



Monterey County Board of Supervisors

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066
www.co.monterey.ca.us

A motion was made by Supervisor Jane Parker, seconded by Supervisor John M. Phillips to:

Adopt Resolution No. 20-009 to:

- a. Authorize and direct the Auditor-Controller to amend Fiscal Year 2019-20 County Administrative Office Adopted Budget, General Fund, Fund 001, Appropriation Unit CAO004, to increase appropriations by \$100,000 to be used for management specialists and/or outside consultants and experts, as needed, regarding Fort Ord Reuse Authority transition matters, financed by a decrease in General Fund Contingencies, Fund 001, Appropriation Unit CAO020, of \$100,000 (4/5th vote required); and
- b. Authorize the County Administrative Officer or his designee to execute individual agreements for consultant services regarding Fort Ord Reuse Authority transition matters, not to exceed a cumulative total amount of \$100,000, and which may include non-standard insurance or indemnification provisions with the approval of the County Counsel-Risk Manager.

PASSED AND ADOPTED on this 7th day of January 2020, by the following vote, to wit:

Roll Call Vote (Supervisor Alejo attendance via teleconference)

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams

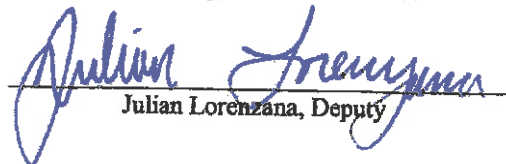
NOES: None

ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting January 7, 2020.

Dated: January 10, 2020
File ID: RES 19-190
Agenda Item No.: 36

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California


Julian Lorenzana, Deputy

**Before the Board of Supervisors
County of Monterey, State of California**

Resolution No. 20-009

- a. Authorize and direct the Auditor-Controller to amend Fiscal Year 2019-20 County Administrative Office Adopted Budget, General Fund, Fund 001, Appropriation Unit CAO004, to increase appropriations by \$100,000 to be used for management specialists and/or outside consultants and experts, as needed, regarding Fort Ord Reuse Authority transition matters, financed by a decrease in General Fund Contingencies, Fund 001, Appropriation Unit CAO020, of \$100,000 (4/5th vote required); and)
- b. Authorize the County Administrative Officer or his designee to execute individual agreements for consultant services regarding Fort Ord Reuse Authority transition matters, not to exceed a cumulative total amount of \$100,000, and which may include non-standard insurance or indemnification provisions with the approval of the County Counsel-Risk Manager.)

WHEREAS, the Fort Ord Reuse Authority (FORA) will statutorily dissolve on June 30, 2020;

WHEREAS, County staff continues to identify and analyze key issues related to the FORA's dissolution on June 30, 2020, such as: FORA bonds for building removal; habitat management/conservation plans (HMP/HCP); Environmental Services Cooperative Agreement (ESCA); Land Use Controls (LUC) annual reporting; Pollution Legal Liability (PLL) first-named insured; and FORA Community Facilities District (CFD) replacement. Other issues that staff is evaluating with a potential impact to the County, depending on their outcome, include transportation; water and wastewater; FORA pending litigation; administrative issues; CalPERS liability; and landfill border parcels;

WHEREAS, the County wishes to hire Mr. Carlos Urrutia as a Management Specialist and a consultant to advise on FORA CFD fee replacement funding to provide analysis and recommendations so that the County may be better informed; and

WHEREAS, due to the complexity of the FORA transition matters and need to resolve these matters by or before June 30, 2020, staff anticipates that there may be additional FORA transition-related matters that will require specific expertise of a Management Specialist and/or outside consultants to advise the County.

NOW, THEREFORE, BE IT RESOLVED THAT, the Board of Supervisors of the County of Monterey as follows:

- 1. Authorize and direct the Auditor-Controller to amend Fiscal Year 2019-20 County Administrative Office Adopted Budget, General Fund, Fund 001, Appropriation Unit CAO004, to increase appropriations by \$100,000 to be used for management specialists and/or outside

consultants and experts, as needed, regarding Fort Ord Reuse Authority transition matters, financed by a decrease in General Fund Contingencies, Fund 001, Appropriation Unit CAO020, of \$100,000 (4/5th vote required); and

2. Authorize the County Administrative Officer or his designee to execute individual agreements for consultant services regarding Fort Ord Reuse Authority transition matters, not to exceed a cumulative total amount of \$100,000, and which may include non-standard insurance or indemnification provisions with the approval of the County Counsel-Risk Manager.

PASSED AND ADOPTED on this 7th day of January 2020, by the following vote, to wit:

Roll Call Vote (Supervisor Alejo attendance via teleconference)

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams

NOES: None

ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting January 7, 2020.

Dated: January 9, 2020

File ID: RES 19-190

Agenda Item No.: 36

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California


Julian Lorenzana, Deputy

COUNTY OF MONTEREY STANDARD AGREEMENT

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:
Economic & Planning Systems, Inc.
_____,
(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION:

The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide:

Consulting services to assist the County of Monterey identify and establish a funding mechanism to replace the FORA CFD to continue funding infrastructure and habitat management required as a result of development in the East Garrison project area.

2.0 PAYMENT PROVISIONS:

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of: \$ 25,000.00

3.0 TERM OF AGREEMENT:

3.01 The term of this Agreement is from March 9, 2020 to June 30, 2020, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS:

The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

Exhibit B Revisions to Section 8.0, Indemnification; Paragraph 9.04, Other Requirements, of Section 9.0, Insurance Requirements; and Paragraph 15.07, Successors and Assigns, of Section 15.0 Miscellaneous Provisions, of Agreement

5.0 PERFORMANCE STANDARDS:

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS:

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided in this paragraph. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION:

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION:

~~CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all 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, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.~~

Please refer to Exhibit B of Agreement.

[Signature]
Contractor's Initials

3/6/20
Date

9.0 INSURANCE REQUIREMENTS:

9.01 **Evidence of Coverage:** Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 **Qualifying Insurers:** All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to

the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

9.03 **Insurance Coverage Requirements:** Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance: including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Requestor must check the appropriate Automobile Insurance Threshold:

Requestor must check the appropriate box.

JM
Contractor's Initials
JM 5/6/20
Date

Agreement Under \$100,000 Business Automobile Liability Insurance: covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Agreement Over \$100,000 Business Automobile Liability Insurance: covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance: if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance: if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or

errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

9.04 **Other Requirements:**

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

~~Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.~~

Please refer to Exhibit B of Agreement.

JMN
Contractor's Initials

3/6/20
Date

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 **RECORDS AND CONFIDENTIALITY:**

- 10.1 **Confidentiality:** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.2 **County Records:** When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.3 **Maintenance of Records:** CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.4 **Access to and Audit of Records:** The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.5 **Royalties and Inventions:** County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION:

11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS:

If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR:

In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is always acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES:

Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY: Dalia M. Mariscal-Martinez Management Analyst III	FOR CONTRACTOR: Ellen Martin Principal
Name and Title 1441 Schilling Place, South 2nd Floor Salinas, California 93901-4527	Name and Title 400 Capitol Mall, 28th Floor Sacramento, California 95814
Address (831) 755-8966	Address (916) 649-8010
Phone:	Phone:

15.0 MISCELLANEOUS PROVISIONS.

- 15.01 **Conflict of Interest:** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 15.02 **Amendment:** This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 **Waiver:** Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 **Contractor:** The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 **Disputes:** CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 **Assignment and Subcontracting:** The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

15.07 ~~Successors and Assigns~~: This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs. Please refer to Exhibit B of Agreement.

Contractor's Initials Date

JWV/3/16/20

15.08 **Compliance with Applicable Law**: The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

15.09 **Headings**: The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

15.10 **Time is of the Essence**: Time is of the essence in each and all of the provisions of this Agreement.

15.11 **Governing Law**: This Agreement shall be governed by and interpreted under the laws of the State of California; venue shall be Monterey County.

15.12 **Non-exclusive Agreement**: This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

15.13 **Construction of Agreement**: The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

15.14 **Counterparts**: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

15.15 **Authority**: Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

15.16 **Integration**: This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.

15.17 **Interpretation of Conflicting Provisions**: In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: _____
Contracts/Purchasing Officer

Date: _____

By: _____
Department Head (if applicable)

Date: _____

By: _____
Board of Supervisors (if applicable)

Date: _____

Approved as to Form¹

By: _____
County Counsel

Date: _____

Approved as to Fiscal Provisions²

By: _____
Auditor/Controller

Date: _____

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

Economic & Planning Systems, Inc.

