Native American representatives, which took place on November 18, 2009;
  - Karin Goetter, Cultural Resource Manager, 24 hours @ \$80/hr = \$1,920.00
  - Kathleen Kubal, Cultural Technician/Graphics preparation, 9.5 hours @ \$60/hr = \$570.00
  - Pam Reading, Project Manager, 17.75 hours @ \$95/hr = \$1686.25
  - Reimbursable costs = \$550.00
  - Subtotal: \$4,726.25**
  
- Four additional internal meetings with Caltrans, the County of Monterey, and the Project Engineer following the November 18, 2009 meeting to discuss additional documentation and consultation needs and next steps for completing the cultural resources documentation necessary to start Phase II field investigations;
  - Karin Goetter, Cultural Resource Manager, 10 hours @ \$80/hr = \$800.00
  - Pam Reading, Project Manager, 10 hours @ \$95/hr = \$950.00
  - Subtotal: \$1,750.00**
  
- Application for Encroachment Permit Extension for delayed archeological investigations; and
  - Pam Reading, Project Manager, 1.5 hours @ \$95/hr = \$142.50
  - Encroachment Permit = \$82.00
  - Subtotal: \$224.50**
  
- Coordination with Moss Landing Power Plant (MLPP) regarding delayed archeological excavations on MLPP property.
  - Karin Goetter, Cultural Resource Manager, 1 hour @ \$80/hr = \$80.00
  - Subtotal: \$80.00**
  
- Prepared a detailed letter to members of archaeological community (Cabrillo College, Santa Cruz Archaeological Society, UCSC, & other local archaeologists) discussing the history of the trail project, alternatives considered, Native American consultation efforts, and solicited information and concerns regarding CA-MNT-229. This task included individual telephone conversations where LSA staff explained additional Section 106 efforts to archaeologists and requested their input regarding

## EXHIBIT A-2 – SCOPE OF SERVICES/PAYMENT PROVISIONS

LSA ASSOCIATES, INC.

how Criterion A might apply to the project, documenting archaeologists suggestions on what to expect during excavations, noting which publications they said should be reviewed and which sites offer comparisons with MNT-229, and researching suggested publications.

Andrew Pulcheon, Senior Cultural Resources Manager, 2 hours @ \$95/hr = \$190.00

Karin Goetter, Cultural Resource Manager, 80 hours @ \$80/hr = \$6,400.00

Kathleen Kubal, Cultural Technician/Graphics, 4 hours @ \$60/hr = \$240.00

Pam Reading, Project Manager, 2 hours @ \$95/hr = \$190.00

**Subtotal: \$7,020.00**

- Prepared a letter, reviewed and approved by Caltrans, to Native Americans, requesting their attendance at third on-site consultation meeting on March 10, 2010 to present the background and current status of the proposed trail project and to gather information from them about the cultural importance of MNT-229 for evaluation under Criterion A for listing in the NRHP.

Andrew Pulcheon, Senior Cultural Resources Manager, 2 hours @ \$95/hr = \$190.00

Karin Goetter, Cultural Resource Manager, 16 hours @ \$80/hr = \$1,280.00

Kathleen Kubal, Cultural Technician/Graphics, 3 hours @ \$60/hr = \$180.00

Alexandra Merritt Greenwald, Cultural Technician, 3 hours @ \$60/hr = \$180.00

Pam Reading, Project Manager, 2 hours @ \$95/hr = \$190.00

**Subtotal: \$2,020.00**

- Organized and attended third on-site field meeting on March 10, 2010 that was focused on the purpose and need of the project, seeking input on alternatives (vegetation, fencing, interpretive sign, etc.), and gathering information related to the location and cultural practices known about CA-MNT-229. Organization and preparation for the meeting included, preparing maps and graphics, preparing talking points, calling and reminding Native American invitees a few days prior to the meeting and requesting a written statement to be read at the meeting if the individual could not attend; requesting SHPO's attendance, coordinating the attendance of all team members (i.e., County of Monterey, Caltrans, and Consulting Engineer), responding to all post-meeting questions, and conducting follow up interviews with those individuals that attended and those individuals that were not able to attend.

