

**COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES  
WITH SURVEYORS, ARCHITECTS, ENGINEERS & DESIGN PROFESSIONALS  
(MORE THAN \$100,000)\***

This Professional Services Agreement ("Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

Whitson and Associates, Inc. dba Whitson Engineers  
(hereinafter "CONTRACTOR").

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

1. **SERVICES TO BE PROVIDED.** 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 services are generally described as follows:  
Provide the Final Design of the Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project

2. **PAYMENTS BY COUNTY.** 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 \$ 1,113,987.

3. **TERM OF AGREEMENT.** The term of this Agreement is from April 13, 2016 to December 31, 2017, 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.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** 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 SAP Contract No. 4600010665
- Exhibit C Wildlife Conservation Board Grant Agreement WC-1059CF
- Exhibit D Monterey County Drug-Free Workplace Policy

5. **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.

\*Approved by County Board of Supervisors on \_\_\_\_\_.

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. PAYMENT CONDITIONS.

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the CONTRACTOR may 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 as the County may require. The Contract Administrator or his or her designee 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.

6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

## 7. 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.

## 8. INDEMNIFICATION.

8.01 For purposes of the following indemnification provisions ("Indemnification Agreement"), "design professional" has the same meaning as set forth in California Civil Code section 2782.8. If any term, provision or application of this Indemnification Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Indemnification Agreement and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of this Indemnification Agreement and the provisions of California Civil Code Sections 2782 or 2782.8, the broadest indemnity protection for the COUNTY under this Indemnity Agreement that is permitted by law shall be provided by CONTRACTOR.

**8.02 Indemnification for Design Professional Services Claims:**

CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or willful misconduct of the COUNTY, or defect in a design furnished by the COUNTY.

**8.03 Indemnification for All Other Claims or Loss:**

For any claim, loss, injury, damage, expense or liability other than claims arising out of the CONTRACTOR's performance of design professional services under this Agreement, CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to property, arising from or related to the performance of services under this Agreement by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of the COUNTY, or defect in a design furnished by the COUNTY.

**9.0 INSURANCE.**

**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 such, insurance has been approved by the County. 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, Broadform 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.

Modification (Justification attached; subject to approval).

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.

Modification (Justification attached; subject to 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.

Modification (Justification attached; subject to 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.

Modification (Justification attached; subject to approval).

#### 9.04 Other Insurance 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.

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 at all times 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. RECORDS AND CONFIDENTIALITY.

- 10.01 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.
- 10.02 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.
- 10.03 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.

- 10.04 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.
- 10.05 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. **NON-DISCRIMINATION.** 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. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** 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. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times 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 particular 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. **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:	FOR CONTRACTOR:
Dalia Mariscal-Martinez, Management Analyst II	Richard Weber, P.E., L.S., Principal
Name and Title	Name and Title
County of Monterey, Resource Management Agency 168 West Alisal Street, 2nd Floor Salinas, CA 93901	Whitson and Associates, Inc. dba Whitson Engineers 9699 Blue Larkspur Lane, Suite 105 Monterey, CA 93940
Address	Address
(831) 755-8966	(831) 649-5225
Phone	Phone

15. **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 professional 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.

- 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.
- 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.

**This space is left blank, intentionally.**

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

COUNTY OF MONTEREY

CONTRACTOR

By: \_\_\_\_\_  
Purchasing Officer

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

By: [Signature]  
Department Head (if applicable)

Date: 14 APRIL 2016

By: \_\_\_\_\_  
Board of Supervisors (if applicable)

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

Approved as to Form<sup>1</sup>

By: [Signature]  
Deputy County Counsel

Date: 3-25-16

Approved as to Fiscal Provisions<sup>2</sup>

By: [Signature]  
Auditor/Controller

Date: 3-28-16

Approved as to Liability Provisions<sup>3</sup>

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

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

Whitson and Associates, Inc.  
dba Whitson Engineers

Contractor's Business Name\*

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

Richard Weber, President  
Name and Title

Date: 3/22/16

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

Richard Weber, CFO  
Name and Title

Date: 3/22/16

County Board of Supervisors' Agreement Number: \_\_\_\_\_.

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

<sup>1</sup>Approval by County Counsel is required for all Professional Service Agreements over \$100,000

<sup>2</sup>Approval by Auditor/Controller is required for all Professional Service Agreements

<sup>3</sup>Approval by Risk Management is required only if changes are made in paragraph 8 or 9

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

To Agreement by and between  
County of Monterey, hereinafter referred to as “County”  
and  
Whitson and Associates, Inc. dba Whitson Engineers,  
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 to provide for the Final Design of the Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project (hereinafter, “Project”), as set forth below:

CONTRACTOR with Balance Hydrologics, Inc. (Balance), H. T. Harvey and Associates (HTH), Donna Meyers dba Conservation Collaborative (CC), Cornerstone Structural Engineering Group (Cornerstone), Kleinfelder, Inc. (Kleinfelder), Avila & Associates Consulting Engineers (Avila), Aurum Consulting Engineers Monterey Bay, Inc. (Aurum), Associated Right of Way Services, Inc. (ARWS) and Subtronic Corporation (Subtronic) as sub-consultants to CONTRACTOR will conduct all work, as described below and as necessary to complete the Project.

#### TASK 1: DRAFT FINAL (60%) DESIGN

##### Task 1.1: Draft Final (60%) Design - Restoration

##### 1.1.a: Draft Final (60%) Restoration Plans, Specifications and Estimate (PS&E)

Prepare sixty percent (60%) Draft Restoration Plans (County Coastal Development Permit (CDP)/Grading Permit Set), building off the thirty-five percent (35%) Plans previously developed, and incorporating applicable clarifications, comments, etc., provided in the Initial Study/Mitigated Negative Declaration (IS/MND) and received during the outreach and technical and permitting meetings held after the thirty-five percent (35%) submittal.

At this time the sheet list is anticipated to include:

- Cover Sheet; Construction Details; Typical Sections; Grading and Drainage; Topsoil Management; Temporary Water Pollution Control; Utility Plan; Non-Native Plant Control; Planting Plan (Tier 1); Irrigation Plan (Tier 1); Seeding Plan and Palette; Landscape Notes, Schedules, and Details.

Submit a sixty percent (60%) design readiness review package to the County, and address any comments provided by the County prior to the sixty percent (60%) submittal.

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

The Restoration Management Plan will be updated based on the sixty percent (60%) design, if needed, based on the updated design.

Develop sixty percent (60%) Draft Restoration Project Specifications using the California Department of Transportation (Caltrans) Special Provisions format and the County's front-end specifications forms. Develop sixty percent (60%) Draft Restoration Quantities and Construction Cost Estimate using Caltrans Engineer's Estimate format and County's front-end bid forms. Both Project components (Restoration and Causeway) will be included in a single, combined specifications document, and the entire Project is planned to be bid as a whole, not separately.

### **1.1.b: Project Management and Regulatory Coordination - Restoration**

Develop sixty percent (60%) Draft Stormwater Pollution Prevention Plan (SWPPP) Intent Document for the overall Project. The SWPPP Intent Document will be developed for issuance of the County Grading Permit.

Support environmental document and permitting processes by responding to specific information requests from County's Environmental Consultant, Denise Duffy and Associates (DDA).

Participate in regular CRFREE technical and Project team meetings<sup>1</sup>, as necessary to complete this scope. Update Project Schedule as needed, including major engineering, permitting and construction tasks.

Participate in a half day Technical and Permitting Committee Meeting to discuss the entire Project (Causeway and Restoration). CONTRACTOR anticipates using this meeting to 1) review the current Project plans and specifications, focusing on environmental aspects, benefits, and mitigations; 2) obtain, discuss and resolve any final County comments; and 3) obtain verbal County approval. Participate in up to two (2) follow-up stakeholder or Public meetings, as requested.

Total cost to complete Task 1.1.a, Draft Final (60%) Restoration Plans, Specifications and Estimate, and Task 1.1.b, Project Management and Regulatory Coordination - Restoration is \$165,464, and is broken out as follows:

- Balance - \$35,020
- HTH - \$75,754
- CC - \$2,000
- CONTRACTOR - \$52,690 (personnel and expenses (including travel) \$41,520; direct cost administration at ten percent (10%) of subcontractors' labor costs \$11,170)

<sup>1</sup> All project meetings for the entire scope will split time and costs between the Restoration and Causeway elements of this project. No double billing will occur.

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

### **1.1.c: Optional Task - Additional (60%) Restoration PS&E Work**

Due to the complex and multi-dimensional nature of this Project, there is the potential that the estimated scope in Sections 1.1.a and 1.1.b may be widened, at the discretion of County, during the terms of this Agreement to include additional or expanded reports, documentation, meetings, project management, or other Project related tasks of that nature.

Total estimated cost of Optional Task 1.1.c is \$13,000.

CONTRACTOR will not access the funds in this Optional Task without prior express written consent from County.

### **Task 1.2: Draft Final (60%) Design – Causeway**

#### **1.2.a: Draft Final (60%) Causeway (Highway) PS&E**

Perform supplemental geotechnical borings at four (4) locations to depths of 30' to 200' and complete the testing and analysis on these additional samples. Develop the Preliminary Foundation Report for the Project following Caltrans Load Resistance Factor Design (LRFD) guidelines and the revised Caltrans Foundation Report Preparation for Bridge Foundations (2009), which became effective January 1, 2010. Develop a separate Preliminary Geotechnical Design Report (GDR) to support the design of the Project roadway improvements and the larger floodplain restoration work.

Develop draft (sixty percent (60%)/unchecked) structure plans, details and calculations for the proposed cast in place post-tensioned box girder bridge on large-diameter cast-in-steel-shell pile foundation.

Prepare sixty percent (60%) Draft Causeway (Highway) Plans (Caltrans Encroachment Permit Set), building off the thirty-five percent (35%) Plans developed previously, and incorporating applicable clarifications, mitigations, comments, etc., provided in the IS/MND and Project Report, and received during the outreach and technical and permitting meetings held after thirty-five percent (35%) submittal.

At this time the sheet list is anticipated to include:

- Cover Sheet; Typical Sections; Layout; Profile and Super-elevation; Construction Details; Temporary Water Pollution Control; Contour Grading; Drainage Plans, Profiles, Details and Quantities; Utility Plan; Construction Area Signs; Stage Construction Plans; Detour Plan; Detour Profile and Superelevation; Pavement Delineation and Sign Plan; Landscape Notes, Schedules, and Details; Seeding Plan; Electrical Symbols, Schedules, Abbreviations and Notes; Electrical Details; Lighting Plan; Bridge General Plan; Deck Contours; Foundation Plan; Abutment Layout; Abutment Details No. 1; Abutment Details No. 2; Bent Layout; Bent



## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

Details No. 1; Bent Details No. 2; Test Pile Details; Typical Section; Girder Layout No. 1; Girder Layout No. 2; Additional Reinforcement No. 1; Additional Reinforcement No. 2; Architectural Details; Bicycle Railing Layout and Details; Bridge Utility Layout and Details; Bridge Drainage Details; Structure Approach Slab Details; and Log of Test Borings

Submit a sixty percent (60%) design readiness review package to Caltrans and the County, and address any comments provided by Caltrans and the County prior to sixty percent (60%) submittal to Caltrans.

Develop sixty percent (60%) Draft Causeway (Highway) Project Specifications using Caltrans Special Provisions format and the County's front-end specifications forms. Develop sixty percent (60%) Draft Causeway Quantities and Construction Cost Estimate using Caltrans Engineer's Estimate format and County's front-end bid forms. Both Project components (Restoration and Causeway) will be included in a single, combined specifications document, and the entire Project is planned to be bid as a whole, not separately.

### **1.2.b: Project Management and Regulatory Coordination - Causeway**

Prepare and submit the Caltrans Encroachment Permit Application utilizing the sixty percent (60%) Draft PS&E. Other permits, including the County CDP and Grading Permit, will be handled by others.

Support environmental document and permitting processes by responding to specific information requests from County's Environmental Consultant, DDA.