Contractor's Business Name*

By: _____
(Signature of Chair, President, or Vice-President) *

Jason Moody, President, Managing Principal
Name and Title

Date: 3/6/20

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasure) *

Jamie Gomes, CFO, Managing Principal
Name and Title

Date: 3/6/2020

County Board of Supervisors' Agreement Number: _____, approved on (date): _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal 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 or Amendment to said Agreement.


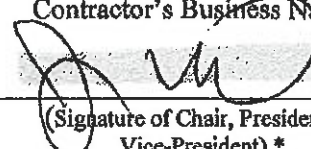

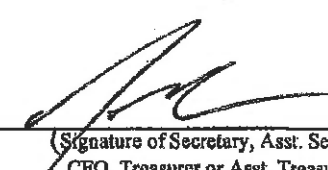
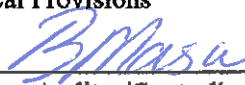
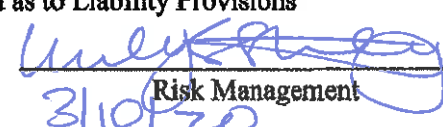
¹ Approval by County Counsel is required

² Approval by Auditor-Controller is required

³ Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY		CONTRACTOR	
By:	_____		<u>Economic & Planning Systems, Inc.</u>
	Contracts/Purchasing Officer		_____
Date:	_____		Contractor's Business Name*
By:		By:	
	Department Head (if applicable)		(Signature of Chair, President, or Vice-President) *
Date:	<u>3/13/2020</u>		<u>Jason Moody, President, Managing Principal</u>
By:	_____		Name and Title
	Board of Supervisors (if applicable)	Date:	<u>3/6/20</u>
Date:	_____		
Approved as to Form ¹			
By:		By:	
	County Counsel		(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer) *
Date:	<u>3/10/20</u>		<u>Jamie Gomes, CFO, Managing Principal</u>
Approved as to Fiscal Provisions ²			Name and Title
By:		Date:	<u>3/6/2020</u>
	Auditor/Controller		
Date:	<u>3/12/20</u>		
Approved as to Liability Provisions ³			
By:			
	Risk Management		
Date:	<u>3/10/20</u>		

County Board of Supervisors' Agreement Number: _____, approved on (date): _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal 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 or Amendment to said Agreement.

¹Approval by County Counsel is required

²Approval by Auditor-Controller is required

³Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

**To Agreement by and between
County of Monterey, hereinafter referred to as "County"
and
Economic & Planning Systems, Inc., hereinafter referred to as "CONTRACTOR"**

A. SCOPE OF SERVICES

A.1 CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

With the impending dissolution of the Fort Ord Reuse Authority (FORA), County is working to identify and establish replacement funding mechanisms to fund infrastructure and habitat management costs needed for development projects on the former Fort Ord, namely the East Garrison project area. This work will include calculating a replacement fee for the already entitled, but not yet issued a building permit, in East Garrison project.

During its operation, FORA imposed a one-time Developer Fee, structured as a Mello-Roos Special Tax that was used to fund (among other obligations) transportation, transit, water, and habitat management costs. Upon FORA's dissolution on June 30, 2020, certain infrastructure obligations will transfer to other service providers, namely the Transportation Agency of Monterey County (TAMC) and the Marina Coast Water District (MCWD). It is anticipated that these service providers will fund these responsibilities via existing and new or increased development impact fee programs.

County desires to establish new replacement funding mechanisms to replace the FORA CFD fee which was used for roadway facilities and habitat management. With consideration to the existing FORA Developer Fee amount and the anticipated fee increases by other service providers, the County is interested in evaluating approaches to securing replacement funding from East Garrison development, with input from the East Garrison Developer.

County requested that CONTRACTOR prepare a work program to provide technical support related to establishing replacement funding mechanisms to fund regional and local roadways and habitat management costs needed to accommodate remaining East Garrison development, which is currently entitled, but for which a building permit has not been issued. The FORA fee is imposed at the time that a building permit is issued. The work program described below identifies CONTRACTOR's anticipated work tasks based on our current understanding of the required technical effort.

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

WORK PROGRAM

CONTRACTOR will support County discussions with the developers of the East Garrison project, UCP East Garrison LLC and their successors in interest, regarding replacement funding mechanisms to fund local roadways, habitat management costs, and other items that may be identified by the project team. CONTRACTOR anticipates that this effort will include, but will not necessarily be limited to, the following tasks:

- Review the existing entitlement, specifically: Development Agreement between the County of Monterey and East Garrison Partners LLC (predecessor in interest of UCP East Garrison LLC); the Disposition and Development Agreement between the Redevelopment Agency of the County of Monterey (predecessor in interest of the Successor Agency) and East Garrison Partners LLC; and the conditions of approval, including EIR mitigation requirements, of the Combined Development Permit issued for the East Garrison Project (Board of Supervisors Resolution No. 05-267) to understand existing requirements and parameters to establish a replacement funding mechanism for the FORA Community Facilities District (CFD). Consider a Development Agreement amendment.
- Compile necessary background information, such as current FORA developer fee rates, proposed MCWD and TAMC fee increases (if available), amounts already paid by the East Garrison developers in FORA CFD fees and whether any credit or deduction for those already paid FORA fees is appropriate. In analyzing and determining appropriate fee levels, CONTRACTOR should only take into consideration entitled future East Garrison development.
- Work with County to inventory infrastructure and public facility funding requirements.
- Leveraging work completed through the FORA Habitat Working Group, identify a potential range of costs associated with habitat management requirements. This may include participation in a Habitat Conservation Plan (HCP) or certain alternatives that will be identified via discussion with the project team. This analysis will also include consideration of various cost allocation approaches that may be considered by the Habitat Working Group as well as the need to maximize funding flexibility to respond to changed circumstances.
- Evaluate alternative scenarios for structuring a development fee that would satisfy habitat management and other infrastructure needs associated with the development, considering increased costs associated with MCWD capacity charges and TAMC fees.
- Identify alternative sources of replacement funding that County may consider to finance infrastructure and habitat management in a post-FORA paradigm.

CONTRACTOR anticipates that other tasks may be needed to support the County's discussion with East Garrison developers and will be available to

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

provide financial modeling and analysis as necessary, subject to the budget parameters outlined below.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/ PAYMENT

County shall pay an amount not to exceed **\$25,000** for the performance of all things necessary for or incidental to the performance of work as set forth in the Work Program within the Scope of Services. CONTRACTOR's compensation for services rendered shall be based on a time and materials basis according to the attached 2020 Hourly Billing Rates and in accordance with the following terms:

At this time, the required work effort for this undertaking is uncertain and could depend to a certain extent on the outcomes of the FORA Habitat Working Group. CONTRACTOR therefore recommends establishing an initial, not to exceed budget for this project of **\$25,000**. This budget authorization will fund roughly 100 hours of CONTRACTOR project management, technical analysis, and meeting attendance time. Should work exceed this level of effort, CONTRACTOR will request County's written authorization for additional budget via an amendment to this Agreement with the understanding that terms will be negotiated in good faith. Direct expenses, including travel and data acquisition will be billed at cost.

County and CONTRACTOR agree that CONTRACTOR shall be reimbursed for travel expenses during this Agreement. CONTRACTOR shall receive compensation for travel expenses as per the "County Travel Policy". A copy of the policy is available online at <https://www.co.monterey.ca.us/home/showdocument?id=69364>. To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

CONTRACTOR warrants that the cost charged for services under the terms of this Agreement are not in excess of those charged to any other client for the same services performed by the same individuals.

B.2 CONTRACTOR'S BILLING PROCEDURES

Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 6, "Payment Conditions", of the AGREEMENT. All invoices shall reference the Multi-Year Agreement (MYA) number, Project Name and associated Delivery Order number, and an original hardcopy shall be sent to the following address or via email to RMA-Finance-AP@co.monterey.ca.us:

County of Monterey
Resource Management Agency (RMA) – Finance Division
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

Any questions pertaining to invoices under this Agreement should be directed to the RMA Finance Division at (831) 755-4800 or via email to: RMA-Finance-AP@co.monterey.ca.us.

County may, in its sole discretion, terminate the Agreement or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

DISALLOWED COSTS: CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

C. SCHEDULE

CONTRACTOR is prepared to commence work on this project immediately and will work to complete the analysis on a schedule that meets County's needs. That said and upon County's written notice to proceed and once project kickoff meeting is held, CONTRACTOR expects to have initial estimates of infrastructure and habitat management costs to open discussions with the developer within the following 2-3 weeks. Work thereafter would depend upon materials needed to support ongoing discussions (e.g., analysis of different scenarios or proposals).