Karin Goetter, Cultural Resource Manager, 40 hours @ \$80/hr = \$3200.00

Kathleen Kubal, Cultural Technician/Graphics, 12 hours @ \$60/hr = \$720.00

Pam Reading, Project Manager, 12 hours @ \$95/hr = \$1140.00

Reimbursable costs = \$550.00

**Subtotal: \$5,584.00**

- Prepared a Memorandum of Findings regarding site CA-MNT-229's eligibility for listing in the National Register of Historic Places under Criterion A and as a Traditional Cultural Property. As part of this effort the following tasks were completed: Conducted thorough research into previously recorded cultural resources reports and site records, and other publications regarding CA-MNT-229

## EXHIBIT A-2 – SCOPE OF SERVICES/PAYMENT PROVISIONS

LSA ASSOCIATES, INC.

and its significance under Criterion A and as a Traditional Cultural Property; contacted and interviewed members of the Amah Mutsun, OCEN, Indian Canyon Mutsun Band of Costanoan tribes to gather information relating to the cultural importance of MNT-229; conducted exhaustive background research on information discussing Criterion A and Traditional Cultural Properties and information discussing their application to a disturbed archeological site; prepared a memo for Caltrans that included an exhaustive evaluation of MNT-229 under Criterion A and as a Traditional Cultural Property for listing in the NRHP; Native American consultation for Criterion A continues, including routine meetings with Caltrans to complete the memo to the agency's satisfaction.

Andrew Pulcheon, Senior Cultural Resources Manager, 10 hours @ \$95/hr = \$950.00

Karin Goetter, Cultural Resource Manager, 120 hours @ \$80/hr = \$9,600.00

Pam Reading, Project Manager, 20 hours @ \$95/hr = \$1900.00

**Subtotal: \$12,450.00**

**Total Out of Scope Budget Expenditures on Additional Cultural Resources Studies and Consultation Efforts: \$38,809.75.**

In summary, the out of scope work that Caltrans has asked the team to complete as part of the Federal Section 106 compliance process has cost a total of **\$38,809.75**. If you have any questions regarding our modified scope and budget, please do not hesitate to contact me.

Sincerely,



Pam Reading, Project Manager



## Sea Engineering, Inc.

200 Washington Street, Suite 210 95060

Phone: (831) 421-0871 / FAX (831) 212-0875 • Website: www.seaengineering.com

March 16, 2010

Wood Rodgers, Inc.  
3301 C Street, Bldg. 100-B  
Sacramento, CA 95816

Attention: Keith Hallsten, P.E.

Subject: Fee Proposal for Design of Shore Protection, Moss Landing Monterey Bay Sanctuary Scenic Trail.

Sea Engineering, Inc. (SEI) is pleased to submit the following work and fee proposal for the subject project. Our work would include the following general tasks.

### Proposed Scope

1. Field investigation will be conducted to determine the current condition and characteristics of the existing shore protection between the bridge abutment to the north and the 16" oil pipe to the south (approximately 350 feet).
2. A wave climate analysis will be performed. This will be based upon nearly 3 years of existing wave data at wave buoy 46236. Wave cases of interest will be obtained from this analysis, which will be transformed to a point just offshore of Moss Landing using a spectral wave model previously developed for Monterey Bay. Wave conditions from the offshore point will be transformed to the project site using a wave model capable of simulating refraction, diffraction, reflection, bottom dissipation, and wave breaking. The results from this model will be utilized to determine the appropriate armor size, and to estimate overtopping during extreme events.
3. A Basis of Design Report will be prepared.
4. AUTOCAD drawings of the proposed revetment will be provided. Wood Rodgers will provide the border file and layer convention for the drawings. This will include plan and section views as well as a typical section and necessary details. These drawings will be of sufficient detail and quality for inclusion in the project construction plans. These drawings will be submitted at 90% and final completion levels.
5. SEI will provide necessary specification sections for inclusion in the project specification set. The specifications will be in the form of edits to Caltrans Standard Special Provisions provided by Wood Rodgers. These sections will be provided at 90% and final completion levels.
6. SEI will provide construction phase services including review of submittals and response to Requests for Information (RFI).