Participate in regular Project technical and Project team meetings, as necessary to complete this scope. Update Project Schedule as needed, including major engineering, permitting and construction tasks.

Participate in a half day Technical and Permitting Committee Meeting. CONTRACTOR anticipates using this meeting to 1) review the current Project plans and specifications, focusing on environmental aspects, benefits, and mitigations; 2) obtain, discuss and resolve any final County comments; and 3) obtain verbal County approval. Participate in up to two (2) follow-up stakeholder or Public meetings, as requested.

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

Total cost to complete Task 1.2.a, Draft Final (60%) Causeway (Highway) PS&E, and Task 1.2.b, Project Management and Regulatory Coordination - Causeway is \$369,620<sup>2</sup>, and is broken out as follows:

- Cornerstone - \$154,500
- Kleinfelder - \$136,000
- Aurum - \$5,500
- CONTRACTOR \$73,620 (personnel and expenses (including travel) \$44,170; direct cost administration at ten percent (10%) of subcontractors' labor costs \$29,450)

### **1.2.c: Optional Task - Additional (60%) Causeway Design Work**

Due to the complex and multi-dimensional nature of this Project, there is the potential that the estimated scope in Sections 1.2.a and 1.2.b may be widened, at the discretion of County, during the terms of this Agreement to include additional or expanded reports, documentation, meetings, project management, or other Project related tasks of that nature.

Total estimated cost of Optional Task 1.2.c is \$24,800.

CONTRACTOR will not access the funds in this Optional Task without prior express written consent from County.

## **TASK 2: FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) CONDITIONAL LETTER OF MAP REVISION (CLOMR)**

Task 2 shall not commence prior to July 1, 2016 unless prior authorized in writing by the County.

### **Task 2.1: FEMA CLOMR**

Modeling will be completed using the HEC-RAS software package and completed in general conformance with the technical submittal requirements for a FEMA CLOMR. Hydraulic modeling will be completed using comparable methodologies to the currently effective flood study. Model results will be used to conditionally re-delineate the Zone AE of the FEMA Flood Zone boundaries (100-year floodplain) included on the impacted FEMA Flood Insurance Rate Map (FIRM) panel and adjust the associated Base Flood Elevations (BFEs). Zone X of the FEMA Flood Zone boundaries will also be re-delineated based on the 500-year flood model results.

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<sup>2</sup> This scope includes a budget to address bridge aesthetics. CONTRACTOR has assumed that aesthetic treatments may include decorative barrier railing, decorative tubular railing, and the use of a formliner and staining on the bridge box girder. If more design / detailing is required for the bridge girders or soffits (e.g., custom or artistic reliefs), such work may not be able to be accommodated within the proposed budget. If based on community or stakeholder feedback custom or artistic treatments are desired, CONTRACTOR will provide the County with a written request with justification and cost estimate for the expanded scope. This additional work shall not be provided by CONTRACTOR unless authorized in writing by the County prior to work commencing.

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

Prepare CLOMR package, and coordinate approval through the Monterey County Water Resources Agency (MCWRA) and FEMA. Meet with MCWRA staff to present the CLOMR and respond to one (1) set of review comments.

Balance will submit the CLOMR package to FEMA. A processing fee of \$6,500 required by FEMA is included as an expense. Budget has been allocated to prepare up to two (2) responses to comments from FEMA.

Total cost to complete Task 2: FEMA CLOMR is \$61,824, and is broken out as follows:

- Balance - \$56,040
- CONTRACTOR - \$5,784 (personnel and expenses (including travel) \$830; direct cost administration at ten percent (10%) of subcontractors' labor costs \$4,954)

### **TASK 3: CALTRANS PROJECT REPORT (PR) AND HYDRAULIC REPORT**

#### **Task 3.1: PR and Final Hydraulics Report (FHR) with Location Hydraulic Study/ Floodplain Encroachment Report (LHS/FER)**

Revise and resubmit Draft PR based on comments received from Caltrans and the County. Coordinate review, comments and responses directly with Caltrans.

Finalize and submit Final PR. The Final PR will be submitted after approval of the Project's Environmental Document (IS/MND), and will include the IS/MND as an attachment, in addition to the thirty-five percent (35%) plans and cost estimate as well as various background technical documents prepared as part of this Project.

Finalize and submit the FHR and LHS/FER based on Caltrans comments during preparation of the PR. If required, revise FHR and LHS/FER based on changes during final design.

Total cost to complete Task 3: CALTRANS PR AND HYDRAULIC REPORT is \$15,000, and is broken out as follows:

- Avila - \$8,000
- CONTRACTOR - \$7,000 (personnel and expenses (including travel) \$6,200; direct cost administration at ten percent (10%) of subcontractors' labor costs \$800)

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

### TASK 4: FINAL (90% & 100%) DESIGN

#### Task 4.1: Final Design (90% & 100%) Design – Restoration

##### 4.1.a: Draft Final (90% & 100%) Restorations PS&E

Update the Restoration Plan and Specifications based on comments received on the sixty (60%) submittal. Update the Restoration Cost Estimate based on ninety percent (90%) design. Update the Restoration and Management Plan (RMP) based on the ninety percent (90%) and one hundred percent (100%) designs, if necessary, based on design updates.

Submit ninety percent (90%) design readiness review package to the County and address any comments provided by the County prior to ninety percent (90%) submittal.

Respond to plan check comments received on the ninety percent (90%) submittal and develop Final one hundred percent (100%) Design package.

##### Task 4.1.b: Project Management and Regulatory Coordination - Restoration

Update the SWPPP Intent Document based on comments received on the sixty percent (60%) submittal. Submit the ninety percent (90%) Design Package to County for Grading Permit plan check, and to Caltrans for Encroachment Permit plan check.

Participate in regular CRFREE technical and Project team meetings, as necessary to complete this scope. Update Project Schedule as needed, including major engineering, permitting and construction tasks. Participate in up to one (1) Public/Stakeholder Meeting or Presentation, if requested.

Total cost to complete Task 4.1.a, Draft Final (90% & 100%) Restorations PS&E, and Task 4.1.b, Project Management and Regulatory Coordination – Restoration, is \$166,979, and is broken out as follows:

- Balance - \$44,890
- HTH - \$78,689
- CC - \$2,000
- CONTRACTOR \$41,400 - (personnel and expenses (including travel) \$28,930; direct cost administration at ten percent (10%) of subcontractors' labor costs \$12,470)

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

### **4.1.c: Optional Task – Additional Final (90% & 100%) Restoration Design Work**

Due to the complex and multi-dimensional nature of this Project, there is the potential that the estimated scope in Sections 4.1.a and 4.1.b may be widened, at the discretion of County, during the terms of this Agreement to include additional or expanded reports, documentation, meetings, project management, or other Project related tasks of that nature.

Total estimated cost of Optional Task 4.1.c is \$12,000.

CONTRACTOR will not access the funds in this Optional Task without prior express written consent from County.

### **Task 4.2: Final Design (90% and 100%) Design – Causeway**

#### **Task 4.2.a: Final (90% & 100%) Design – Causeway**

Update the Highway Plans and Specifications based on comments received on the sixty percent (60%) submittal. Update Causeway Cost Estimate based on ninety percent (90%) design. Update the Foundation Report and GDR based on comments received on the sixty percent (60%) submittal.

Submit ninety percent (90%) design readiness review package to Caltrans and the County, and address any comments provided by Caltrans and the County prior to ninety percent (90%) submittal to Caltrans.

Perform independent in-house bridge design check. An independent engineer who was not involved in the design will re-analyze the bridge, verify member capacities and review the special provisions for the bridge. The checker will provide a list of comments and a set of “red-marked” plans that communicate issues uncovered during the preparation of the independent check. Issues raised by the checker will be discussed with and resolved by the designer and checker. The final design will reflect agreement between the two (2) engineers.

Respond to plan check comments received on the ninety percent (90%) submittal, and develop Final one hundred percent (100%) Design package.

#### **Task 4.2.b: Project Management and Regulatory Coordination – Causeway**

Submit the ninety percent (90%) Design Package to County for Grading Permit plan check, and to Caltrans for Encroachment Permit plan check.

Participate in regular CRFREE technical and Project team meetings, as necessary to complete this scope. Update Project Schedule, including major engineering, permitting and construction tasks, based on sixty percent (60%) designs. Participate in up to one (1) Public/Stakeholder Meeting or Presentation, if requested. Provide bid Package and Design Review Meeting with County, if requested.

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

Total cost to complete Task 4.2.a, Final (90% & 100%) Design – Causeway, and Task 4.2.b, Project Management and Regulatory Coordination - Causeway is \$192,630, and is broken out as follows:

- Cornerstone - \$110,500
- Kleinfelder - \$20,600
- Aurum - \$3,300
- CONTRACTOR - \$58,230 (personnel and expenses (including travel) \$44,940; direct cost administration at ten percent (10%) of subcontractors' labor costs \$13,290)

### **4.2.c: Optional Task – Additional Final (90% & 100%) Causeway Design Work**

Due to the complex and multi-dimensional nature of this Project, there is the potential that the estimated scope in Sections 4.1.a and 4.1.b may be widened, at the discretion of County, during the terms of this Agreement to include additional or expanded reports, documentation, meetings, project management, or other Project related tasks of that nature.

Total estimated cost of Optional Task 4.2.c is \$12,000.

CONTRACTOR will not access the funds in this Optional Task without prior express written consent from County.

## **TASK 5: RIGHT-OF-WAY**

### **Task 5.1: Right-of-Way**

General consultation including establishment of work process; attendance of meetings; coordination with County, Caltrans, and State Parks; and general assistance to County on right-of-way related issues.

Revise and finalize right-of-way cost estimates for one (1) Project alternative for up to two (2) parcels (State Parks parcel and the proposed adjusted Parcel "P"). The cost estimates will be in the Caltrans Right-of-Way Data Sheet format.

Prepare Acquisition Maps and Legal Descriptions for proposed right-of-way donation. Prepare legal description and plats in support of the Caltrans Right-of-Way Certification process<sup>3</sup>.

Prepare an Appraisal and Appraisal Review of right-of-way to be donated by Big Sur Land Trust (BSLT) (Adjusted Parcel "P"). Appraisal is for the "Fair Market Value" of the property as per California Code of Civil Procedure, Section 1263.320.

<sup>3</sup> Caltrans may require that monuments be set, and this would require that a Record of Survey be completed. CONTRACTOR anticipates this would occur sometime after construction, and so CONTRACTOR has not included it in this proposal. If required by Caltrans, CONTRACTOR will provide a proposal for this work as the Project nears the end of the Final Design stage. This additional work shall not be provided by CONTRACTOR unless authorized in writing prior to by the County.

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

Prepare acquisition documents including Offer Letter, Summary Statement pertaining to the acquisition of real property or an interest therein, Purchase Agreement, Deed, Public Acquisition Brochure and Goodwill Information Sheet. Per Section 102 of the California Streets and Highways Code, a copy of the appraisal report will be provided to the property owner.

If needed and requested by the County, negotiate to acquire one (1) fee simple acquisition and one (1) temporary construction easement. CONTRACTOR has assumed there will be negotiations with only one (1) property owner and no lessees.

Provide Draft Right-of-Way Certification for approval by County, in accordance with the Caltrans Right-of-Way Manual. Supporting documentation will be submitted along with Right-of-Way Certification. Supporting documentation may include, but is not limited to, Right-of-Way Contracts; Agreements for Possession and Use; Orders for Prejudgment Possession; deeds, diary, notes; Certification of Utility Facilities; and Right-of-Way Sufficiency Forms. Coordinate processing of the Right-of-Way Certification with Caltrans.

Total cost to complete Task 5: Right-of-Way is \$46,690, and is broken out as follows:

- ARWS - \$25,500
- CONTRACTOR - \$21,190 (personnel and expenses (including travel) \$18,740; direct cost administration at 10% of subcontractors' labor costs \$2,450)

### **TASK 6: UTILITY COORDINATION**

#### **Task 6.1: Utility Relocation Coordination**

Identify actual conflicts and policy conflicts, and develop conflict plans.