EXHIBIT A - SCOPE OF SERVICES/PAYMENT PROVISIONS

2020 HOURLY BILLING RATES

Sacramento Office

Managing Principal	\$285-\$300
Senior Principal	\$350
Principal	\$265
Executive/Senior Vice President	\$240
Senior Consultant	\$240
Vice President	\$215
Senior Technical Associate	\$195
Senior Associate	\$185
Associate	\$170
Research Analyst II	\$130
Research Analyst I	\$95
Production and Administrative Staff	\$80

Billing rates updated annually.



**EXHIBIT B – REVISIONS TO SECTION 8.0, INDEMNIFICATION;
PARAGRAPH 9.04, OTHER REQUIREMENTS, OF SECTION 9.0 INSURANCE
REQUIREMENTS; AND PARAGRAPH 15.07, SUCCESSORS AND ASSIGNS, OF
SECTION 15.0, MISCELLANEOUS PROVISIONS, OF AGREEMENT**

Revise Section 8.0, Indemnification, of Agreement to read as follows:

8.0 INDEMNIFICATION:

CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorney's fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the negligent performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's negligent performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

Revise second paragraph of Paragraph 9.04, Other Requirements, of Section 9.0, Insurance Requirements, of Agreement to read as follows:

~~Each liability policy shall provide that~~ The County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Revise Paragraph 15.7, Successors and Assigns, of Section 15.0, Miscellaneous Provisions, of Agreement to read as follows:

15.7 Successors and Assigns: This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, ~~and heirs.~~



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/9/2020

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 Andreini & Company-San Mateo 220 West 20th Ave San Mateo CA 94403	CONTACT NAME: PHONE (A/C No. Ext): 650-573-1111 FAX (A/C No): 650-378-4361 E-MAIL ADDRESS: ktotten@andreini.com	
	INSURER(S) AFFORDING COVERAGE NAIC#	
INSURED Economic & Planning Systems 400 Capitol Mall, 28th Floor Sacramento CA 95814	ECONO-5	INSURER A : Federal Insurance Company 20281
		INSURER B : Republic Indemnity Co of Calif 43753
		INSURER C : Continental Casualty Company 20443
		INSURER D :
		INSURER E :
		INSURER F :

COVERAGES

CERTIFICATE NUMBER: 1389144905

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: Per Project/Loc	Y	Y	35929623WCE	4/1/2019	4/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ see Insurer C GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 Per Project Agg \$ 3,000,000
A	<input checked="" type="checkbox"/> 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	Y	Y	73558746	4/1/2019	4/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			79871994	4/1/2019	4/1/2020	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y	16150816	4/1/2019	4/1/2020	<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	Errors & Omissions Adv/Personal Injury Retro 1/1/83 Retention - \$10,000			425343942	4/1/2019	4/1/2020	Per Claim 2,000,000 Annual Aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 30 days notice of cancellation except 10 days for non-payment of premium per policy provisions.

EPS #202003 Monterey County East Garrison Technical Support

County of Monterey, its officer, agents, and employees are additional insured on a primary and non-contributory basis with regard to General and Auto Liability and Waivers of Subrogation apply per attached policy provisions.

CERTIFICATE HOLDER**CANCELLATION**

County of Monterey
 1441 Schilling Place, South 2nd Floor
 Salinas CA 93901-4527

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

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Liability Insurance

Endorsement

Policy Period APRIL 1, 2019 TO APRIL 1, 2020
Effective Date APRIL 1, 2019
Policy Number 3592-96-23 WCE
Insured ECONOMIC & PLANNING SYSTEMS INC

Name of Company FEDERAL INSURANCE COMPANY

Date Issued JANUARY 7, 2019

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added.

Who Is An Insured

**Additional Insured -
Scheduled Person
Or Organization**

Persons or organizations shown in the Schedule are **insureds**; but they are **insureds** only if you are obligated pursuant to a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the person or organization is an **insured** only:

- if and then only to the extent the person or organization is described in the Schedule;
- to the extent such contract or agreement requires the person or organization to be afforded status as an **insured**;
- for activities that did not occur, in whole or in part, before the execution of the contract or agreement; and
- with respect to damages, loss, cost or expense for injury or damage to which this insurance applies.

No person or organization is an **insured** under this provision:

- that is more specifically identified under any other provision of the Who Is An Insured section (regardless of any limitation applicable thereto).
- with respect to any assumption of liability (of another person or organization) by them in a contract or agreement. This limitation does not apply to the liability for damages, loss, cost or expense for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.

Liability Endorsement
(continued)

Under Conditions, the following provision is added to the condition titled Other Insurance.

Conditions

**Other Insurance –
Primary, Noncontributory
Insurance – Scheduled
Person Or Organization**

If you are obligated, pursuant to a contract or agreement, to provide the person or organization shown in the Schedule with primary insurance such as is afforded by this policy, then in such case this insurance is primary and we will not seek contribution from insurance available to such person or organization.

Schedule

Persons or organizations that you are obligated, pursuant to a contract or agreement, to provide with such insurance as is afforded by this policy.

All other terms and conditions remain unchanged.

Authorized Representative



WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

State	Person or Organization	Job Description
California		

This endorsement provides a blanket waiver of subrogation applicable to all jobs for persons or organizations whom the Named Insured has agreed by written contract to furnish this waiver. The charge for this endorsement shall be 5% of total manual premium, subject to a minimum premium of \$250. This charge will be billed on your next invoice based on current manual premium, and the final charge will be calculated and billed at the final audit.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Republic Indemnity Company of California	
Company Number	27561
Insured	Economic and Planning Systems, Inc.
Policy Number	161508-16
Endorsement Number	6
Endorsement Effective	April 01, 2019
Printed On	March 12, 2019

Countersigned by : _____

Liability Insurance

General Liability

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Contract

Please read the entire policy carefully. The terms and conditions of this insurance include the various sections of this contract: Coverages; Investigation, Defense And Settlements; Supplementary Payments; Coverage Territory; Who Is An Insured; Limits Of Insurance; Exclusions; Conditions; and Definitions, as well as the Declarations, Common Policy Conditions and any Endorsements and Schedules made a part of this insurance.

Throughout this contract the words "you" and "your" refer to the Named **Insured** shown in the Declarations and other persons or organizations qualifying as a Named **Insured** under this contract. The words "we," "us" and "our" refer to the Company providing this insurance.

In addition to the Named **Insured**, other persons or organizations may qualify as **insureds**. Those persons or organizations and the conditions under which they qualify are identified in the Who Is An Insured section of this contract.

Words and phrases that appear in **bold print** have special meanings and are defined in the Definitions section of this contract.

Coverages**Bodily Injury And Property Damage Liability Coverage**

Subject to all of the terms and conditions of this insurance, we will pay damages that the **insured** becomes legally obligated to pay by reason of liability:

- imposed by law; or
- assumed in an **insured contract**;

for **bodily injury** or **property damage** caused by an **occurrence** to which this coverage applies.

This coverage applies only to such **bodily injury** or **property damage** that occurs during the policy period.

Damages for **bodily injury** include damages claimed by a person or organization for care or loss of services resulting at any time from the **bodily injury**.

Other than as provided under the Investigation, Defense And Settlements and Supplementary Payments sections of this contract, we have no other obligation or liability to pay sums or perform acts or services under this coverage.

Advertising Injury And Personal Injury Liability Coverage

Subject to all of the terms and conditions of this insurance, we will pay damages that the **insured** becomes legally obligated to pay by reason of liability:

- imposed by law; or
- assumed in an **insured contract**;

for **advertising injury** or **personal injury** to which this coverage applies.

This coverage applies only to such **advertising injury** or **personal injury** caused by an offense that is first committed during the policy period.

Other than as provided under the Investigation, Defense And Settlements and Supplementary Payments sections of this contract, we have no other obligation or liability to pay sums or perform acts or services under this coverage.

Coverages
(continued)

Medical Expenses Coverage

Subject to all of the terms and conditions of this insurance, we will pay **medical expenses** for **bodily injury** caused by an accident to which this coverage applies:

- that takes place on premises rented to or owned by you; or
- in connection with your operations;

provided that such:

- accident occurs during the policy period;
- expenses are incurred and reported to us within three (3) years of the date of the accident; and
- person who sustained such **bodily injury** submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

We will make these payments regardless of fault.