## EXHIBIT A-2 – SCOPE OF SERVICES/PAYMENT PROVISIONS



Moss Landing Fee Proposal  
March 16<sup>th</sup>, 2010  
Page 2

### Assumptions and Limitations

1. Wood Rodgers will provide SEI with topographic mapping in AutoCAD format prepared for the overall project in January 2009. That mapping covers upland features above the approximate mid-tide level, and does not contain bathymetric mapping. If necessary, SEI will extend the mapping and/or update localized areas where wave erosion has altered the project site since the preparation of the mapping.
2. We assume that the crest of the proposed revetment will be designed to approximately match the existing grade, and will be located along the shore so as to accommodate the proposed bike path. Wood Rodgers will provide a top/back-of-revetment line in a 3-dimensional AutoCAD file to define the slope to be restored and protected. No other special considerations for tie-in to the bike path are included in this scope of work.
3. Determination of site seismic characteristics is not included in this scope of work. Additionally, the proposed revetment will not be designed based upon seismic considerations.
4. Exploration of alternatives will be limited to that which is necessary to arrive at the most appropriate shore protection. We assume that all permitting work will be accomplished by others as part of the comprehensive Monterey Bay Sanctuary Scenic Trail project.

We propose to provide the design services described above for a lump sum fee of \$40,000.

Should you have any questions or need additional information please call or email me at [kisrael@seaengineering.com](mailto:kisrael@seaengineering.com) or [dhansen@seaengineering.com](mailto:dhansen@seaengineering.com). We look forward to possibly working with you on this project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Demont D. Hansen'.

Demont D. Hansen, PE  
Coastal Engineer, SEI

And

A handwritten signature in black ink, appearing to read 'Ken Israel'.

Ken Israel  
Vice President, SEI

# EXHIBIT A-2 – SCOPE OF SERVICES/PAYMENT PROVISIONS

# LSA

LSA ASSOCIATES, INC.  
1998 SANTA BARBARA STREET, SUITE 120  
SAN LUIS OBISPO, CALIFORNIA 93401  
805.782.0745 TEL  
805.782.0796 FAX

BERKELEY  
CARLSBAD  
FORT COLLINS

FRESNO  
IRVINE  
PALM SPRINGS

POINT RICHMOND  
RIVERSIDE  
ROCKLIN  
SO. SAN FRANCISCO

## MEMORANDUM

**DATE:** March 12, 2010

**TO:** Keith Hallsten, Senior Civil Engineer/Project Manager, Wood Rodgers Engineering, Inc.

**FROM:** Pam Reading, Senior Planner, LSA Associates, Inc.

**SUBJECT:** Augment to Existing Biological Scope of Work in Support of the Proposed Rock Slope Shoreline Protection Project for the Moss Landing Segment of the Monterey Bay Sanctuary Scenic Trail

This memorandum serves as a request for an augment to revise the Natural Environment Study (NES) and amend the Jurisdictional Delineation (JD), to supplement the original scope of work approved as part of LSA Associates, Inc.'s (LSA) December 2008 contract. It is LSA's understanding that due to recent storms and associated wave and tidal activity in and around Elkhorn Slough, the shoreline directly south of the southern abutment of the proposed pedestrian bridge over Elkhorn Slough is eroding and will require stabilization before the proposed Moss Landing Segment of the Monterey Bay Sanctuary Scenic Trail is constructed. It is LSA's understanding that the Slope Shoreline Protection Project (Proposed Project) will consist of replacing or supplementing the existing rip-rap in an area approximately 350 feet long and 50 feet wide, as roughly depicted on the attached figure dated March 2, 2010. Because the Proposed Project is anticipated to exceed the current limits of the Biological Study Area (BSA) as it is currently defined in the Natural Environment Study (NES) and Jurisdictional Delineation (JD), these documents will need to be revised to include the limits, potential impacts, and prescribed mitigation, if necessary, of the Proposed Project. LSA's proposed scope of work and budget is described below.

This scope of work specifies that the engineer will provide a detailed project description and detailed site plans of the Proposed Project.

### Task 1: Revise the Draft NES to Include Proposed Project Area

**Existing Conditions.** The text of the NES will be expanded to include a discussion of the existing biological conditions at the location of the Proposed Project. The expanded limits of the BSA will be described and added to figures already prepared for the NES. Based on LSA's current understanding, it includes a strip of estuarine open water habitat directly west of the limits of the current BSA boundary at the location of the Proposed Project. The Figures provided in the NES including, Figure 2 (Project Alignment), Figure 4 (Extent of Soils), Figure 5 (Surface Waters), Appendices D (Land Uses/Vegetation Communities), and Appendix F (Project Effects to Land Uses/Vegetation Communities), will be revised to include the expanded BSA.