Prepare and issue Relocation Claim Letter to Owner, requesting utility owners to develop Owners' Relocation Plans and furnish evidence of their occupancy rights (Owners' Claim of Liability).

Prepare a Report of Investigation, Draft Utility Agreement, and Notice to Owner for each utility. Coordinate approvals with Monterey County and Caltrans.

Prepare and issue a Utility Clearance Memo listing all conflicts, locations, and Notices to Owner, liability, and estimated completion dates. The Memo will be included in the Right-of-Way Certification.

Provide coordination between Monterey County, Caltrans, and utility owners.

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

Total cost to complete Task 6.1, Utility Relocation Coordination is \$10,980, and is broken out as follows:

- CONTRACTOR - \$10,980 (personnel and expenses \$10,980)

### **Task 6.2: Optional Task - Utility Potholing**

If potholing is deemed necessary, CONTRACTOR will provide to County a scope and cost estimate for this work after the need and scope for potholing has been evaluated. A budget of \$23,000 is included in the Agreement for potential potholing work, based on an assumed three (3) days of potholing under temporary traffic control, and associated surveying, engineering, and coordination.

Total cost to complete Task 6.2: Optional Task – Utility Potholing is \$23,000.

- Subtronic - \$16,364
- CONTRACTOR - \$6,636 (personnel and expenses (including travel) \$5,000; direct cost administration at ten percent (10%) of subcontractors' labor costs \$1,636)

CONTRACTOR will not access the funds in this Optional Task without prior express written consent from County. Substitution of subcontractor (Subtronic) is subject to approval of County, and such approval shall not be unreasonably withheld.

Total cost for the completion of this scope is a not to exceed amount of \$1,113,987. CONTRACTOR will be provided with a Notice to Proceed (NTP) by County to authorize work on Tasks 1.1.a, 1.1.b, 1.2.a, 1.2.b, 2, 3, 4.1.a, 4.1.b, 4.2.a, 4.2.b, 5 and 6.1 per conditions outlined above for a total not to exceed amount of \$1,029,187. CONTRACTOR is not authorized to begin work on the remaining Tasks 1.1.c, 1.2.c, 4.1.c, 4.2.c, and 6.2 for a total not to exceed amount of \$84,800. County written NTP for these tasks, if authorized, will be provided separately.

The effort anticipated to complete this work is based on the CONTRACTOR's team's experience for the quantity and nature of work that can reasonably be anticipated for the outlined scope. Cost estimates provided for tasks are best-estimates at the time of Agreement execution; actual invoiced task amounts may vary from the initial task estimates. An amendment to the Agreement is not required if the task allocated budget amount(s) do not exceed the overall Agreement not-to-exceed amount. In the event that the CONTRACTOR costs are to exceed the task allocated budget amount(s), CONTRACTOR shall notify County in advance and as soon as possible in writing and clearly describe how CONTRACTOR will achieve net fiscal neutrality.

CONTRACTOR and its sub-consultant team will provide the County with a written request with justification and cost estimate to request additional funding for unforeseen tasks that arise outside this scope of work and may exceed the allocated budget amount.



## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

Services detailed in Exhibit A – Scope of Services/Payment Provisions of the Agreement shall be provided as noted. Additional services shall not be provided until the additional work is presented to the County and with County approval, amended into the Agreement. Once the amendment to the Agreement is fully executed, CONTRACTOR will be authorized to proceed with the additional services.

Optional services detailed in Exhibit A – Scope of Services/Payment Provisions of the Agreement shall not be provided unless authorized in writing by the County's Project Manager prior to the optional services being provided.

- A.2 CONTRACTOR shall produce the following deliverables (written reports, installed products, etc.) by the proposed dates indicated below. Any necessary modifications to these proposed dates must be discussed and coordinated in advance with the County.

### **Task 1 – Draft Final (60%) Design Deliverables:**

- Restoration Plans
- Highway Plans
- Special Provisions (Restoration & Highway)
- Engineer's Estimate (Restoration & Highway)
- Bridge Design Calculations
- Project Schedule
- Preliminary Foundation Report
- Preliminary Geotechnical Design Report
- SWPPP Intent Document
- Update to Design Basis Memorandum, if required
- Update to Restoration Management Plan, if required
- Update to Location Hydraulic Study, if required

### **Directly Submitted to Caltrans:**

- Highway Plans
- Special Provisions (Causeway)
- Engineer's Estimate (Causeway)
- Bridge Design Calculations
- Preliminary Foundation Report
- Preliminary Geotechnical Design Report
- Update to Location Hydraulic Study, if required
- Caltrans Encroachment Permit Application Form
- Restoration Plans (for Reference Only)

**Delivery Date: July 2016**

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

### **Task 2 – FEMA CLOMR Deliverables:**

#### **Directly Submitted to FEMA:**

- FEMA CLOMR Application

**Delivery Date: March 2017**

### **Task 3 – Caltrans PR & FHR / LHS/FER Deliverables**

#### **Directly Submitted to Caltrans (PR/Draft Environmental Document (DED) approval):**

- Draft Caltrans Project Report (copies as required by Caltrans)
- Final Caltrans Project Report (copies as required by Caltrans)
- Final Hydraulics Report with Location Hydraulic Study/Floodplain Encroachment Report included as an Appendix to Project Report (copies as required by Caltrans)

**Delivery Date: March 2017**

### **Task 4 – Final (90% - 100%) Designs Deliverables:**

- Comment Response Letter
- Highway Plans
- Restoration Plans
- Special Provisions
- Engineer's Estimate
- Project Schedule
- Final Foundation Report
- Final Geotechnical Design Report
- SWPPP Intent Document
- Update to Restoration Management Plan, if required

#### **Directly Submitted to Caltrans:**

- Plan Check Comment Response Letter
- Final Foundation Report
- Final Geotechnical Design Report
- Highway Plans
- Special Provisions
- Engineer's Estimate
- Revised Caltrans Encroachment Permit Application Form, if required
- Restoration Plans (for Reference Only)

**Delivery Date: October 2017**

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

### **Task 5 – Right of Way Deliverables (deliverables to be provided in parallel with design):**

- Right-of-Way Data Sheet
- Acquisition Maps and Legal Descriptions
- Appraisal and Appraisal Review
- Acquisition documents including Offer Letter, Summary Statement, Purchase Agreement, Deed, Public Acquisition Brochure and Goodwill Information Sheet (if not addressed in Client brochure)
- Draft Right-of-Way Certification and Supporting Documentation

**Delivery Date: October 2017**

### **Task 6 – Utility Coordination Deliverables (deliverables to be provided in parallel with design):**

- Utility Verification Letter to Owner (one (1) for each utility)
- Positive Locating Plans (if required)
- Potholing Revised Scope of Work and Cost Estimate (if required)
- Conflict Plans
- Relocation Claim Letter to Owner (one (1) for each utility)
- Report of Investigation (one (1) for each utility)
- Draft Utility Agreement (one (1) for each utility)
- Notice to Owner (one (1) for each utility)
- Utility Clearance Memo (one (1) for each utility)

**Delivery Date: October 2017**

**Monthly Project Status Reports** shall be provided in an agreed upon format between CONTRACTOR and County, to include monthly updates to the Project status by task.

All written reports and deliverables required under this Agreement must be delivered electronically in PDF format, or if needed, in Microsoft Word or Excel, as applicable. For documents requiring County or Public distribution, such as technical studies that will be submitted to relevant agencies as hardcopy documents, if not explicitly stated in the task descriptions within the scope, CONTRACTOR will print and send up to three (3) hard copies, in addition to electronic copies of each deliverable to the following individual in accordance with the schedule above:

Melanie Beretti  
Resource Management Agency (RMA) Special Programs Manager  
County of Monterey, RMA  
168 West Alisal Street, 2<sup>nd</sup> Floor  
Salinas, California 93901

Email: [berettim@co.monterey.ca.us](mailto:berettim@co.monterey.ca.us)

## EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

### B. PAYMENT PROVISIONS

#### B.1 COMPENSATION/ PAYMENT

County shall pay an amount not to exceed \$1,113,987 for or incidental to the performance of work as set forth in the Scope of Services. CONTRACTOR's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

According to CONTRACTOR's Budget for the Final Design of the CRFREE (attached).

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 [www.co.monterey.ca.us/auditor/policies.htm](http://www.co.monterey.ca.us/auditor/policies.htm). 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 any other client for the same services performed by the same individuals.

#### B.2 CONTRACTOR'S BILLING PROCEDURES

Payment shall be based upon satisfactory acceptance of the work completed per tasks outlined in the CONTRACTOR's monthly invoice and activity report, which are due by the tenth (10<sup>th</sup>) day of each month for work performed during the prior month. CONTRACTOR shall include on all invoices a detailed breakdown of the time worked on each task, the individual completing the work, the hourly rates, and expenses, receipts for all materials and supplies, and any other further information required by the terms of Exhibit B, SAP Contract No. 4600010665, and Exhibit C, Wildlife Conservation Board Grant Agreement WC-1059CF, of this Agreement.

Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 6.0, "Payment Conditions", of the Agreement. All invoices shall reference the Multi-Year Agreement (MYA) number, Project name and associated Purchase Order number, and an original hardcopy shall be sent to the following:

County of Monterey  
RMA – Finance Division  
168 West Alisal Street, 2<sup>nd</sup> Floor  
Salinas, California 93901

## **EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS**

Any questions pertaining to invoices under this Agreement shall be directed to the RMA - Finance Division at (831) 755-4800.

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. Claims for payment of services for any given fiscal year (July 1 to June 30) must be submitted to the County by July 31 and within twelve (12) months after the calendar month in which services were completed.

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

**STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES  
AGREEMENT BETWEEN THE STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES AND  
MONTEREY COUNTY  
UNDER THE FLOOD CORRIDOR PROGRAM**

**THIS AGREEMENT**, made in quadruplicate and commencing this 13<sup>th</sup> day of June, 2014, is entered into by and between the Department of Water Resources of the State of California (hereinafter called the State, or DWR), and Monterey County, (hereinafter called the Grantee) for the Carmel River Floodplain Restoration and Environmental Enhancement Project.

The State and the Grantee agree as follows:

**SECTION 1 PURPOSE OF AGREEMENT**

This Agreement is made by and between the State and the Grantee to assist in financing a Flood Protection Project pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Public Resources Code Section 5096.800 et seq, Division 5, Chapter 1.699, Article 4), specifically Public Resources Code 5096.825.

Grant funds may be used only as provided in this Agreement for such Eligible Project Costs as set forth in the Scope of Work and Budget, copies of which are incorporated herein by this reference and set forth in Exhibit B, Project Location, Exhibit C, Scope of Work, and Exhibit D, Budget, which describe tasks to be accomplished and costs associated with those tasks under this Agreement.

**SECTION 2 TERM OF AGREEMENT**

This Agreement shall remain in effect for four (4) years from the date of execution. The date of execution shall be the last date of the required signatures of the parties to the Agreement. Certain activities specified in this Agreement have a different term such as maintenance responsibilities of the grantee which continue in perpetuity and require annual reporting for five years after project completion.

**SECTION 3 PROJECT COSTS**

The Total Project Costs (identified in Exhibit D) are estimated to be \$16,137,800.

**SECTION 4 STATE GRANT**

Pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006, and subject to the availability of funds, including any mandates from the Department of

Finance, the Pooled Money Investment Board, or any other State authority, the State will reimburse the Grantee, in accordance with the terms of this Agreement, an amount equal to the Grantee's eligible expenditures for this project not to exceed \$5,000,000.00, as the State Share, as identified in Exhibit D, Budget. The State will not make payments of any kind—advances or reimbursements—until funding is made available by the State Treasurer, after allocation decisions are made by the Pooled Money Investment Board and Department of Finance.

**SECTION 5 GRANTEE'S COST SHARE AMOUNT**

The Grantee agrees to fund the difference, if any, between the actual Project Cost and the State Grant (Section 4). The total cost of the project will be paid for from a variety of sources including, the County cost of permitting and managing the project, the cost of the property, State and Federal Grants, and participation by the California Department of Transportation. The rate of payment of State grant funds expressed as a percentage share of the State Grant cannot exceed the rate of payment of expenses by the grantee expressed as a percentage of the grantee's share of project costs without prior State authorization. If the grant is cancelled for any reason, the Grantee's obligation to provide the required 10% local match remains in effect for all FCP funds expended to that point.