We have no other obligation or liability under this coverage.

Investigation, Defense And Settlements

Subject to all of the terms and conditions of this insurance, we will have the right and duty to defend the **insured** against a **suit**, even if such **suit** is false, fraudulent or groundless.

If such a **suit** is brought, we will pay reasonable attorney fees and necessary litigation expenses to defend:

- the **insured**; and
- if applicable, the indemnitee of the **insured**, provided the obligation to defend, or the cost of the defense of, such indemnitee has been assumed by such **insured** in an **insured contract**.

Such attorney fees and litigation expenses will be paid as described in the Supplementary Payments section of this contract.

We have no duty to defend any person or organization against any **suit** seeking damages to which this insurance does not apply.

We may, at our discretion, investigate any **occurrence** or offense and settle any claim or **suit**.

Our duty to defend any person or organization ends when we have used up the applicable Limit Of Insurance.

Supplementary Payments

Subject to all of the terms and conditions of this insurance, we will pay, with respect to a claim we investigate or settle, or a **suit** against an **insured** we defend:

- A. the expenses we incur.
- B. the cost of:
 - 1. bail bonds; or
 - 2. bonds required to:
 - a. appeal judgments; or

**Supplementary
Payments**
(continued)

- b. release attachments;
but only for bond amounts within the available Limit Of Insurance. We do not have to furnish these bonds.
- C. reasonable expenses incurred by the **insured** at our request to assist us in the investigation or defense of such claim or **suit**, including actual loss of earnings up to \$1000 a day because of time off from work.
- D. costs taxed against the **insured** in the **suit**, except any:
1. attorney fees or litigation expenses; or
 2. other loss, cost or expense;
- in connection with any injunction or other equitable relief.
- E. prejudgment interest awarded against the **insured** on that part of a 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.
- F. interest on the full amount of a 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.

Supplementary Payments does not include any fine or other penalty.

These payments will not reduce the Limits Of Insurance.

Our obligation to make these payments ends when we have used up the applicable Limit Of Insurance.

Coverage Territory

This insurance applies anywhere, provided the **insured's** responsibility to pay damages, to which this insurance applies, is determined in a **suit** on the merits brought in the United States of America (including its possessions and territories), Canada or Puerto Rico, or in a settlement to which we agree.

Who Is An Insured

Sole Proprietorships

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

If you die:

- persons or organizations having proper temporary custody of your property are **insureds**; but they are **insureds** only with respect to the maintenance or use of such property and only for acts until your legal representative has been appointed; and
- your legal representatives are **insureds**; but they are **insureds** only with respect to their duties as your legal representatives. Such legal representatives will assume your rights and duties under this insurance.

Who Is An Insured
(continued)

Partnerships Or Joint Ventures

If you are a partnership (including a limited liability partnership) or a joint venture, you are an **insured**. Your members, your partners and their spouses are **insureds**; but they are **insureds** only with respect to the conduct of your business.

Limited Liability Companies

If you are a limited liability company, you are an **insured**. Your members and their spouses are **insureds**; but they are **insureds** only with respect to the conduct of your business. Your managers are **insureds**; but they are **insureds** only with respect to their duties as your managers.

Other Organizations

If you are an organization (including a professional corporation) other than a partnership, joint venture or limited liability company, you are an **insured**. Your directors and **officers** are **insureds**; but they are **insureds** only with respect to their duties as your directors or **officers**. Your stockholders and their spouses are **insureds**; but they are **insureds** only with respect to their liability as your stockholders.

Employees

Your **employees** are **insureds**; but they are **insureds** only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, no **employee** is an **insured** for:

A. bodily injury, advertising injury or personal injury:

1. to you, to any of your directors, managers, members, **officers** or partners (whether or not an **employee**) or to any co-**employee** while such injured person is either in the course of his or her employment or while performing duties related to the conduct of your business;
2. to the brother, child, parent, sister or spouse of such injured person as a consequence of any injury described in subparagraph A.1. above; or
3. for which there is any obligation to share damages with or repay someone else who must pay damages because of any injury described in subparagraphs A.1. or A.2. above.

With respect to **bodily injury** only, this limitation does not apply to:

- you or to your directors, managers, members, **officers**, partners or supervisors as **insureds**; or
 - your **employees**, as **insureds**, with respect to such damages caused by cardio-pulmonary resuscitation or first aid services administered by such an **employee**; or
- B. property damage** to any property owned, occupied or used by you or by any of your directors, managers, members, **officers** or partners (whether or not an **employee**) or by any of your **employees**.

This limitation does not apply to **property damage** to premises while rented to you or temporarily occupied by you with permission of the owner.

Who Is An Insured (continued)

Volunteers

Persons who are volunteer workers for you are **insureds**; but they are **insureds** only for acts within the scope of their activities for you and at your direction.

Real Estate Managers

Persons (other than your **employees**) or organizations acting as your real estate managers are **insureds**; but they are **insureds** only with respect to their duties as your real estate managers.

Permissive Users Of Mobile Equipment

With respect to **mobile equipment** registered in your name under a motor vehicle registration law:

- A. persons driving such equipment on a public road with your permission are **insureds**; and
- B. persons or organizations responsible for the conduct of such persons described in subparagraph A. above are **insureds**; but they are **insureds** only with respect to the operation of the equipment and only if no other insurance of any kind is available to them.

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

- **bodily injury** to any co-**employee** of the person driving the equipment; or
- **property damage** to any property owned or occupied by or loaned or rented to you, or in your charge or the charge of the employer of any person who is an **insured** under this provision.

Vendors

Persons or organizations who are vendors of **your products** are **insureds**; but they are **insureds** only with respect to their liability for damages for **bodily injury** or **property damage** resulting from the distribution or sale of **your products** in the regular course of their business and only if this insurance applies to the **products-completed operations hazard**.

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

- assumption of liability by them in a contract or agreement. This limitation does not apply to the liability for damages for **bodily injury** or **property damage** that such vendor would have in the absence of such contract or agreement;
- representation or warranty unauthorized by you;
- physical or chemical change in **your products** made intentionally by the vendor;
- repackaging, unless unpacked solely for the purpose of inspection, demonstration or testing, or the substitution of parts under instruction from the manufacturer and then repacked in the original container;
- 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 **your products**;
- demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of **your products**; or
- of **your products** which, after distribution or sale by you, have been labeled or relabeled or used as a container, ingredient or part of any other thing or substance by or for the vendor.

Who Is An Insured

Vendors (continued)

Further, no person or organization from whom you have acquired **your products**, or any container, ingredient or part entering into, accompanying or containing **your products**, is an **insured** under this provision.

Lessors Of Equipment

Persons or organizations from whom you lease equipment are **insureds**; but they are **insureds** only with respect to the maintenance or use by you of such equipment and only if you are contractually obligated to provide them with such insurance as is afforded by this contract.

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

- damages arising out of their sole negligence; or
- **occurrence** that occurs, or offense that is committed, after the equipment lease ends.

Lessors Of Premises

Persons or organizations from whom you lease premises are **insureds**; but they are **insureds** only with respect to the ownership, maintenance or use of that particular part of such premises leased to you and only if you are contractually obligated to provide them with such insurance as is afforded by this contract.

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

- damages arising out of their sole negligence;
- **occurrence** that occurs, or offense that is committed, after you cease to be a tenant in the premises; or
- structural alteration, new construction or demolition operations performed by or on behalf of them.

Subsidiary Or Newly Acquired Or Formed Organizations

If there is no other insurance available, the following organizations will qualify as named **insureds**:

- a subsidiary organization of the first named **insured** shown in the Declarations of which, at the beginning of the policy period and at the time of loss, such first named **insured** controls, either directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization; or
- a subsidiary organization of the first named **insured** shown in the Declarations that such first named **insured** acquires or forms during the policy period, if at the time of loss such first named **insured** controls, either directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization.

Limitations On Who Is An Insured

- A. Except to the extent provided under the Subsidiary Or Newly Acquired Or Formed Organizations provision above, no person or organization is an **insured** with respect to the conduct of any person or organization that is not shown as a named **insured** in the Declarations.
- B. No person or organization is an **insured** with respect to the:
 1. ownership, maintenance or use of any assets; or
 2. conduct of any person or organization whose assets, business or organization;

Who Is An Insured**Limitations On Who Is An Insured
(continued)**

you acquire, either directly or indirectly, for any:

- **bodily injury or property damage** that occurred; or
- **advertising injury or personal injury** arising out of an offense first committed; in whole or in part, before you, directly or indirectly, acquired such assets, business or organization.