**Eelgrass Field Survey.** The aquatic habitat of Moss Landing Harbor at the location of the Proposed Project is relatively shallow with a lesser tidal current than further north. Eelgrass tends to inhabit relatively shallow waters. A field visit will be conducted to determine if eelgrass is present at the location of the Proposed Project. Photographs of the effected habitat will be taken and included in Appendix E of the NES.



## EXHIBIT A-2 – SCOPE OF SERVICES/PAYMENT PROVISIONS

LSA ASSOCIATES, INC.

**Impacts and Mitigation Measures.** The NES will be revised to include the potential effects of the proposed project, and avoidance, minimization, or compensation measures as necessary. Acreage of open water habitat existing with the larger BSA and potentially effected habitat (permanently (directly and indirectly) and temporarily) by the Proposed Project will be calculated. Impacts and mitigations (avoidance, minimization, and compensation measures) with regards to jurisdictional waters, eelgrass, fisheries, Essential Fish Habitat, marine mammals, and invasive species will be described. Because the proposed project would take place within estuarine open water habitat, no effects to trees, special status plants, or upland habitats are anticipated.

### **Task 2: Revise the Draft JD to Address the Proposed Project Area**

A JD report was prepared in May 2009 and revised in September 2009 for the Moss Landing segment of the proposed Monterey Bay Sanctuary Scenic Trail. As part of the JD effort, a field verification visit with the US Army Corps of Engineers (Corps) was completed on July 15, 2009. A verification letter from the Corps was issued on October 7, 2009. The verified JD will need to be revised to include a discussion of the Proposed Project, including its limits and potential impacts to jurisdictional waters. Revisions to the JD to account for an expanded BSA will necessitate correspondence with Paula Gill and/or Christina Cavell from the Corps to request re-verification of the JD as a supplement to the October 7, 2009 verification letter.

The limits and acreages of the BSA, as defined in the JD report, will be revised to include the area within the maximum extent of temporary or permanent impacts associated with the Proposed Project. The methodology, results, and conclusions sections of the report will also be revised. Appendix B (Figure of Soils) and Appendix C (Figure of Jurisdictional Waters) will be revised to show the limits of the expanded BSA. Appendix E will be revised include additional photographs of the expanded BSA. It is not anticipated that additional sample points or another visit with the Corps would be required as a part of this effort.

### **Permitting:**

Additional budget should not be necessary for permitting requirements associated with the proposed project; the proposed project will be incorporated into LSA's existing budget for permitting responsibilities.

### **BUDGET**

Task 1. Revise NES	\$ 7,190.00
Task 2. Revise JD	\$ 4,640.00
<b>TOTAL</b>	<b>\$11,830.00</b>

Attendance at team meetings has not been included as part of this scope of work. Should additional meetings be required, LSA can participate on a time and materials basis. Conference calls are included in the estimate herein.

Attachment



POLICY NUMBER: 6805350L903

COMMERCIAL GENERAL LIABILITY  
ISSUE DATE: 10/1/2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

NAME OF PERSON(S) OR ORGANIZATION(S):

The County of Monterey, its agents, officers and  
Employees

PROJECT/LOCATION OF COVERED OPERATIONS: All Operations of the Named Insured

### PROVISIONS

A. The following is added to WHO IS AN INSURED (Section II):

The person or organization shown in the Schedule above is an additional insured on this Coverage Part, but only with respect to liability for bodily injury, "property damage" or "personal 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 premises owned by or rented to you; or
- c. In connection with your work and included within the "products-completed operations hazard."

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply to the rendering of or failure to render any "professional services".
- e. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the LIMITS OF INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):  
However, if you specifically agree in a contract or agreement requiring insurance that, for the additional insured shown in the Schedule, the insurance provided to that additional insured under this

COMMERCIAL GENERAL LIABILITY

Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance" for such additional insured. But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when the additional insured is also an additional insured under any other insurance.

- C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against the additional insured shown in the Schedule above because of payments we make for "bodily injury", "property damage" or "personal

injury" arising out of "your work" on or for the project, or at the location, shown in the Schedule above, performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that additional insured. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with that additional insured entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

- D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include the person or organization shown in the Schedule as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

POLICY NUMBER: BA5367L055

BUSINESS AUTOMOBILE LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## DESIGNATED INSURED ENDORSEMENT (CA 20 48)

Name of Person(s) or Organization(s)

County of Monterey  
Resource Management Agency  
Attn: Dalia M. Mariscal  
168 West Alisal Street, 2nd Floor  
Salinas, CA 93901

### BUSINESS AUTO COVERAGE

Each person or organization indicated above is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in SECTION II of the Coverage Form.