**SECTION 6 INCORPORATION OF STANDARD TERMS AND GRANTEE COMMITMENTS**

In addition to Exhibits B, C, and D, this agreement by this reference incorporates Exhibit A, Standard Terms and Exhibit E, Planned Maintenance Activities. The Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations and statements made by the Grantee in the Application, documents, amendments and communications filed in support of its request for financing.

**SECTION 7 METHOD OF PAYMENT**

The Grantee shall submit invoices on a quarterly basis for non-capital costs and on an as-needed basis for capital costs, not to exceed one invoice per month. All payments will be made to the Grantee upon receipt of an original invoice by the State of California, Department of Water Resources, 3464 El Camino Avenue, Room 200, Sacramento, California 95821, to the attention of David Wright, Project Manager for the State. Invoices should include SAP contract number and work plan element identification.

The Grantee shall meet all conditions for disbursement of money under this Agreement, including the provisions of the Conditions for Disbursement which is located in Exhibit A.

Failure by Grantee to comply may, at the option of the State, result in termination of the Agreement.

**SECTION 8 PROGRESS REPORTS AND STATEMENT OF COSTS**

The Grantee shall submit quarterly progress reports, starting with the end of the first complete calendar quarter after date of execution, describing the status of the Project and containing a Statement of Costs to the State. The submittal and approval by the State of these reports is a requirement for continued disbursement of State Grant funds. Progress reports shall summarize the work completed during the reporting period, include a statement of progress toward completion compared to the Project schedule, and provide a comparison of costs to date compared to the approved scope of work and Project budget. Additionally, if the grantee is aware of any anticipated problems, obstacles, or issues that could affect the project budget, schedule, or scope of work, they should be discussed in the progress reports.

**SECTION 9 FINAL REPORTS**

Upon project completion or termination, the Grantee shall submit a Final Report describing project activities and a report of expenditures (Final Financial Report) for the State's review and comment. The Final Report and Final Financial Report shall both be submitted within sixty (60) days of the project completion or termination. The Final Report shall describe the results of the project's activities, and include photographs of pre-project conditions and of the work completed. The Grantee shall also submit a Post-Completion Annual Report of Maintenance Activities annually for five years following completion of the project, with the first report due 12 months after the project completion date.

For any construction activity undertaken pursuant to and funded by this agreement, upon completion of the project the Grantee shall provide for a final inspection and a written certification by a California Registered Civil Engineer that the project has been completed in accordance with final plans and specifications and any modifications thereto. Such certification shall be submitted to the State with a copy of the final report of project expenditures required in the paragraph below. The Grantee shall keep on file, for the useful life of the project, as built plans and specifications for the project. Such documents shall be made available for inspection by the State upon reasonable notice.

The Final Financial Report documenting total project expenditures shall be submitted by the Grantee at the same time as the Final Report.

**SECTION 10 RELATIONSHIPS OF PARTIES**

The Grantee, its contractors, subcontractors, and their respective agents and employees required for performing any work under this Agreement shall act in an independent capacity and not as officers, employees, or agents of the State. Grantee is solely responsible for planning, design, construction, maintenance, and operation of the



activity undertaken pursuant to and funded by this agreement. Any review or approval by the State is solely for the purpose of proper administration of State funding and shall not be deemed to relieve or restrict Grantee's responsibility for its work.

**SECTION 11 PERMITS, LICENSES, APPROVALS AND LEGAL OBLIGATIONS**

The Grantee shall be responsible for obtaining any and all permits, licenses and approvals required for performing any work under this Agreement, including those necessary for planning and implementing the Project. The Grantee shall be responsible for complying with all applicable federal, State and local laws, rules or regulations affecting any such work, specifically including, but not limited to, environmental, labor, procurement and safety laws, rules, regulations and ordinances.

Without limiting the foregoing, Grantee shall keep informed of and take all measures necessary to ensure compliance with the California Labor Code requirements, including but not limited to Section 1720 *et seq.* of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5), and payment of prevailing wages for work done under this funding agreement.

Work that is subject to the California Environmental Quality Act (CEQA) and funded under this Agreement shall not proceed until documents that satisfy the CEQA process are received by the State Project Manager and the State has completed its CEQA compliance. Work funded under this Agreement that is subject to a CEQA document shall not proceed until and unless approved by the State Project Manager. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. Once CEQA documentation has been completed, the State will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation.

**SECTION 12 GRANTEE'S RESPONSIBILITIES FOR WORK**

The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to bid disputes and payment disputes with the Grantee's contractors and subcontractors. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.

**SECTION 13 PROJECT OFFICIALS AND NOTICES**

The State's Program Manager shall be the Chief, Division of Flood Management, Department of Water Resources. The State's Program Manager shall be the State's representative and shall have the authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment for work performed under the Funding Agreement. The State's Program Manager may delegate any task to the State's Project Manager.

The Project Manager for the State is David Wright.

The Grantee's Program Manager shall be Benny Young, Director Monterey County Resource Management Agency. The Grantee's Program Manager shall be the Grantee's representative and shall have the authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment of work performed under the Funding Agreement. The Grantee's Program Manager may delegate any task to the Grantee's Project Manager.

The Grantee Project Manager shall be John Ford, Management Analyst, Monterey County Resource Management Agency. The Grantee Project Manager shall be the Grantee's representative for the administration of the Agreement and shall have full authority to act on behalf of the Grantee, including authority to execute all payment requests. All communications given to the Project Manager shall be as binding as if given to the Grantee.

Either party may change its representative upon written notice to the other party. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Funding Agreement shall be in writing to the Project Manager.

Notices required to be given to the State in writing by the Grantee under this Agreement shall be sent to:

David Wright, P.E., Senior Engineer, Water Resources  
State of California  
Department of Water Resources  
Flood Corridor Program  
3464 El Camino Avenue, Suite 200  
Sacramento, CA 95821

Notices required to be given to the Grantee in writing by the State under this Agreement shall be sent to:

Benny Young, Director  
Monterey County Resource Management Agency  
168 W. Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA 93901

A change of address for delivery or notice may be made by either party by written notice of such change of address to the other party.

Notices may be sent by any of the following means: delivery in person, by certified U.S. Mail, postage prepaid, by "overnight" delivery service or, electronic transmission followed by submittal of a hard copy.

**SECTION 14 MAINTENANCE OF PROPERTY IMPROVED**

Grantee agrees to make provisions to insure that the property is used, managed, maintained, developed, rehabilitated, or restored with the grant funds provided in this Agreement consistent with the purposes of the program and is required to continue in perpetuity or until deemed no longer necessary by the State. Specific maintenance activities are outlined in Exhibit E, Planned Maintenance Activities. The Grantee or their successors may, with the approval of the State, transfer this responsibility to use, manage, and maintain the property as discussed in Exhibit A, Standard Terms: Easements.


IN WITNESS HEREOF, the following authorized representatives have executed this Agreement as of the date first above written and approved as to Legal form and sufficiency.

**MONTEREY COUNTY**

By:   
Benny Young, Director Resource Management Agency

Date: 6/12/2014

Approved as to Legal Form and Sufficiency

By:   
Deputy County Counsel Cynthia L. Hasson

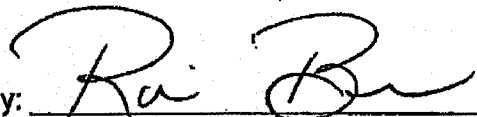
Date: 6-12-14

STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES

By:   
Keith E. Swanson, Chief, Division of Flood Management

Date: 6/18/14

Approved as to Legal Form and Sufficiency

By:   
Robin E. Brewer, Assistant Chief Counsel

Date: 6-13-14

**Attachments**

**List of Exhibits:**

- Exhibit A – Standard Terms**
- Exhibit B – Project Location**
- Exhibit C – Scope of Work**
- Exhibit D – Budget**
- Exhibit E – Planned Maintenance Activities**

**STANDARD TERMS**

1. ACCOUNTING AND DEPOSIT OF GRANT DISBURSEMENT:

- a) Separate Accounting of State Grant Disbursements and Interest Records: The Grantee shall account for the money disbursed pursuant to this Agreement separately from all other Grantee's funds. The Grantee shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. The Grantee shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. The Grantee shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by the State at any and all reasonable times.
- b) Disposition of Money Disbursed: All money disbursed pursuant to this Agreement shall be deposited, administered, and accounted for pursuant to the provisions of applicable law.
- c) Remittance of Unexpended Funds: The Grantee, within a period of sixty (60) days from the final disbursement from the State to the Grantee of State Grant funds, shall remit to the State any unexpended funds that were disbursed to the Grantee under this Agreement and were not needed to pay Eligible Project Costs.
- d) Interim and Final Audits: The State reserves the right to conduct an audit at any time between the execution of this Agreement and the completion of the Project, with the costs of such audit borne by the State. After completion of the Project, the State may require the Grantee to conduct a final audit, at the State's expense.

Pursuant to Government Code Section 8546.7, the contracting parties shall be subject to the examination and audit of the State for a period of five (5) years after project completion. All Grantee's records and those of the Grantee's subcontractors related to this Agreement shall be retained for at least five (5) years after Project completion.

2. **ACKNOWLEDGEMENT OF CREDIT:** The Grantee shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Project, erecting signs at the project site, or using any data and/or information developed under the Agreement.
3. **AMENDMENT:** This Agreement may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in

any way contrary to applicable law. Requests by the Grantee for amendments must be in writing stating the amendment request and the reason for the request.

4. **AMERICANS WITH DISABILITIES ACT:** By signing this Agreement, Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
5. **ANTITRUST CLAIMS:** Grantee shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Grantee's contracts with other entities for acquisition of goods, and services and construction of public works with funds provided by the State under this Agreement.
6. **APPROVAL:** This Agreement is of no force or effect until signed by all parties to the agreement. Grantee may not submit invoices or receive payment until has all required signatures have been obtained.
7. **AVAILABILITY OF FUNDS:** Work to be performed under this Agreement is subject to availability of funds through the State's normal budget process.
8. **CALIFORNIA CONSERVATION CORPS:** As required in Water Code Section 79038(b), Grantee shall examine the feasibility of using the California Conservation Corps or community conservation corps to accomplish the habitat restoration, enhancement and protection activities listed in the Scope of Work (Exhibit C), and shall use the services of one of these organizations whenever feasible.
9. **CLAIMS DISPUTE:** Any claim that the Grantee may have regarding the performance of this agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the Project Manager, Department of Water Resources, within thirty (30) days of the Grantee's knowledge of the claim. Project Manager and Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to this Agreement to implement the terms of any such resolution.
10. **COMPETITIVE BIDDING AND PROCUREMENTS:** Grantee shall comply with all applicable laws and regulations securing competitive bids and undertaking competitive negotiations in Funding Recipient's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement.

**EXHIBIT B – SAP CONTRACT NO. 4600010665**

EXHIBIT A  
SAP Contract No. 4600010665

11. **CONDITIONS FOR DISBURSEMENT:** The State shall have no obligation to disburse money under this Agreement unless and until the Grantee has satisfied the State that the disbursement is in accordance with the requirements of the legislation creating the funding source for the grant funds. Before engaging in site modifications to be paid for from State funds, the Grantee must complete the following:

- a) For Construction Projects, the Grantee must submit to the State, final plans and specifications certified by a California Registered Civil Engineer or equivalent documentation as to compliance with the approved Project.
- b) The Grantee must submit a written statement by an authorized representative that it has obtained all necessary permits, easements, rights-of-way and approvals as may be required by other State, federal, and/or local agencies, as specified in Section 11 of this Agreement.
- c) The Grantee must demonstrate compliance with the California Environmental Quality Act and if applicable the National Environmental Policy Act by submitting copies of any environmental documents, including environmental impact reports, environmental impact statements, negative declarations, mitigation agreements, legal notices and environmental permits as may be required prior to modifying the Project site.
- d) The Grantee must demonstrate continuing availability of sufficient funds to complete the Project.
- e) The Grantee shall develop, and submit for State approval, a plan to minimize the impacts to adjacent landowners (California Water Code Section 79041, Division 26, Chapter 5, Article 2.5). This plan may require completion of a hydrologic and hydraulic study, and if so the specifications will be included in Exhibit C, the project Scope of Work.