Limits Of Insurance

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.**

The Limits Of Insurance apply separately to each consecutive annual period and to any remaining period of less than twelve (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 twelve (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.

General Aggregate Limit

Subject to the Each Occurrence Limit, the General Aggregate Limit is the most we will pay for the sum of:

- **damages for bodily injury and property damage, except damages included in the products-completed operations hazard; and**
- **medical expenses.**

Products-Completed Operations Aggregate Limit

Subject to the Each Occurrence Limit, the Products-Completed Operations Aggregate Limit is the most we will pay for the sum of damages for **bodily injury and property damage** included in the **products-completed operations hazard**.

Advertising Injury And Personal Injury Aggregate Limit

The Advertising Injury And Personal Injury Aggregate Limit is the most we will pay for the sum of damages for **advertising injury and personal injury**.

Each Occurrence Limit

The Each Occurrence Limit is the most we will pay for the sum of:

- **damages for bodily injury and property damage; and**
- **medical expenses;**

arising out of any one **occurrence**.

Any amount paid for damages or **medical expenses** will reduce the amount of the applicable aggregate limit available for any other payment.

Limits Of Insurance

Each Occurrence Limit (continued)

If the applicable aggregate limit has been reduced to an amount that is less than the Each Occurrence Limit, the remaining amount of such aggregate limit is the most that will be available for any other payment.

Damage To Premises Rented To You Limit

Subject to the Each Occurrence Limit, the Damage To Premises Rented To You Limit is the most we will pay for the sum of damages for **property damage** to any one premises while rented to you or temporarily occupied by you with permission of the owner.

Medical Expenses Limit

Subject to the Each Occurrence Limit, the Medical Expenses Limit is the most we will pay for the sum of **medical expenses**, under Medical Expenses coverage, for **bodily injury** sustained by any one person.

Bodily Injury/Property Damage Exclusions

None of the following exclusions, except "Contracts", "Expected Or Intended Injury" and "Loss In Progress", apply to **property damage** to premises while rented to you or temporarily occupied by you with permission of the owner.

Aircraft, Autos Or Watercraft

This insurance does not apply to **bodily injury** or **property damage** arising out of the ownership, maintenance, use (use includes operation and **loading or unloading**) or entrustment to others of any:

- aircraft;
- **auto**; or
- watercraft;

owned or operated by or loaned or rented to any **insured**.

This exclusion does not apply to:

- A. a watercraft while ashore on premises owned by or rented to you;
- B. a watercraft you do not own, provided that it:
 1. is less than fifty-five (55) feet long; and
 2. does not transport persons or cargo for a charge;
- C. the parking of an **auto** on premises owned by or rented to you, provided the **auto** is not owned by or loaned or rented to you or the **insured**;
- D. the liability for damages assumed in an **insured contract** resulting from the ownership, maintenance or use, by others, of an aircraft or watercraft;
- E. the operation of the equipment described in subparagraphs F.2. or F.3. of the definition of **mobile equipment**; or
- F. an aircraft you do not own, provided that:
 1. the pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;

**Bodily Injury/Property
Damage Exclusions****Aircraft, Autos Or
Watercraft
(continued)**

2. it is rented with a trained, paid crew; and
3. it does not transport persons or cargo for a charge

**Alcoholic Beverage Type
Businesses**

This insurance does not apply to **bodily injury** or **property damage** for which any **insured** may be held liable by reason of:

- causing or contributing to the intoxication of any person;
- furnishing alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- 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.

Contracts

This insurance does not apply to **bodily injury** or **property damage** for which the **insured** is obligated to pay damages by reason of assumption of liability in a contract or agreement.

This exclusion does not apply to the liability for damages:

- that such **insured** would have in the absence of such contract or agreement; or
- assumed in an oral or written contract or agreement that is an **insured contract**, provided the **bodily injury** or **property damage**, to which this insurance applies, occurs after the execution of such contract or agreement.

**Damage To Alienated
Premises**

This insurance does not apply to **property damage** to any premises you sell, give away or abandon, if the **property damage** arises out of any part of those premises.

This exclusion does not apply if the premises are **your work** and were never occupied, rented or held for rental by you.

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

This insurance does not apply to **property damage** to:

- **impaired property**; or
- property that has not been physically injured;

arising out of any:

- defect, deficiency, inadequacy or dangerous condition in **your product** or **your work**; or

**Bodily
Injured/Property
Damage Exclusions**

**Damage To Impaired
Property Or Property Not
Physically Injured
(continued)**

- delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms and conditions.

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

**Damage To Owned
Property**

This insurance does not apply to **property damage** to any property owned by you.

**Damage To Various
Property Of Others (Care,
Control Or Custody)**

This insurance does not apply to **property damage** to any:

- personal property loaned or rented to you;
- property held by you or on your behalf for sale or entrusted to you for safekeeping or storage;
- property on your premises for purposes of performing operations on such property by you or on your behalf;
- tools or equipment used by you or on your behalf in performing operations; or
- property in your care, control or custody that will be erected, installed or used in construction operations by you or on your behalf.

This exclusion does not apply to the liability for damages assumed in a sidetrack agreement.

Damage To Your Product

This insurance does not apply to **property damage** to **your product** arising out of it or any part of it.

Damage To Your Work

This insurance does not apply to **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 causing the damage was performed on your behalf by a subcontractor.

Employer's Liability

A. This insurance does not apply to **bodily injury** to an **employee** of the **insured** arising out of and in the course of:

1. employment by the **insured**; or
2. performing duties related to the conduct of the **insured's** business.

B. This insurance does not apply to **bodily injury** to the brother, child, parent, sister or spouse of such **employee** as a consequence of any injury described in paragraph A. above.

This exclusion applies:

- whether the **insured** may be liable as an employer or in any other capacity; and
- to any obligation to share damages with or repay someone else who must pay damages because of any injury described in paragraphs A. or B. above.

**Bodily
Injured/Property
Damage Exclusions****Employer's Liability
(continued)**

This exclusion does not apply to the liability for damages assumed by the **insured** in an **insured contract**.

**Expected Or Intended
Injury**

This insurance does not apply to **bodily injury** or **property damage** arising out of an act that:

- is intended by the **insured**; or
- would be expected from the standpoint of a reasonable person in the circumstances of the **insured**;

to cause **bodily injury** or **property damage**, even if the actual **bodily injury** or **property damage** is of a different degree or type than intended or expected.

This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or tangible property.

Loss In Progress

This insurance does not apply to **bodily injury** or **property damage** that is a change, continuation or resumption of any **bodily injury** or **property damage** known by you, prior to the beginning of the policy period, to have occurred.

Bodily injury or **property damage** will be deemed to be known by you:

- A. if such injury or damage is known by, or should have been known from the standpoint of a reasonable person in the circumstances of:
 1. you;
 2. any of your directors, managers, members, **officers** (or their designees) or partners (whether or not an **employee**); and
- B. when any person described in paragraph A. above:
 1. reports all, or any part, of any such injury or damage to us or any other insurer;
 2. receives a claim or a demand for damages because of any such injury or damage; or
 3. becomes aware that any such injury or damage has occurred or has begun to occur.

**Mobile Equipment
Transportation**

This insurance does not apply to **bodily injury** or **property damage** arising out of the transportation of **mobile equipment** by an **auto** owned or operated by or loaned or rented to any **insured**.

**Advertising
Injury/Personal Injury
Exclusions**

Breach Of Contract

This insurance does not apply to **advertising injury** or **personal injury** arising out of breach of contract.

Continuing Offenses

This insurance does not apply to **advertising injury** or **personal injury** that arises out of that part of an offense that continues or resumes after the later of the end of the policy period of:

- A. this insurance; or
- B. a subsequent, continuous renewal or replacement of this insurance, that:
 - 1. is issued to you by us or by an affiliate of ours;
 - 2. remains in force while the offense continues; and
 - 3. would otherwise apply to **advertising injury** and **personal injury**.

Contracts

This insurance does not apply to **advertising injury** or **personal injury** for which the **insured** is obligated to pay damages by reason of assumption of liability in a contract or agreement.

This exclusion does not apply to the liability for damages:

- that such **insured** would have in the absence of such contract or agreement; or
- assumed in a written contract or agreement that is an **insured contract**, provided the **advertising injury** or **personal injury**, to which this insurance applies, is caused by an offense first committed after the execution of such contract or agreement.