Schedule continued: The County of Monterey, its agents, officers and employees

TRAVELERS CORP. TEL: 1-800-328-2189  
 ARCHITECTS PLAN  
 COMMON POLICY DECLARATIONS  
 ISSUE DATE: 10/01/09  
 POLICY NUMBER: BA-5367L055-09-GRP

INSURING COMPANY:  
 TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

1. NAMED INSURED AND MAILING ADDRESS:  
 WOOD RODGERS INC.  
 3301 C ST BLDG 100B  
 SACRAMENTO, CA 95816

2. POLICY PERIOD: From 10/01/09 to 10/01/10 12:01 A.M. Standard Time at  
 your mailing address.

3. LOCATIONS

Premises Loc. No.	Bldg. No.	Occupancy	Address

4. COVERAGE PARTS FORMING PART OF THIS POLICY AND INSURING COMPANIES:  
 COMMERCIAL AUTOMOBILE COV PART DECLARATIONS CA TO 01 02 07 TIL

5. NUMBERS OF FORMS AND ENDORSEMENTS  
 FORMING A PART OF THIS POLICY: SEE IL T8 01 10 93

6. SUPPLEMENTAL POLICIES: Each of the following is a separate policy  
 containing its complete provisions:

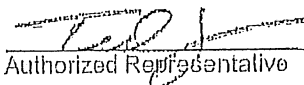
Policy	Policy No.	Insuring Company

7. DIRECT BILL  
 PREMIUM SUMMARY:

Provisional Premium	\$
Due at Inception	\$
Due at Each	\$

NAME AND ADDRESS OF AGENT OR BROKER:  
 DEALEY RENTON & ASSOC (CGW76)  
 P O BOX 12675  
 OAKLAND, CA 946042675

COUNTERSIGNED BY:

  
 Authorized Representative

DATE: 10/8/09

POLICY NUMBER: BA-53671055-09-GRP  
EFFECTIVE DATE: 10-01-09  
ISSUE DATE: 10-01-09

## LISTING OF FORMS, ENDORSEMENTS AND SCHEDULE NUMBERS

THIS LISTING SHOWS THE NUMBER OF FORMS, SCHEDULES AND ENDORSEMENTS BY LINE OF BUSINESS.

IL TO 02 11 89	COMMON POLICY DECLARATIONS
IL TB 01 10 93	FORMS, ENDORSEMENTS AND SCHEDULE NUMBERS
IL TO 01 01 07	COMMON POLICY CONDITIONS

## COMMERCIAL AUTOMOBILE

CA TO 01 02 07	BUSINESS AUTO COV PART ITEMS 1, 2
CA TO 02 11 06	BUSINESS AUTO COV PART DEC- ITEM 3
CA TO 03 02 07	BUSINESS AUTO COV PART ITEMS 4, 5
CA TO 30 11 06	BUSINESS AUTO/TRUCK COV PART-SUPPL SCHD
CA TO 31 11 07	TABLE OF CONTENTS-BUSINESS AUTO COV FORM
CA 00 01 03 06	BUSINESS AUTO POLICY
CA T4 00 01 04	AMENDATORY ENDORSEMENT
CA 01 36 10 01	NEVADA CHANGES
CA 01 43 05 07	CALIFORNIA CHANGES
CA 03 05 02 97	CA CHANGES-WAIVER OF COLLISION DED
CA 04 24 04 06	CALIFORNIA AUTO MED PAY COV
CA 20 48 02 99	DESIGNATED INSURED
CA 21 27 06 08	NEVADA UM COVERAGE
CA 21 54 03 06	CALIFORNIA UM COVERAGE-BI
CA 99 03 03 06	AUTO MED PAY COVERAGE
CA 99 16 12 93	HIREN AUTOS. SPECIF AS COV AUTOS YOU OWN
CA T3 40 08 08	BLANKET WAIVER OF SUBROGATION
CA T3 04 01 87	AMENDED TITLE-AUTO COVERAGE PARTS