12. **CONFLICT OF INTEREST:**

- a) Current State Employees:  
No state officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

No state officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

- b) Former State Employees:



**EXHIBIT B – SAP CONTRACT NO. 4600010665**

EXHIBIT A  
SAP Contract No. 4600010665

For the two year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Agreement while employed in any capacity by any state agency.

For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed Agreement within the twelve-month period prior to his or her leaving state service.

c) City/County/Non Profit Employees:

No employee, officer, employer or agency of the City/County/Non Profit shall participate in the selection or in the award or administration of a contract supported by State Funds if a conflict of interest, real or apparent, would be involved. The City/County/Non Profit shall comply with all applicable laws on conflict of interest including, but not limited to the following: Public Contract Code (PCC) Sections 10335.5 et seq., PCC Sections 10365.5 et seq., PCC Sections 10410 et seq., and Government Code Sections 1090 et seq., and 8100 et seq.

13. **DRUG-FREE WORKPLACE CERTIFICATION:** By signing this contract, the Grantee hereby certifies under penalty of perjury under the laws of the State of California that the Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees, contractors and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors or subcontractors for violations.
- b) Establish a Drug-Free Awareness Program to inform employees, contractors and subcontractors about all of the following:
  - 1. The dangers of drug abuse in the workplace,
  - 2. The Grantee's policy of maintaining a drug-free workplace,
  - 3. Any available counseling, rehabilitation and employee assistance programs, and
  - 4. Penalties that may be imposed upon employees, contractors or subcontractors for drug abuse violations.
- c) Every employee, contractor and subcontractor who works under this Agreement:

1. Will receive a copy of the Grantee's drug-free policy statement, and
  2. Will agree to abide by terms of the Grantee's statement as a condition of employment, contract or subcontract.
14. **EASEMENTS:** Where the Grantee acquires property in fee title or funds improvements to property already owned in fee by the Grantee using grant funds provided through this Agreement, or proposes that property be conserved as open space and such conserved property is used in determining the benefits score for the project, an appropriate easement or other title restriction providing for floodplain preservation and agricultural and/or wildlife habitat conservation for the subject property in perpetuity, approved by the State, shall be conveyed to a regulatory or trustee agency or conservation group acceptable to the State. Any easement or other title restriction applied to any portion of the project area as part of the project must be in first position ahead of any recorded mortgage or lien on the property unless this requirement is waived by the State.
- Where the Grantee acquires an easement under this Agreement, the Grantee agrees to monitor and enforce the terms of the easement, unless the easement is subsequently transferred to another land management or conservation organization or entity with State permission, at which time monitoring and enforcement responsibilities will transfer to new easement owner.
- Failure to provide an easement acceptable to the State can result in termination of this Agreement.
15. **ELIGIBLE PROJECT COSTS:** Grantee shall apply State Grant funds received only to eligible project costs, as identified in Exhibit D - Budget.
16. **GOVERNING LAW:** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
17. **INDEMNIFICATION:** Grantee shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to any claims or damages arising from the planning, design, construction, maintenance and/or operation of levee rehabilitation measures for this Project and any breach of this Agreement. Grantee shall require its contractors to name the State, its officers, agents, and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.
18. **INSPECTIONS OF PROJECT BY STATE:** The State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Agreement. This right shall extend to any subcontracts, and the

Grantee shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Agreement with the State.

19. **INSPECTIONS OF BOOKS, RECORDS AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Funding Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Funding Agreement. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Funding Agreement, and the State may withhold disbursements to Grantee or take any other action it deems necessary to protect its interests as provided in the Funding Agreement.
20. **LABOR COMPLIANCE PLAN:** Prior to awarding a contract for public works projects funded in whole or in part from Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, or any other source of funding so requiring, the Grantee shall comply with Public Resources Code Section 75075, which requires adoption and enforcement of a labor compliance program pursuant to subdivision (b) of Labor Code Section 1771.5 for application to the funded public works project. At the State's request, Grantee must promptly submit written evidence of its compliance with Labor Compliance Program requirements.
21. **NONDISCRIMINATION:** During the performance of this Agreement, the Grantee, its contractors, and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Grantee and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Govt. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et. seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.

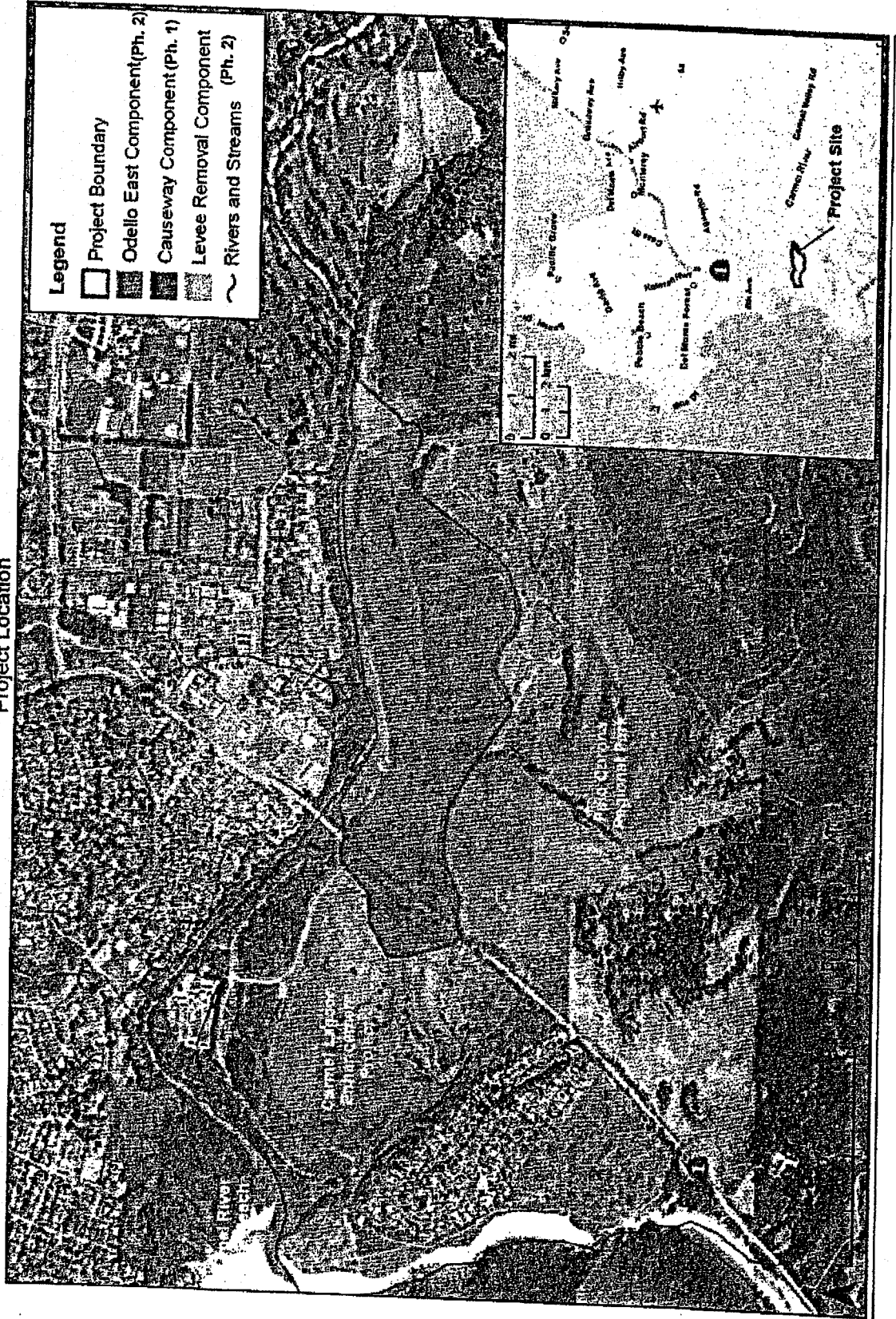
- 22. PROHIBITION AGAINST DISPOSAL OF PROPERTY WITHOUT STATE PERMISSION:** The Grantee shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, without prior permission of the State. The Grantee shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of the Grantee to meet its obligations under this Agreement, without prior written permission of the State. The State may require that the proceeds from the disposition of any real or personal property be remitted to the State, up to the value of the State funds disbursed to the Grantee for improvements to the property under this Agreement.
- 23. REIMBURSEMENT CLAUSE:** If applicable, travel and per diem expenses to be reimbursed under this contract shall be the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations.
- 24. SEVERABILITY:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
- 25. SUCCESSOR AND ASSIGNS:** This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto. No assignment or transfer of this Agreement or any part thereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose.
- 26. TERMINATION WITHOUT CAUSE:** The State may terminate this Agreement without cause on thirty (30) days advance written notice. The Grantee shall be reimbursed for all reasonable expenses incurred up to the date of termination.
- 27. TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided including but not limited to reasons of default under Standard Term 28 – Termination By Grantee.
- 28. TERMINATION BY GRANTEE:** Subject to State approval which may be reasonably withheld, Grantee may terminate this Agreement and be relieved of contractual obligations. In doing so, Grantee must provide a reason(s) for termination. Grantee must submit all progress reports summarizing accomplishments up until termination date. If the grant is cancelled, the Grantee obligation to provide the required 10% local funding remains in effect

for all Flood Corridor Program funds expended to that point.

29. **THIRD PARTY BENEFICIARIES:** The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
30. **TIMELINESS:** Time is of the essence in this Agreement.
31. **WITHHOLDING OF GRANT FUNDS BY STATE:**
- a) **Withholding Clause:** The State, at its discretion, may withhold ten percent (10%) of the funds requested by the Grantee for reimbursement of Eligible Project Costs until applicable milestones are completed or until the Project is completed and Final Report is received. Withheld funds may be released upon completion of milestones identified in Exhibit C, the project Scope of Work.
  - b) **Additional Conditions for Withholding:** If the State determines that the Project is not being completed substantially in accordance with the provisions of this Agreement or that the Grantee has failed in any other respect to comply substantially with the provisions of this Agreement, and if the Grantee does not remedy any such failure to the State's satisfaction, the State may withhold from the Grantee all or any portion of the State Grant commitment and take any other action that it deems necessary to protect its interests.
32. **WORKERS' COMPENSATION:** The Grantee affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and the Grantee affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.

EXHIBIT B  
SAP Contract No. 4600010665

Carmel River Floodplain Restoration and Environmental Enhancement Project  
Project Location



## SCOPE OF WORK

### MONTEREY COUNTY Carmel River Floodplain Restoration and Environmental Enhancement Project

#### I. Project Goals and Objectives

The Carmel River Floodplain Restoration and Environmental Enhancement Project (Project) is a multi-objective project that combines flood protection, wildlife corridor and habitat enhancement, agricultural land protection, storm water detention, and public recreation on a 130-acre site in the lower Carmel River floodplain.