Crime Or Fraud

This insurance does not apply to **advertising injury** or **personal injury** arising out of any criminal or fraudulent conduct committed by or with the consent or knowledge of the **insured**.

**Expected Or Intended
Injury**

This insurance does not apply to **advertising injury** or **personal injury** arising out of an offense, committed by or on behalf of the **insured**, that:

- is intended by such **insured**; or
- would be expected from the standpoint of a reasonable person in the circumstances of such **insured**;

to cause injury.

**Failure To Conform To
Representations Or
Warranties**

This insurance does not apply to **advertising injury** or **personal injury** arising out of the failure of goods, products or services to conform with any electronic, oral, written or other representation or warranty of durability, fitness, performance, quality or use.

Internet Activities

This insurance does not apply to **advertising injury** or **personal injury** arising out of:

- controlling, creating, designing or developing of another's Internet site;

Advertising Injury/Personal Injury Exclusions

Internet Activities (continued)

- controlling, creating, designing, developing, determining or providing the content or material of another's Internet site;
- controlling, facilitating or providing, or failing to control, facilitate or provide, access to the Internet or another's Internet site; or
- publication of content or material on or from the Internet, other than material developed by you or at your direction.

Media Type Businesses

This insurance does not apply to **advertising injury** or **personal injury** arising out of an offense committed by or on behalf of an **insured** whose business is advertising, broadcasting, cablecasting, publishing, telecasting or telemarketing.

This exclusion does not apply to **personal injury** caused by an offense described in subparagraphs A., B. or C. of the definition of **personal injury**.

Prior Offenses

This insurance does not apply to **advertising injury** or **personal injury** arising out of any offense first committed before the beginning of the policy period.

Publications With Knowledge Of Falsity

This insurance does not apply to **advertising injury** or **personal injury** arising out of any electronic, oral, written or other publication of content or material by or with the consent of the **insured**:

- with knowledge of its falsity; or
- if a reasonable person in the circumstances of such **insured** would have known such content or material to be false.

Wrong Description Of Prices

This insurance does not apply to **advertising injury** or **personal injury** arising out of any wrong description of the price of goods, products or services.

Medical Expenses Exclusions

Athletic Activities

This insurance does not apply to **medical expenses** arising out of **bodily injury** to any person injured while taking part in athletics.

Injury To Insureds

This insurance does not apply to **medical expenses** arising out of a **bodily injury** to any **insured**, except a volunteer worker.

**Medical Expenses
Exclusions**
(continued)

Nuclear Energy

This insurance does not apply to **medical expenses** arising out of **bodily injury** in any way related to the:

- **nuclear hazardous properties of nuclear material;** and
- **operation of a nuclear facility** by any person or organization.

**Products-Completed
Operations Hazard**

This insurance does not apply to **medical expenses** arising out of **bodily injury** included in the **products-completed operations hazard**.

**Workers' Compensation
Or Similar Laws**

This insurance does not apply to **medical expenses** arising out of **bodily injury** to any person, whether or not an **employee** of any **insured**, if benefits for such **bodily injury** are payable or must be provided under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

Policy Exclusions

Asbestos

- A. This insurance does not apply to **bodily injury, property damage, advertising injury or personal injury** arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of **asbestos**.
- B. This insurance does not apply to any loss, cost or expense arising out of any:
 - 1. request, demand, order or regulatory or statutory 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 **asbestos**; or
 - 2. claim or proceeding by or on behalf of a governmental authority or others 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 **asbestos**.

**Employment-Related
Practices**

- A. This insurance does not apply to any damages sustained at any time by any person, whether or not sustained in the course of employment by any **insured**, arising out of any employment-related act, omission, policy, practice or representation directed at such person, occurring in whole or in part at any time, including any:
 - 1. arrest, detention or imprisonment;
 - 2. breach of any express or implied covenant;
 - 3. coercion, criticism, humiliation, prosecution or retaliation;
 - 4. defamation or disparagement;
 - 5. demotion, discipline, evaluation or reassignment;
 - 6. discrimination, harassment or segregation;

Policy Exclusions

Employment-Related Practices
(continued)

- 7. a. eviction; or
b. invasion or other violation of any right of occupancy;
 - 8. failure or refusal to advance, compensate, employ or promote;
 - 9. invasion or other violation of any right of privacy or publicity;
 - 10. termination of employment; or
 - 11. other employment-related act, omission, policy, practice, representation or relationship in connection with any **insured** at any time.
- B. This insurance does not apply to any damages sustained at any time by the brother, child, parent, sister or spouse of such person at whom any employment-related act, omission, policy, practice or representation is directed, as described in paragraph A. above, as a consequence thereof.

This exclusion applies:

- whether the **insured** may be liable as an employer or in any other capacity; and
- to any obligation to share damages with or repay someone else who must pay damages because of any of the foregoing.

Enhancement, Maintenance Or Prevention Expenses

This insurance does not apply to any loss, cost or expense incurred by you or others for any:

- A. enhancement or maintenance of any property; or
- B. prevention of any injury or damage to any:
 - 1. person or organization; or
 - 2. property you own, rent or occupy.

Intellectual Property Laws Or Rights

This insurance does not apply to any actual or alleged **bodily injury, property damage, advertising injury or personal injury** arising out of, giving rise to or in any way related to any actual or alleged:

- assertion; or
- infringement or violation;

by any person or organization (including any **insured**) of any **intellectual property law or right**, regardless of whether this insurance would otherwise apply to all or part of any such actual or alleged injury or damage in the absence of any such actual or alleged assertion, infringement or violation.

This exclusion applies, unless such injury:

- is caused by an offense described in the definition of **advertising injury**; and
- does not arise out of, give rise to or in any way relate to any actual or alleged assertion, infringement or violation of any **intellectual property law or right**, other than one described in the definition of **advertising injury**.

Policy Exclusions
(continued)

Nuclear Energy

- A. This insurance does not apply to **bodily injury, nuclear property damage, advertising injury or personal injury**:
1. with respect to which any **insured** under this policy also has status as an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would have had status as an insured under any such policy but for its termination upon exhaustion of its limit of insurance; or
 2. arising out of the **nuclear hazardous properties of nuclear material** and with respect to which:
 - a. any person or organization is required to maintain financial protection pursuant to the United States of America Atomic Energy Act of 1954, or any law amendatory thereof; or
 - b. the **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. This insurance does not apply to **bodily injury, nuclear property damage, advertising injury or personal injury** arising out of the **nuclear hazardous properties of nuclear material**:
1. if the **nuclear material**:
 - a. is at any **nuclear facility** owned by, or operated by or on behalf of, any **insured**;
 - b. has been discharged or dispersed therefrom; or
 - c. is contained in **nuclear spent fuel or nuclear waste** at any time transported, handled, stored, disposed of, processed, treated, possessed or used by or on behalf of any **insured**; or
 2. in any way related to the furnishing by any **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**. But if such facility is located within the United States of America (including its possessions or territories) or Canada, this subparagraph 2. applies only to **nuclear property damage** to such **nuclear facility** and any property thereat.

Pollution

- A. This insurance does not apply to **bodily injury, property damage, advertising injury or personal injury** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:
1. at or from any premises, site or location which is or was at any time owned or occupied by, or loaned or rented to, any **insured**;
 2. 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;

Policy Exclusions**Pollution
(continued)**

3. which are or were at any time transported, handled, stored, disposed of, processed or treated as waste by or for any:
 - a. **insured**; or
 - b. person or organization for whom any **insured** may be legally responsible; or
4. at or from any premises, site or location on which any **insured** or any contractor or subcontractor working directly or indirectly on any **insured's** behalf is performing operations, if the:
 - a. **pollutants** are brought on or to the premises, site or location in connection with such operations by such **insured**, contractor or subcontractor; or
 - b. 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**.

Subparagraph A.4.a. above does not apply to **bodily injury** or **property damage** caused by 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 operating fluids escape directly from that particular part of such **mobile equipment** designed by its manufacturer to hold, store or receive them. But, this exception does not apply if such **bodily injury** or **property damage** arises out of any discharge, dispersal, seepage, migration, release or escape of **pollutants**, that:

- was intended by the **insured**;
- would have been expected from the standpoint of a reasonable person in the circumstances of the **insured**;
- was a necessary part of operations performed by any **insured**, contractor or subcontractor; or
- occurred during the process of fueling the **mobile equipment** or changing or replenishing any operating fluid.