## INTERLINE ENDORSEMENTS

IL 00 21 09 08	NUCLEAR ENERGY LIAB EXCL END-BROAD FORM
IL 01 10 09 07	NV CHANGES-CONCEALMENT, MISREP OR FRAUD
IL 02 51 09 07	NV CHANGES-CANCELLATION & NONRENEWAL
IL 02 70 09 08	CA CHANGES-CANCELLATION & NON-RENEWAL

## POLICYHOLDER NOTICES

PN CA 36 09 05	CA AUTO BODY REPAIR CONS BILL OF RIGHTS
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### BLANKET WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Paragraph 5. Transfer of Rights Of Recovery Against Others To Us of the CONDITIONS section is replaced by the following:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent

required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.





# BUSINESS AUTO 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 Company providing this insurance.

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

## SECTION I - COVERED AUTOS

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

### A. Description Of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols
1	Any "Auto"
2	Owned "Autos" Only Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
3	Owned Private Passenger "Autos" Only Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
5	Owned "Autos" Subject To No-Fault Only those "autos" you own that are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos" Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).
8	Hired "Autos" Only Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
9	Nonowned "Autos" Only Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs.
19	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.

**B. Owned Autos You Acquire After The Policy Begins**

1. If Symbols 1, 2, 3, 4, 5, 6 or 19 are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol 7 is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

**C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos**

If Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. "Loss"; or
  - e. Destruction.

**SECTION II - LIABILITY COVERAGE**

**A. Coverage**

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However,

we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

**1. Who Is An Insured**

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
  - (1) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
  - (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
  - (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
  - (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
  - (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.
- c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

2. Coverage Extensions

a. Supplementary Payments

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic-law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All costs taxed against the "insured" in any "suit" against the "insured" we defend.
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

b. Out-Of-State Coverage Extensions

While a covered "auto" is away from the state where it is licensed we will:

- (1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

B. Exclusions

This insurance does not apply to any of the following:

1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. 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; or
- b. That the "insured" would have in the absence of the contract or agreement.

3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
  - (1) Employment by the "insured"; or
  - (2) Performing the duties related to the conduct of the "insured's" business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. 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.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured

1. Liability Coverage  
 2. Medical Payments Coverage  
 3. Bodily Injury Coverage  
 4. Property Damage Coverage  
 5. Uninsured Motorist Coverage  
 6. Underinsured Motorist Coverage  
 7. Rental Car Coverage  
 8. Towing and Labor Coverage  
 9. Traffic Law Violations Coverage  
 10. Damage to Your Own Vehicle  
 11. Damage to Other Vehicles  
 12. Damage to Property  
 13. Damage to Contents  
 14. Damage to Electronic Equipment  
 15. Damage to Personal Effects  
 16. Damage to Personal Property  
 17. Damage to Personal Automobiles  
 18. Damage to Personal Aircraft  
 19. Damage to Personal Watercraft  
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contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

5. Fellow Employee

"Bodily injury" to any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business.

6. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

7. Handling Of Property

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

8. Movement Of Property By Mechanical Device

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

9. Operations

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

- a. Any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment"; or
- b. Machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

10. Completed Operations

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraph a. or b. above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed, if your contract calls for work at more than one site.
- (3) 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.

11. Pollution

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are ac-

cepted by the "insured" for movement into or onto the covered "auto"; or

- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

12. War

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

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by gov-

ernmental authority in hindering or defending against any of these.

13. Racing

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

C. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined, resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage Endorsement, Uninsured Motorists Coverage Endorsement or Underinsured Motorists Coverage Endorsement attached to this Coverage Part.

SECTION III - PHYSICAL DAMAGE COVERAGE

A. Coverage

- 1. We will pay for "loss" to a covered "auto" or its equipment under:

- a. Comprehensive Coverage

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

- b. Specified Causes Of Loss Coverage

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

### c. Collision Coverage

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

### 2. Towing

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

### 3. Glass Breakage - Hitting A Bird Or Animal - Falling Objects Or Missiles

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

### 4. Coverage Extensions

#### a. Transportation Expenses

We will pay up to \$20 per day to a maximum of \$600 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

#### b. Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

### B. Exclusions

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

#### a. Nuclear Hazard

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

#### b. War Or Military Action

- (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.