##### Project Objectives

- A. Reduce Flood Flows in Urban Areas: County Services Area 50 (CSA-50) is a developed area located along the north side of the lower Carmel River and includes the highest number of repetitive loss properties in Monterey County. Of the 147 acres of developed land in CSA-50, approximately 105 acres flood during the 50-year flood event and all 147 acres flood during the 100-year event. The Project will reconnect the historic floodplain on the south side of the River, by removal of levees and excavation of material in the floodplain. This expanded floodplain will receive the floodwaters moving water away from the developed areas of the floodplain and reduce the water surface elevations by an estimated 0.5-1.0 foot during a 100-year storm event. This is expected to reduce potential liabilities for flood damage costs for up to 50 repetitive loss structures in Monterey County and reduce the number of structures needing coverage under the federal Flood Insurance Program.
- B. Increase Riparian and Wetland Habitat: The Project will restore approximately 90 acres of riparian and wetland habitat in the historic floodplain, providing increased habitat acreage for sensitive species including steelhead trout, California red-legged frog, and western pond turtle, as well as six additional state species of concern. The project will provide increased quantity and quality of breeding and/or foraging habitat for 27 avian species that have been identified by one or more bird conservation plans as species of concern.
- C. Provide Habitat Connection Across the Floodplain: The Project includes a flood conveyance by-pass or causeway under Highway 1. This causeway will be sized such that large animals can migrate between the open space area connecting to the Carmel Lagoon on the west with the recreated wetlands on the east side of Highway 1. This will provide a connection under Highway 1 for wildlife species utilizing over 25,000 acres of protected habitat areas in the immediate project vicinity.
- D. Protect Agricultural Land from Flooding: The Project will establish a permanent 36-acre organic farm above the level of the 100-year floodplain. The material removed

from the reconstituted floodplain will be used to fill the farm land to the south. The resulting farm land would then not be subject to inundation in a flood event.

- E. Improve Water Quality: The Project will provide additional filtration for sediment and nutrients through the creation of a functioning floodplain and associated riparian habitat and wetlands, resulting in improved water quality in the surface and groundwater flows entering the Carmel River Lagoon, the Carmel Bay (State-designated Area of Special Biological Significance, Marine Protected Area, and Critical Coastal Area) and the Monterey Bay National Marine Sanctuary.
- F. Recharge Groundwater and Base Flows to the Carmel River: The Project will address one of the watershed's most critical environmental concerns - very low or no flow in the Lower Carmel River and Carmel Lagoon during the dry season. The restored floodplain will expose storm water to a greater surface area which will provide for a greater degree of water infiltration to the aquifer. Groundwater monitoring wells established on the project site in 2009 documented that groundwater recharge from the Carmel River establishes a base level in the aquifer underlying the Project site. Sedimentary interbedding on the floodplain provide additional capacity for infiltration and recharge to the aquifer above this base level. Due to these conditions, opportunities exist on the parcel to enhance groundwater recharge.
- G. Public Trails and Recreation: The Project will include a public trail along the southern edge of the farm field and will link to over 5000 acres of public land (Palo Corona Regional Park) immediately adjacent to the project site.

## II. Project Description

The project consists of two interrelated phases. Each phase is an integral component of the overall project, but they are differentiated because each has a set of constraints which may result in one phase moving along faster than the other phase. The phases are described as follows:

### Phase One -- Causeway

Phase One includes reconstruction of Highway 1 south of the Carmel River Bridge in including a 520-foot long flood by-pass or conveyance causeway under State Route 1 and contouring the embankments along the Highway consistent with current California Department of Transportation standards. The causeway will allow floodwaters from the Carmel River to flow into the south branch of the Carmel River channel which was dammed with installation of State Route 1. Excess material taken from the road bed for the causeway will be placed in the "fill" area for the agricultural preserve.

### Phase Two -- Levee Removal, Agricultural Preserve, Restoration of Floodplain Habitat

Phase Two will include: removal of approximately 2,400 linear feet of the levee along the south side of the Carmel River, grading of approximately 55 acres of existing farmland to create restored floodplain habitat and filling approximately 36 acres of land to create an agricultural preserve above the 100-year floodplain. The grading on the existing 55 acres of farmland area will result in 36 acres of farmland above the 100 year floodplain, and 19 acres



of land restored to floodplain. The floodplain restoration grading will be designed for the re-establishment of riparian vegetation and grading for a public trail. The soil excavated from the levee removal and floodplain restoration will be used to fill the new agricultural preserve area. The ability to retain fill material on site will result in significant cost savings. Upon completion of grading, the restored floodplain will be planted with native species and invasive species control will occur as part of the restoration plan.

### III. Tasks and Deliverables

Subtasks in bold indicate project elements funded under this Agreement.

#### Task 1: Administration

##### **Subtask 1.1 Quarterly Progress Reports**

Progress reports will be submitted to DWR on a quarterly basis in accordance with Section 8 of this Agreement.

- Deliverable: Quarterly Progress Reports

##### **Subtask 1.2 Final Report**

The final report will be submitted in accordance with Section 9 of this Agreement. It will include a description of results of project activities, as well as photographs of pre-project conditions and work completed.

- Deliverable: Final Report

##### **Subtask 1.3 Written Certification by California Registered Civil Engineer**

Per Section 9 of this Agreement, the completed construction will be inspected and written certification of conformance with final approved contract documents, including project plans and specifications will be provided by a registered Civil Engineer.

- Deliverable: Wet-stamped certification by a registered Civil Engineer on final record drawings and appropriate contract documents.

##### **Subtask 1.4 Final Financial Report**

The final financial report will be submitted in accordance with Section 9 of this Agreement. It will be submitted concurrently with the final report.

- Deliverable: Final Financial Report

##### **Subtask 1.5 Post Completion Reports**

This subtask includes the delivery of an annual report of maintenance activities on an annual basis in accordance with Section 9 of this Agreement and Exhibit E: Planned Maintenance Activities.

- Deliverable: Annual Maintenance Summary Report

Task 2: Design

Subtask 2.1 Causeway Design

This subtask includes work associated with advancing the design of the causeway. This work includes updates to the Hydrologic and Hydraulic Study.

- Deliverable: Updated Hydrologic and Hydraulic Study

Subtask 2.2 Project Study Report for Caltrans

Subtask 2.3 Restoration Plan

A restoration plan including planting ratios, success criteria for monitoring, and a monitoring plan will be developed as part of this subtask.

- Deliverable: Final Restoration Plan

Subtask 2.4 Finalize Plans

Subtask 2.5 Prepare Stormwater Pollution Prevention Plan (SWPPP)

This subtask includes preparation of a Storm Water Pollution Prevention Program in accordance with State and Federal requirements to protect water quality during construction and implementation of the project.

- Deliverable: SWPPP

Subtask 2.6 Construction Staking, Management, and Testing

This subtask includes construction staking services performed under the direction of a licensed Land Surveyor, project management, and soils testing.

- Deliverable: Completed Highway 1 Plans, Restoration Plans, and SWPPP.

Task 3: Property Acquisition

Subtask 3.1 Acquisition of Easements for construction of Causeway.

Subtask 3.2 Property Tenure/Acquisition

- Deliverables: Phase 1: Construction Easements, Phase 2: Property Title.

Task 4: Permitting and Environmental Review

Subtask 4.1 Preparation and Public Review of Negative Declaration

A subsequent Initial Study and Mitigated Negative Declaration/Environmental Assessment or Finding of No Significant Impact will be prepared to address the work within the Caltrans Right of Way. The County of Monterey will function as Lead agency for the CEQA document and Caltrans will coordinate the NEPA document.

- Deliverable: Mitigated Negative Declaration and public comment letters

- Subtask 4.2 Coastal Development Permit from California Coastal Commission**
- Deliverable: Coastal Development Permit
- Subtask 4.3 Encroachment Permit**
- Deliverable: Encroachment Permit from California Department of Transportation
- Subtask 4.4 Section 401 National Pollutant Discharge Elimination Systems (NPDES) Permit**
- Deliverable: Section 401 NPDES Permit from Central Coast Regional Water Quality Control Board
- Subtask 4.5 Section 404 Permit**
- Deliverable: Clean Water Act Section 404 Permit
- Subtask 4.6 Streambed Alteration Agreement**
- Deliverable: Section 1603 Streambed Alteration Agreement from California Department of Fish and Wildlife
- Subtask 4.7 Section 4(f) Compliance with US Department of Transportation**
- Deliverable: Documentation of compliance.

**Task 5: Project Implementation**

**Subtask 5.1: Project Administration**

This subtask includes cost associated with administration of the project implementation and grant administration, including staff labor and project-related overhead costs. In addition, a Plan to Minimize Impacts to Adjacent Landowners will be drafted and submitted to the satisfaction of DWR in accordance with Water Code Section 79041.

- Deliverable: Invoices, Labor charges, overhead costs, receipts, and backup documentation.
- Deliverable: Plan to Minimize Impacts to Adjacent Landowners

**Subtask 5.2: Contractor Procurement**

**5.2.1: Bidding Period**

- Send out Request for Proposals
- Pre-bid meeting
- Answer questions from prospective contractors

**5.2.2 Bid opening and contract award**

- Receive Proposals and bids

- Evaluate proposals
- Negotiate final contract
- 5.2.3 Notice to proceed
  - Issue notice to proceed
- Subtask 5.3: Construction Activities**
  - Deliverables: Project status reports
- 5.3.1 **Existing Utility Removal and Replacement**

This task involves the removal and temporary relocation of existing overhead utilities along Highway 1. The utilities along Highway 1 will be installed underground as part of the causeway improvements.
- 5.3.2 **Temporary Detour Construction**

This subtask includes construction of a temporary detour on east side of State Route 1.
- 5.3.3 **Embankment Removal and Causeway Construction**

Remove and replace existing State Route 1 to include new slope embankments and a new 520-foot long causeway under State Route 1. Remove temporary detour and restore topography.
- 5.3.4 **Utility removal Along Existing Levee**

This task involves the removal and relocation of existing overhead utilities along the Levee along the south side of the Carmel River. The utilities along Highway 1 will be installed underground as part of the causeway improvements.
- 5.3.5 **Levee and Debris Removal**

Removal of approximately 2,400 feet of existing levee and debris along the south side of the Carmel River and placement of fill in an area designated to be organic farmland elevated out of the floodplain.
- 5.3.6 **Initial Grading**

This subtask includes the grading and re-contouring of the east edge of the Odello property to allow flood flows to access the floodplain via the south bank of the Carmel River.
- 5.3.7 **Finish Grading**

This subtask includes activities to restore area within restored floodplain to support a riparian environment and creation of agricultural preserve area outside of the floodplain. It includes top soil installation.
- 5.3.8 **Planting of Vegetation (Seeding)**

This subtask includes planting of vegetation in the floodplain area. Application methods include hydro seeding.
- 5.3.9 **Construction Biological Monitoring**

This subtask includes the biologist being on site to conduct pre-construction surveys, and ongoing site monitoring as required by the Mitigation Measures contained in the CEQA/NEPA document. The Biologist will provide reports of their findings and recommendations in the event that unexpected biological resources are potentially impacted.

**5.3.10 Storm Water Pollution Prevention Program**

This subtask includes implementation of a Storm Water Pollution Prevention Program to protect water quality during construction and during implementation of the project.

**Subtask 5.4 Notice of Completion**

**Task 6: Construction Implementation**

**Subtask 6.1 As-Built Engineering Documentation**

- **Deliverable: As-Built Engineering Documentation (Plans and Specifications)**

**Subtask 6.2 Post Construction Mitigation Monitoring**

Maintenance and monitoring will be conducted in accordance with Section 9 of this Agreement and Exhibit E: Planned maintenance activities.