Subparagraph A.4.a. above does not apply to **bodily injury** or **property damage** if sustained within a building and caused by the release of gaseous irritants or contaminants from materials brought into that building, in connection with the operations being performed by you or on your behalf by the contractor or subcontractor.

Subparagraph A.1. above does not apply to **bodily injury** if sustained within a building and caused by the escape of gaseous irritants or contaminants from equipment used to heat that building.

Subparagraphs A.1. and A.4.a. above do not apply to **bodily injury** or **property damage** caused by heat, smoke or fumes from a **hostile fire**.

- B. This insurance does not apply to any loss, cost or expense arising out of any:
 1. request, demand, order or regulatory or statutory 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

Policy Exclusions

Pollution (continued)

2. claim or proceeding by or on behalf of a governmental authority or others 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**.

Paragraph B. above does not apply to the liability for damages, for **property damage**, that the **insured** would have in the absence of such request, demand, order or regulatory or statutory requirement, or such claim or proceeding by or on behalf of a governmental authority.

This exclusion does not apply to the liability for damages, for **property damage**, to premises while rented to you or temporarily occupied by you with permission of the owner and caused by a **hostile fire**, explosion, smoke or leakage from fire protective equipment.

This exclusion applies regardless of whether or not the pollution was accidental, expected, gradual, intended, preventable or sudden.

Recall Of Products, Work Or Impaired Property

This insurance does not apply to any 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:

- **your product;**
- **your work;** or
- **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.

Workers' Compensation Or Similar Laws

This insurance does not apply to any obligation of the **insured** under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

Conditions

Arbitration

We are entitled to exercise all of the **insured's** rights in the choice of arbitrators and in the conduct of any arbitration proceeding, except when the proceeding is between us and the **insured**.

Bankruptcy

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

Conditions
(continued)

**Disclosures And
Representations**

We have issued this insurance:

- based upon representations you made to us; and
- in reliance upon your representations.

Unintentional failure of an **employee** of the **insured** to disclose a hazard or other material information will not violate this condition, unless an **officer** (whether or not an **employee**) of any **insured** or an **officer's** designee knows about such hazard or other material information.

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

- A. You must see to it that we and any other insurers are notified as soon as practicable of any **occurrence** or offense that may result in a claim, if the claim may involve us or such other insurers. To the extent possible, notice should include:
1. how, when and where the **occurrence** or offense happened;
 2. the names and addresses of any injured persons and witnesses; and
 3. the nature and location of any injury or damage arising out of the **occurrence** or offense.
- B. If a claim is made or **suit** is brought against any **insured**, you must:
1. immediately record the specifics of the claim or **suit** and the date received;
 2. notify us and other insurers as soon as practicable; and
 3. see to it that we receive written notice of the claim or **suit** as soon as practicable.
- C. You and any other involved **insured** must:
1. immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or **suit**;
 2. authorize us to obtain records and other information;
 3. cooperate with us and other insurers in the:
 - a. investigation or settlement of the claim; or
 - b. 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 loss to which this insurance may also apply.
- D. No **insureds** will, except at that **insured's** own cost, make any payment, assume any obligation or incur any expense, other than for first aid, without our consent.
- E. Notice given by or on behalf of:
1. the **insured**;
 2. the injured person; or
 3. any other claimant;

to a licensed agent of ours with particulars sufficient to identify the **insured** shall be deemed notice to us.

Conditions

Duties In The Event Of Occurrence, Offense, Claim Or Suit (continued)

- F. Knowledge of an **occurrence** or offense by an agent or **employee** of the **insured** will not constitute knowledge by the **insured**, unless an **officer** (whether or not an **employee**) of any **insured** or an **officer's** designee knows about such **occurrence** or offense.
- G. Failure of an agent or **employee** of the **insured**, other than an **officer** (whether or not an **employee**) of any **insured** or an **officer's** designee, to notify us of an **occurrence** or offense that such person knows about will not affect the insurance afforded to you.
- H. If a claim or loss does not reasonably appear to involve this insurance, but it later develops into a claim or loss to which this insurance applies, the failure to report it to us will not violate this condition, provided the **insured** gives us immediate notice as soon as the **insured** is aware that this insurance may apply to such claim or loss.

Legal Action Against Us

No person or organization has a right under this insurance to:

- join us as a party or otherwise bring us into a **suit** seeking damages from an **insured**; or
- sue us on this insurance unless all of the terms and conditions of this insurance 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** obtained after an actual:

- trial in a civil proceeding; or
- arbitration or other alternative dispute resolution proceeding;

but we will not be liable for damages that are not payable under the terms and conditions of this insurance or that are in excess of the applicable **Limits Of Insurance**.

Other Insurance

If other valid and collectible insurance is available to the **insured** for loss we would otherwise cover under this insurance, our obligations are limited as follows.

Primary Insurance

This insurance is **primary** except when the **Excess Insurance** provision described below applies.

If this insurance is **primary**, our obligations are not affected unless any of the other insurance is also **primary**. Then, we will share with all that other insurance by the method described in the **Method of Sharing** provision described below.

Excess Insurance

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

- A. that is **Fire**, **Extended Coverage**, **Builder's Risk**, **Installation Risk** or similar insurance for **your work**;
- B. that is insurance that applies to **property damage** to premises rented to you or temporarily occupied by you with permission of the owner;
- C. if the loss arises out of aircraft, **autos** or watercraft (to the extent not subject to the **Aircraft, Autos Or Watercraft** exclusion);

Conditions**Other Insurance
(continued)**

- D. that is insurance:
1. provided to you by any person or organization working under contract or agreement for you; or
 2. under which you are included as an insured; or
- E. that is insurance under any Property section of this policy.

When this insurance is excess, we will have no duty to defend the **insured** against any **suit** if any other insurer has a duty to defend such **insured** against such **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 loss, if any, that exceeds the sum of the total:

- amount that all other insurance would pay for loss in the absence of this insurance; and
- of all deductible and self-insured amounts under all 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 negotiated specifically to apply in excess of the Limits Of Insurance shown in the Declarations of this insurance.

Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this method each insurer contributes equal amounts until it has paid its applicable limits 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 limits of insurance to the total applicable limits of insurance of all insurers.

Premium Audit

We will compute all premiums for this insurance in accordance with our rules and rates.

In accordance with the Estimated Premiums section of the Premium Summary, premiums shown with an asterisk (*) are estimated premiums and are subject to audit.

In addition to or in lieu of such designation in the Premium Summary, premiums may be designated as estimated premiums elsewhere in this policy. In that case, these premiums will also be subject to audit, and the second paragraph of the Estimated Premiums section of the Premium Summary will apply.

Separation Of Insureds

Except with respect to the Limits Of Insurance, and any rights or duties specifically assigned in this insurance to the first named **insured**, this insurance applies:

- as if each named **insured** were the only named **insured**; and
- separately to each **insured** against whom claim is made or **suit** is brought.

Conditions

(continued)

**Transfer Or Waiver Of
Rights Of Recovery
Against Others**

We will waive the right of recovery we would otherwise have had against another person or organization, for loss to which this insurance applies, provided the insured has waived their rights of recovery against such person or organization in a contract or agreement that is executed before such loss.

To the extent that the insured's rights to recover all or part of any payment made under this insurance have not been waived, 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.

Definitions

WHEN USED WITH RESPECT TO INSURANCE UNDER THIS CONTRACT, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW:

Advertisement

Advertisement means an electronic, oral, written or other notice, about goods, products or services, designed for the specific purpose of attracting the general public or a specific market segment to use such goods, products or services.

Advertisement does not include any e-mail address, Internet domain name or other electronic address or metalanguage.

Advertising Injury

Advertising injury means injury, other than **bodily injury, property damage or personal injury**, sustained by a person or organization and caused by an offense of infringing, in that particular part of your **advertisement** about your goods, products or services, upon their:

- copyrighted **advertisement**; or
- registered collective mark, registered service mark or other registered trademarked name, slogan, symbol or title.

Agreed Settlement

Agreed settlement means a settlement and release of liability signed by us, the **insured** and the claimant or the claimant's legal representative.

Asbestos

Asbestos means asbestos in any form, including its presence or use in any alloy, by-product or other material or waste. Waste includes material to be recycled, reconditioned or reclaimed.

Auto

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**.

Bodily Injury

Bodily injury means physical:

- injury;
- sickness; or
- disease;

sustained by a person, including resulting death, humiliation, mental anguish, mental injury or shock at any time. All such loss shall be deemed to occur at the time of the physical injury, sickness or disease that caused it.