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.
3. We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this insurance:

- a. Wear and tear, freezing, mechanical or electrical breakdown.
  - b. Blowouts, punctures or other road damage to tires.
4. We will not pay for "loss" to any of the following:
- a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
  - b. Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measurement equipment.
  - c. Any electronic equipment, without regard to whether this equipment is permanently installed, that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound.
  - d. Any accessories used with the electronic equipment described in Paragraph c. above.

Exclusions 4.c. and 4.d. do not apply to:

- a. Equipment designed solely for the reproduction of sound and accessories used with such equipment, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or such equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto"; or
- b. Any other electronic equipment that is:
  - (1) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system; or
  - (2) An integral part of the same unit housing any sound reproducing equipment described in Paragraph a. above and permanently installed in the opening of the dash or console of the covered "auto" normally used by the manufacturer for installation of a radio.

- 5. We will not pay for "loss" to a covered "auto" due to "diminution in value".

**C. Limit Of Insurance**

- 1. The most we will pay for "loss" in any one "accident" is the lesser of:
  - a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
  - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality;
- 2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
- 3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

**D. Deductible**

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

**SECTION IV - BUSINESS AUTO CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions:

**A. Loss Conditions**

**1. Appraisal For Physical Damage Loss**

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

**2. Duties in The Event Of Accident, Claim, Suit Or Loss**

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized

representative prompt notice of the "accident" or "loss" include:

- (1) How, when and where the "accident" or "loss" occurred;
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

b. Additionally, you and any other involved "insured" must:

- (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
- (4) Authorize us to obtain medical records or other pertinent information.
- (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.

c. If there is "loss" to a covered "auto" or its equipment you must also do the following:

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

3. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and

b. Under Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

4. Loss Payment - Physical Damage Coverages

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

B. General Conditions

1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

2. Concealment, Misrepresentation Or Fraud

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium



charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

4. No Benefit To Bailee - Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

5. Other Insurance

a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own.
- (2) Primary while it is connected to a covered "auto" you own.

b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary for any liability assumed under an "insured contract".

d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

6. Premium Audit

a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed

for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- a. The United States of America;
- b. The territories and possessions of the United States of America;
- c. Puerto Rico;
- d. Canada; and
- e. Anywhere in the world if:

(1) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and

(2) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

8. Two Or More Coverage Forms Or Policies Issued By Us

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to

apply as excess insurance over this Coverage Form.

SECTION V - DEFINITIONS

A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".

B. "Auto" means:

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

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

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

D. "Covered pollution cost or expense" means any cost or expense arising out of:

- 1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- 2. Any 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".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

a. That are, or that are contained in any property that is:

- (1) Being transported or towed by, handled, or handled for movement into, onto or from the covered "auto";
- (2) Otherwise in the course of transit by or on behalf of the "insured";
- (3) Being stored, disposed of, treated or processed in or upon the covered "auto";

b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are ac-

cepted by the "insured" for movement into or onto the covered "auto"; or

c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a, above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraph 6.b. or 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

E. "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".

F. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

G. "Insured" means any person or organization qualifying as an insured in the Who is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.

H. "Insured contract" means:

1. A lease of premises;
2. A sidetrack agreement;
3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
5. 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 to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

An "insured contract" does not include that part of any contract or agreement:

- a. 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, roadbeds, tunnel, underpass or crossing; or
- b. That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
- c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.

- I. "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".

- J. "Loss" means direct and accidental loss or damage.

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

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

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

3. Vehicles that travel on crawler treads;

4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - a. Power cranes, shovels, loaders, diggers or drills; or
  - b. Road construction or resurfacing equipment such as graders, scrapers or rollers.

5. Vehicles not described in Paragraph 1., 2., 3., or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - b. Cherry pickers and similar devices used to raise or lower workers.

6. Vehicles not described in Paragraph 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
  - a. Equipment designed primarily for:
    - (1) Snow removal;
    - (2) Road maintenance, but not construction or resurfacing; or
    - (3) Street cleaning;
  - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment.

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

- L. "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.
- M. "Property damage" means damage to or loss of use of tangible property.
- N. "Suit" means a civil proceeding in which:
  1. Damages because of "bodily injury" or "property damage"; or
  2. A "covered pollution cost or expense",

to which this insurance applies, are alleged.

"Suit" includes:

- a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" 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 or "covered pollution costs or expenses" are claimed and to which the Insured submits with our consent.
- O. "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.
  - P. "Trailer" includes semitrailer.