- **Deliverable: Annual Maintenance Summary Report**

EXHIBIT B - SAP CONTRACT NO. 4600010665

EXHIBIT C  
SAP Contract No. 4600010665

IV. Schedule

Task	2014				2015				2016				2017				2018													
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J
1.1 Quarterly Progress Reports			X		X				X				X				X				X				X				X	
1.2 Final Report																														
1.3 Written Certification																														
1.4 Final Financial Report																														
1.5 Post Completion Reports																														
2.1 Crossway Design	X	X	X	X	X	X	X	X																						
2.2 Project Study Report Complete					X	X	X	X																						
2.3 Restoration Plan					X	X	X	X																						
2.4 Finalize Plans									X	X	X	X																		
2.5 SWPPP Preparation									X	X																				
2.6 Construction Staking, Management, and Testing											X	X	X	X																
3. Property Acquisition																														
3.1 Acquisition of Easements			X	X	X	X																								
3.2 Property Tenure					X	X	X	X	X	X																				
4. Permitting and Environmental Review																														
4.1 Preparation and Public Review of Negative Declaration			X	X	X																									
4.2 Coastal Development Permit			X	X	X	X	X	X	X	X																				
4.3 Encroachment Permit					X	X	X	X	X	X																				
4.4 Section 401 (NPDES) Permit					X	X	X	X	X	X																				
4.5 Section 404					X	X	X	X	X	X																				
4.6 Streambed Alteration Agreement					X	X	X	X	X	X																				
4.7 Section 4(f) Compliance					X	X	X	X	X	X																				

EXHIBIT B – SAP CONTRACT NO. 4600010665

EXHIBIT C  
SAP Contract No. 4600010665

Task	2014				2015				2016				2017				2018													
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J
5.1 Project Administration					X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
5.2 Contractor Procurement									X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
5.2.1 Bidding Period					X	X																								
5.2.2 Bid opening and contract award						X																								
5.2.3 Notice to proceed							X																							
5.3 Construction Activities									X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
5.3.1 Existing Utility Removal and Replacement									X	X																				
5.3.2 Temporary Detour Construction									X	X	X																			
5.3.3 Embankment Removal and Causeway Construction											X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
5.3.4 Utility Removal Along Existing Levee									X	X																				
5.3.5 Levee Removal											X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
5.3.6 Initial Grading											X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
5.3.7 Finish Grading																					X	X	X	X	X	X	X	X	X	X
5.3.8 Planting																									X	X	X	X	X	X
5.3.9 Construction Biological Monitoring																													X	X
5.3.10 SWPPP Implementation									X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
5.4 Notice of Completion																														X
6-Construction Implementation																														
6.1 As-Built Engineering Documentation																														X
6.2 Post Construction Mitigation Monitoring																													X	X

## V. Benefits

### Flood Benefits

The Lower Carmel River Floodplain Restoration and Enhancement Project will be completed on the 130-acre historic floodplain located just upstream of the Carmel River Lagoon and east of Highway One on land known as the Odello fields. The land is part of the historic floodplain along the Carmel River but has not been available for a typical flooding regime for almost 100 years due to agricultural production on the land. In the early 1900s, earthen levees were built on the south side of the river by the farmer-landowner to constrain the river and the entire expanse of wetlands and riparian forest surrounding the Carmel River Lagoon and Odello East was put into agricultural production for artichokes. Downstream of the present day Highway One, the levee and agricultural production narrowed the riparian forest and wetlands on the south side of the river for nearly ½-mile at their widest to a narrow strip along the river. Upstream of Highway One, the riparian forest on the south side of the main stem was reduced from a maximum of about 1400 feet wide to a narrow strip.

The levees kept flood events out of the fields except during larger flows (10-year storms and larger), which spread into the floodplain and caused damages to residential and commercial properties. The existing levees are not adequate to hold the 1% annual chance flood.<sup>1</sup> The construction of Highway One in the early 1930s further diminished the ecological condition of the entire coastal ecosystem by placing a physical barrier between the Carmel River Lagoon and the larger floodplain thereby preventing hydrologic connectivity across the floodplain. Highway One created a north-south barrier to flood flows as well, resulting in flood waters flowing to the north side of the river, which affects areas such as Mission Fields, the Crossroads Shopping Center and Rio Road/Val Verde Road. Today the lower Carmel River is confined by levees on both sides, beginning near the river's mouth and running 1.2 miles upstream.<sup>2</sup> Recent major floods include January and March 1995 events and the February 1998 event. These events resulted in approximately \$10,520,000 (2009 dollars) in damages and affected 220 residences and the Highway One Bridge over the river had to be completely replaced.

The project focuses on restoring a more frequent flooding regimen to 90-acres of the Odello East property and provides a flood conveyance by-pass or causeway to both reconnect the west and east sides of the floodplain hydrologically and for habitat connectivity and wildlife movement. The remaining 36 acres of the Odello property will be retained as an agricultural preserve with an organic farming operation and native plant nursery with public access. The ecological goals of the project are to restore connectivity, increase riparian and wetland habitat and natural ecological function to a critical section of the Carmel River watershed. The flood benefit goal of the project is to reduce flood damages to the north overbank areas which historically have sustained damages and are repetitive loss properties.

The project is subsequent to a series of habitat conservation and restoration activities occurring in the lower floodplain and lagoon since the 1990s including the Carmel River Lagoon Riparian

<sup>1</sup>Monterey County Water Resources Agency. Monterey County Flood Management Plan, pp. 20. Update 2008. Prepared for Monterey County.

<sup>2</sup>Balance Hydrologics, Inc., 2007. Design Alternatives Analysis for Floodplain Restoration at the Odello Property.



Restoration Project completed in 2000 and the Carmel River Lagoon South Arm Restoration Project completed in 2004. Both of these projects were completed by California State Parks in partnership with the State Department of Transportation and the Big Sur Land Trust. Partners in this Project include California State Parks, Coastal Conservancy, Monterey County Water Resources Agency, Monterey County Public Works, Monterey Peninsula Water Management District and the Big Sur Land Trust.

### **Wildlife and/or Agricultural Benefits**

The key wildlife objectives associated with this project are to restore important habitat for several wildlife species by establishing the type of vegetation typical of river corridor environments and to provide a more dense and diverse riparian corridor. This would create important habitat for sensitive species including California red-legged frogs and western pond turtles. In addition the project will increase flow conveyance and habitat connectivity between the project site and the Carmel River Lagoon benefiting habitat for the south/central California Coast Steelhead.

The project will also maintain an active organic agricultural operation on a portion of the Project site in order to preserve historically important agricultural operations.

**EXHIBIT B – SAP CONTRACT NO. 4600010665**

EXHIBIT D  
SAP Contract No. 4600010665

**BUDGET**

**MONTEREY COUNTY**

**CARMEL RIVER FLOODPLAIN RESTORATION AND ENVIRONMENTAL ENHANCEMENT PROJECT**

<b>Task</b>	<b>DWR Funds (Phase 1)</b>	<b>DWR Funds (Phase 2)</b>	<b>DWR Funds (Total)</b>	<b>Monterey County Funds</b>	<b>Other Grant Funds</b>	<b>Total</b>
<b>1 Administration</b>	\$2,500	\$2,500	\$5,000			\$5,000
1.1 Quarterly Progress Reports	\$1,000	\$1,000	\$2,000			\$2,000
1.2 Final Report	\$750	\$750	\$1,500			\$1,500
1.3 Written Certification	\$250	\$250	\$500			\$500
1.4 Final Financial Report	\$250	\$250	\$500			\$500
1.5 Post Completion Reports	\$250	\$250	\$500			\$500
<b>2 Design</b>	\$247,200	\$225,000	\$472,200		\$1,827,800	\$2,300,000
2.1 Causeway Design					\$1,000,000	\$1,000,000
2.2 Project Study Report						
2.3 Restoration Plan		\$200,000	\$200,000			\$200,000
2.4 Finalize Plans						
2.5 SWPPP Preparation	\$25,000	\$25,000	\$50,000		\$100,000	\$150,000
2.6 Construction Staking, Management, and Testing	\$222,200		\$222,200		\$727,800	\$950,000

1 of 3

**EXHIBIT B - SAP CONTRACT NO. 4600010665**

EXHIBIT D  
SAP Contract No. 4600010665

Task	DWR Funds (Phase 1)	DWR Funds (Phase 2)	DWR Funds (Total)	Monterey County Funds	Other Grant Funds	Total
<b>3. Property Acquisition</b>				\$1,810,000		\$1,810,000
3.1 Acquisition of Easements						
3.2 Property Tenure				\$1,810,000		\$1,810,000
<b>4. Permitting and Environmental Review</b>	\$137,800	\$100,000	\$237,800			\$237,800
4.1 Preparation and Public Review of Negative Declaration	\$137,800	\$95,000	\$232,800			\$232,800
4.2 Coastal Development Permit	\$5,000		\$5,000			\$5,000
4.3 Encroachment Permit	\$5,000		\$5,000			\$5,000
4.4 Section 401 (NPDES) Permit	\$5,000		\$5,000			\$5,000
4.5 Section 404 Permit	\$5,000		\$5,000			\$5,000
4.6 Streambed Alteration Agreement		\$5,000	\$5,000			\$5,000
4.7 Section 4(f) Compliance with State Parks						
<b>5. Project Implementation</b>	\$2,092,500	\$2,152,500	\$4,245,000		\$7,370,000	\$11,615,000
5.1 Project Administration	\$25,000	\$25,000	\$50,000		\$190,000	240,000
5.2 Contractor Procurement						
5.2.1 Bidding Period						
5.2.2 Bid opening and contract award						
5.2.3 Notice to proceed						

**EXHIBIT B – SAP CONTRACT NO. 4600010665**

EXHIBIT D  
SAP Contract No. 4600010665

Task	DWR Funds (Phase 1)	DWR Funds (Phase 2)	DWR Funds (Total)	Monterey County Funds	Other Grant Funds	Total
5.3 Construction Activities						
5.3.1 Existing Utility Removal and Replacement	\$500,000		\$500,000		\$100,000	\$600,000
5.3.2 Temporary Detour Construction	\$500,000		\$500,000		\$250,000	\$750,000
5.3.3 Embankment Removal and Causeway Construction	\$1,042,500	\$377,500	\$1,420,000		\$6,530,000	\$7,950,000
5.3.4 Utility Removal Along Existing Levee		\$125,000	\$125,000			\$125,000
5.3.5 Levee and Debris Removal		\$200,000	\$200,000		\$30,000	\$230,000
5.3.6 Initial Grading		\$600,000	\$600,000		\$40,000	\$640,000
5.3.7 Finish Grading		\$300,000	\$300,000		\$30,000	\$330,000
5.3.8 Planting of Vegetation (Seeding)		\$300,000	\$300,000			\$300,000
5.3.9 Construction Biological Monitoring		\$200,000	\$200,000		\$100,000	\$300,000
5.3.10 SWPPP Implementation	\$25,000	\$25,000	\$50,000		\$100,000	\$150,000
5.4 Notice of Completion						
6 Construction Implementation		\$20,000	\$20,000		\$130,000	\$150,000
6.1 As-Built Engineering Documentation						
6.2 Post Construction Mitigation Monitoring		\$20,000	\$20,000		\$130,000	\$150,000
<b>Total</b>	<b>\$2,500,000</b>	<b>\$2,500,000</b>	<b>\$5,000,000</b>	<b>\$1,810,000</b>	<b>\$8,327,000</b>	<b>\$16,137,000</b>

1. \$500,000 used as 10% local match for DWR Grant.

PLANNED MAINTENANCE ACTIVITIES  
COUNTY OF MONTEREY  
CARMEL RIVER FLOODPLAIN RESTORATION AND  
ENVIRONMENTAL ENHANCEMENT PROJECT

***Facilities to be Maintained***

Causeway – A roadway structure will be constructed on State Highway 1 that will be elevated over the Carmel Lagoon to provide for water to flow under. The structure will be approximately 520 feet in length and will consist of two 12 foot wide travel lanes and 8 foot wide shoulders.

Levee Removal/Enhancement Area – The Enhancement Area, after the levee is removed, will consist of areas planted with native plants and maintained with irrigation for the first three years as needed. The Enhancement Area will also be designed for self-recruitment of native plants and shrubs with inundation by annual flood flows. The objective of the grading and planting will be to create a natural floodplain environment that does not require ongoing management of either vegetation or sedimentation.

***Maintenance Goals***

Maintenance activities will be based on the preservation of land, protection of wildlife habitat and maintaining transitory storage capacity for reducing flood risk, consistent with the purposes of the Flood Corridor Program.

***Maintenance Framework***

The Causeway Project is to be located on State Route 1, will be constructed by the County of Monterey, but will be a Caltrans facility after construction. As such, it will be owned and maintained by Caltrans as part of the state highway system. The County of Monterey and Caltrans will enter into a Cooperative Agreement prior to construction that will provide for maintenance.

The Levee Removal/Enhancement Area Project will be constructed/installed by the County of Monterey. The agricultural preserve will be owned and maintained by the Big Sur Land Trust after construction while the floodplain area will be dedicated to the County of Monterey.