Employee

Employee includes a **leased worker**. **Employee** does not include a **temporary worker**.

Hostile Fire

Hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

Definitions
(continued)

WHEN USED WITH RESPECT TO INSURANCE UNDER THIS CONTRACT, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW:

Impaired Property

Impaired property means tangible property, other than **your product** or **your work**, that cannot be used or is less useful because:

- it incorporates **your product** or **your work** that is known or thought to be defective, deficient, inadequate or dangerous; or
- you have failed to fulfill the terms or conditions of a contract or agreement;

if such property can be restored to use by:

- the repair, replacement, adjustment or removal of **your product** or **your work**; or
- your fulfilling the terms or conditions of the contract or agreement.

Insured

Insured means a person or an organization qualifying as an **insured** in the Who Is An Insured section of this contract.

Insured Contract

Insured contract:

A. means:

1. a lease of premises;
2. a sidetrack agreement;
3. an easement or license agreement;
4. an obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
5. an elevator maintenance agreement; or
6. any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for such municipality) in which you assume the tort liability of another person or organization to pay damages, to which this insurance applies, sustained by a third person or organization.

B. does not include that part of any contract or agreement that indemnifies an architect, engineer or surveyor for damages arising out of:

1. preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, field orders, change orders, designs or specifications; or
2. giving directions or instructions, or failing to give them.

Definitions

(continued)

WHEN USED WITH RESPECT TO INSURANCE UNDER THIS CONTRACT, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW:

Intellectual Property Law Or Right

Intellectual property law or right means any:

- certification mark, copyright, patent or trademark (including collective or service marks);
- right to, or judicial or statutory law recognizing an interest in, any trade secret or confidential or proprietary non-personal information;
- other right to, or judicial or statutory law recognizing an interest in, any expression, idea, likeness, name, slogan, style of doing business, symbol, title, trade dress or other intellectual property; or
- other judicial or statutory law concerning piracy, unfair competition or other similar practices.

Leased Worker

Leased worker means a person leased to a party by a labor leasing firm, in a contract or agreement between such party and the labor leasing firm, to perform duties related to the conduct of the party's business. **Leased worker** does not include a **temporary worker**.

Loading Or Unloading

Loading or unloading:

- A. means the handling of property:
 1. after it is moved from the place where it is accepted for movement into or onto an aircraft, **auto** or watercraft;
 2. while it is in or on an aircraft, **auto** or watercraft; or
 3. while it is being moved from an aircraft, **auto** or watercraft to the place where it is finally delivered.
- B. 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, **auto** or watercraft.

Medical Expenses

Medical expenses means reasonable expenses for necessary:

- first aid administered at the time of an accident;
- medical, surgical, x-ray and dental services, including prosthetic devices; and
- ambulance, hospital, professional nursing and funeral services.

Mobile Equipment

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 premises owned by or rented to you;
- C. vehicles that travel on crawler treads;

Definitions

WHEN USED WITH RESPECT TO INSURANCE UNDER THIS CONTRACT, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW:

**Mobile Equipment
(continued)**

- D. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
1. power cranes, shovels, loaders, diggers or drills; or
 2. road construction or resurfacing equipment such as graders, scrapers or rollers;
- E. vehicles not described in subparagraphs 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; and
- F. vehicles not described in subparagraphs A., B., C. or D. above maintained primarily for purposes other than the transportation of persons or cargo.

Mobile equipment does not include self-propelled vehicles with the following types of permanently attached equipment, and such vehicles will be considered **autos**:

1. equipment designed primarily for:
 - a. snow removal;
 - b. road maintenance, but not construction or resurfacing; or
 - c. street cleaning;
2. cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
3. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

Nuclear Facility

Nuclear facility means any:

- A. **nuclear reactor**;
- B. equipment or device designed or used for:
1. separating the isotopes of plutonium or uranium;
 2. processing or utilizing **nuclear spent fuel**; or
 3. handling, processing or packaging **nuclear waste**;
- C. equipment or device used for the processing, fabricating or alloying of **nuclear material**, if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than:
1. twenty-five (25) grams of plutonium or uranium 233, or any combination thereof; or
 2. two-hundred-fifty (250) grams of uranium 235; or

Definitions

WHEN USED WITH RESPECT TO INSURANCE UNDER THIS CONTRACT, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW:

**Nuclear Facility
(continued)**

D. structure, basin, excavation, premises or place prepared or used for the storage or disposal of **nuclear waste**;

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

**Nuclear Hazardous
Properties**

Nuclear hazardous properties includes radioactive, toxic or explosive properties.

Nuclear Material

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

By-product material, **source material** and **special nuclear material** have the meanings given them in the United States of America Atomic Energy Act of 1954 or in any law amendatory thereof.

**Nuclear Property
Damage**

Nuclear property damage includes all forms of radioactive contamination of property.

Nuclear Reactor

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

Nuclear Spent Fuel

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

Nuclear Waste

Nuclear waste means any waste material:

- containing **nuclear material**, other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content; and
- resulting from the operation by any person or organization of any **nuclear facility** described in subparagraphs A. or B. of the definition of **nuclear facility**.

Occurrence

Occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Officer

Officer means a person holding any of the officer positions created by an organization's charter, constitution, by-laws or any other similar governing document.

Definitions
(continued)

WHEN USED WITH RESPECT TO INSURANCE UNDER THIS CONTRACT, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW:

Personal Injury

Personal injury means injury, other than **bodily injury**, **property damage** or **advertising injury**, caused by an offense of:

- A. false arrest, false detention or other false imprisonment;
- B. malicious prosecution;
- C. wrongful entry into, wrongful eviction of a person from or other violation of a person's right of private occupancy of a dwelling, premises or room that such person occupies, if committed by or on behalf of its landlord, lessor or owner;
- D. electronic, oral, written or other publication of material that:
 - 1. libels or slanders a person or organization (which does not include disparagement of goods, products, property or services); or
 - 2. violates a person's right of privacy; or
- E. discrimination, harassment or segregation based on a person's age, color, national origin, race, religion or sex.

Pollutants

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.

Products-Completed Operations Hazard

Products-completed operations hazard:

- A. includes all **bodily injury** and **property damage** taking place away from premises owned or occupied by or loaned or rented to you 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.

Your work will be deemed completed when:

- all of the work called for in your contract or agreement has been completed.
- all of the work to be performed at the site has been completed, if your contract or agreement calls for work at more than one site.
- that part of the work completed at a site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

- B. does not include **bodily injury** or **property damage** arising out of:
 - 1. the transportation of property, unless the injury or damage results from a condition in or on a vehicle not owned or operated by or loaned or rented to you and that condition was created by the **loading or unloading** of that vehicle by any insured;

Definitions

WHEN USED WITH RESPECT TO INSURANCE UNDER THIS CONTRACT, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW:

Products-Completed Operations Hazard (continued)

- 2. the existence of tools, uninstalled equipment or abandoned or unused materials; or
- 3. products or operations for which the classification in our rules indicates that such products or operations are not subject to the Products-Completed Operations Aggregate Limit of insurance.

Property Damage

Property damage means:

- physical injury to tangible property, including 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
- loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it.

Tangible property does not include any software, data or other information that is in electronic form.

Suit

Suit means a civil proceeding in which damages, to which this insurance applies, are sought. **Suit** includes an arbitration or other dispute resolution proceeding in which such damages are sought and to which the **insured** must submit or does submit with our consent.

Temporary Worker

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

Your Product

Your product:

A. means any:

- 1. 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 assets or business you have acquired; and
- 2. containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

B. includes:

- 1. representations or warranties made at any time with respect to the durability, fitness, performance, quality or use of **your product**; and
- 2. the providing of or failure to provide instructions or warnings.

C. does not include vending machines or other property loaned or rented to or located for the use of others but not sold.

Definitions
(continued)

WHEN USED WITH RESPECT TO INSURANCE UNDER THIS CONTRACT, WORDS AND PHRASES THAT APPEAR IN BOLD PRINT HAVE THE SPECIAL MEANINGS DESCRIBED BELOW:

Your Work

Your work:

- A. means any:
 - 1. work or operations performed by:
 - a. you or on your behalf; or
 - b. a person or organization whose assets or business you have acquired; and
 - 2. materials, parts or equipment furnished in connection with such work or operations.
- B. includes:
 - 1. representations or warranties made at any time with respect to the durability, fitness, performance, quality or use of **your work**; and
 - 2. the providing of or failure to provide instructions or warnings.