***Maintenance of Restoration Area***

Maintenance activities will be performed in accordance with the following descriptions:

The Enhancement Area will be documented as to type, location and number of native plants and shrubs installed in each planting area via flagging system and planting plan. Primary maintenance will be to conduct weeding and/or mowing for Years 1-3 along with maintaining irrigation to each planting area and plant. The planting area will be checked as needed for irrigation, plant condition, target planting density, and considerations for target roughness values (i.e., Manning's n) for floodwater conveyance, if applicable. Plant replacement or thinning will be

determined based on likelihood of failure and condition of plants, native and invasive nonnative plant recruitment and, if applicable (i.e., if the floodplain hydrologic and hydraulic modeling indicate a need for continued maintenance of the channel to keep roughness sufficiently low), maintenance of floodwater conveyance capacity. Replacement plants will be noted in planting plan as needed. The ongoing collection of litter on the site will be accomplished under the same programs for all County owned and maintained property.

***Maintaining Agency***

Causeway - Caltrans  
Enhancement Area – Big Sur Land Trust

***Maintenance Funding***

Causeway – State Highway Funding  
Enhancement Area – Stewardship funds from Big Sur Land Trust

***Maintenance Reporting***

The County of Monterey will submit an Annual Report of Maintenance Activities for the Causeway Project and the Levee Removal/Enhancement Area Project to the Department of Water Resources for a period of 5 years following the completion the project. The cooperative agreements with Caltrans and the Big Sur Land trust will require that those entities submit reporting information to the County of Monterey as required to complete the Annual Reports. The Annual Reports will include photos and will describe the maintenance inspections and activities performed during the year and any outstanding maintenance items.

***Long Term Maintenance Plan***

Causeway – Caltrans will be responsible for the long term maintenance of the Causeway as part of their maintenance responsibilities for the State highway system.

Levee Removal/Enhancement Area - The Big Sur Land Trust will incorporate the maintenance of the Restoration Area into its annual stewardship program for all properties in ownership by the Big Sur Land Trust. Annual activities for land stewardship include non-native plant species management, irrigation management if appropriate, plant condition assessment and replacement, and volunteer stewardship crews. BSLT Land Stewardship staff will oversee the long term maintenance of the Restoration Area.

**WILDLIFE CONSERVATION BOARD**

**GRANT AGREEMENT**

**WC-1059CF**

**Between**

**STATE OF CALIFORNIA/WILDLIFE CONSERVATION BOARD**

**and**

**BIG SUR LAND TRUST**

**for**

**CARMEL RIVER RIPARIAN RESTORATION**

**MONTEREY COUNTY**

**State of California  
Natural Resources Agency  
Wildlife Conservation Board  
Department of Fish and Game**

Carmel River Riparian Restoration, Monterey County  
Grant Agreement Number WC-1059CF  
Project ID 2010174

**GRANTEE:**  
**Project Director:** Big Sur Land Trust  
Donna Meyers, Director of Conservation  
509 Hartnell Street  
Monterey, California 95060  
(831) 625-5523 ext. 105

**GRANTOR:**  
**State Project Manager:** State of California, Wildlife Conservation Board  
Chad Fien  
Wildlife Conservation Board  
1807 13<sup>th</sup> Street, Suite 103  
Sacramento, California 95811  
(916) 323-8979  
Facsimile (916) 323-0280  
Email [cfien@dfg.ca.gov](mailto:cfien@dfg.ca.gov)

**LANDOWNER:** Clinton and Margaret Eastwood  
7145 Carmel Valley Rd  
Carmel, California 93923

**Grant Agreement No.:** WC-1059CF  
**Terms of Agreement:**  
**Board Approval Date:** June 2, 2011  
**Capital Improvements:** Date of Notice to Proceed through December 31, 2014  
**Management:** Completion of Capital Improvements to June 1, 2036  
**Project Life:** Twenty-five years  
**Project ID:** 2010174

**FUNDING CERTIFICATION**

I hereby certify that (a) the following funds will be encumbered on behalf of Grantor; and (b) Grant Funds shall not be disbursed unless and until sufficient proceeds from the source identified below become available to Grantor to disburse.

*Hexame Woodward*  
Fiscal Officer (WCB)

4-20-11  
Date:

**Grant Amount:** \$2,500,000.00  
**Fund Source:** California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Fund, (P-40), (Section 5096.650(a)(1))  
**Appropriation Item:** Chapter 875, Statutes of 2001  
**Line Item:** 3640-801-8029  
**Expenditure Code:** 1000-841-73000



**EXHIBIT C – WILDLIFE CONSERVATION BOARD GRANT AGREEMENT WC-1059CF**

**AMENDMENT NO. 1 TO GRANT AGREEMENT WC-1059CF  
BETWEEN THE  
STATE OF CALIFORNIA/WILDLIFE CONSERVATION BOARD  
AND  
BIG SUR LAND TRUST  
FOR  
CARMEL RIVER RIPARIAN RESTORATION, MONTEREY COUNTY  
Project ID: 2010174.**

THIS AMENDMENT TO AGREEMENT is made and entered into this 4th day of November, 2014, by and between the State of California, acting by and through the WILDLIFE CONSERVATION BOARD, hereinafter called GRANTOR and BIG SUR LANDTRUST, hereinafter called GRANTEE.

WHEREAS, the parties hereto entered into Grant Agreement WC-1059CF, dated July 13, 2011, and expiring December 31, 2014, to implement Carmel River Riparian Restoration project on the Odello Property in Monterey County, and

WHEREAS, due to circumstances beyond the Grantee's control, work cannot be completed by the Grant expiration date, and

WHEREAS, the Grantor finds a grant extension to December 31, 2018 is reasonable and appropriate.

NOW THEREFORE, the expiration date of said agreement December 31, 2014, as shown on Page 2 and Page 3, is hereby changed to December 31, 2018.

Except as amended herein, all terms and conditions of said agreement will remain unchanged and in full force and effect.

State of California  
Wildlife Conservation Board

By: [Signature]  
John P. Donnelly, Executive Director

Date: 12/23/14

Grantee  
BIG SUR LANDTRUST

By: [Signature]  
Jeannette Tullafe-Lewis, President

Date: 12/11/2014

I certify that (a) budgeted funds are available for the extended period stated above; and (b) Grant Funds shall not be disbursed unless and until sufficient proceeds become available to Grantor to disburse.

[Signature]  
Fiscal Officer

11/19/14

Date:

Grant Amount: \$2,500,000.00  
Fund Source: California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Fund, Section 5098.650(a)(1)  
Appropriation Item: Chapter 875, Statutes of 2001  
Line Item: 3640-801-6029  
Expenditure Code: 14-1000-841-73000

*Carmel River Riparian Restoration, Monterey County  
Grant Agreement Number WC-1059CF  
Project ID – 2010174*

Page 1

## **1. SCOPE OF THE AGREEMENT**

Pursuant to Chapter 4.1 of Division 2, (commencing with Section 1385) of the California Fish and Game Code, and the approval granted by the Wildlife Conservation Board on June 2, 2011, the Wildlife Conservation Board (Grantor) hereby grants to Big Sur Land Trust (Grantee) a sum not to exceed two million five hundred thousand dollars (\$2,500,000.00), subject to the terms and conditions of this Grant (Agreement).

## **2. PURPOSE OF THE GRANT**

The purpose of this Agreement is to restore the lower floodplain of the Carmel River, located in Monterey County, as shown on the attached Exhibit A - LOCATION MAP, using funds allocated under Section 5096.650(a)(1) of the California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Fund pursuant to the Wildlife Conservation Law of 1947, for the protection of habitat to protect rare and endangered species, wildlife corridors and significant natural landscapes and ecosystems.

## **3. AMOUNT AND PROCEDURE FOR PAYMENT**

- 3.1 In consideration for the satisfactory completion of the services described herein, the Grantor agrees to pay the Grantee, in arrears, upon receipt of an invoice in triplicate, including backup subcontractor invoices, for services rendered under this Agreement. The amount payable under this Agreement shall be for approved budgeted items and shall not exceed \$2,500,000.00. Payments shall be made not more frequently than monthly in arrears. Payment shall be contingent upon receipt of an invoice received and approved by the Grantor's representative. The invoice must be submitted on Grantee's letterhead, signed by the authorized representative and include a written description of the work completed during the period of the invoice.
- 3.2 Invoices must be itemized using the same categories included in the attached budget entitled Exhibit B - BUDGET, which is incorporated herein and made a part hereof by reference. Exhibit C – INVOICE TEMPLATE, provides the format to use for submitting invoices to the Grantor for payment. Each invoice shall contain supporting or back-up documentation for all charges on the invoice, including receipts for all materials and supplies, all Grantee staff time shown by number of hours worked and hourly rate, and all sub-contractor services. The Grantor may withhold ten percent (10%) from each payment until the Grantor has approved the acceptance of the project.

*Carmel River Riparian Restoration, Monterey County  
Grant Agreement Number WC-1059CF  
Project ID – 2010174*

Page 2

- 3.3 Upon completion of the work and responsibilities included within this Agreement as outlined under "Statement of Work/Grantee's Responsibility," and upon approval of all work by the State Project Manager, the Grantee may submit an invoice requesting the ten percent (10%) retention. Invoices should be sent to:

Wildlife Conservation Board  
1807 13<sup>th</sup> Street, Suite 103  
Sacramento, California 95811  
Attn: Chad Fien

- 3.4 The Grantee agrees to submit all final billings within thirty (30) days after completion of the project.

#### **4. BUDGET**

Prior to approval of the Agreement by the Grantor, Grantee shall disclose all funding sources for the project and shall include all amounts applied for/or obtained for the project. These amounts shall be reflected in the BUDGET by BUDGET categories. If the Grantee determines during the project term that funds from other sources cannot be obtained or will not be used, the Grantee will notify the Grantor immediately.

Should the Grantor become aware through any means that the Grantee did not disclose all funding sources for the project, the grant will be referred to the Department of Finance for a project audit.

The attached BUDGET is an estimate of the Grantee's anticipated costs of performance. When actual project costs indicate that the costs of certain budget categories are higher than estimated, and these higher costs are offset by lower actual costs in other budget categories, the Grantee shall submit a written request to shift funds between approved budget categories. Contingencies shall be used only upon written request by the Grantee. The Grantor shall approve or deny the requested budget revision or use of contingencies in writing within 10 days of receipt of the Grantee's written request. The total reimbursement to the Grantee shall not exceed the total grant amount without written amendments, approved in writing by the Grantor.

#### **5. COMMENCEMENT OF PROJECT AND DISBURSEMENT**

No funds shall be obligated or disbursed under this Agreement for any portion of the project funded by the Grantor until this grant proposal and Agreement have been approved by the Wildlife Conservation Board at a public meeting, and the Grantee has received a "Notice to Proceed" from the Grantor. The approval of the grant proposal and Agreement by the Grantor on June 2, 2011, if such approval is given, does not constitute authorization for the expenditure of project funds. No work items initiated prior to receipt of a Notice to Proceed will be reimbursed by the Grantor.

Carmel River Riparian Restoration, Monterey County  
Grant Agreement Number WC-1059CF  
Project ID – 2010174

Page 3

**6. STATEMENT OF WORK**

**6.1 Grantee Responsibility:**

- 6.1.1. Based upon the attached design and specifications entitled Exhibit D - WORK PLAN, which is incorporated herein and made a part hereof by reference, the Grantee shall be responsible for all restoration and construction activities. The Grantee agrees to complete all construction and restoration activities specified herein and in the WORK PLAN by December 31, 2014.
- 6.1.2 The Grantee is responsible for recognizing the cooperative nature of this project and shall provide credit to the Grantor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared by the Grantee referencing this project. Any sign that is installed for this project shall be subject to the mutual agreement of the Grantor and Grantee regarding text, design and location, and shall display the logo of the Grantor which is available on the Grantor's website: [www.wcb.ca.gov](http://www.wcb.ca.gov).
- 6.1.3 The Grantee is responsible for obtaining all necessary permissions and approvals, and complying with all regulations, ordinances and statutes that apply to the project, including any and all approvals from the State Water Resources Control Board, and any work performed pursuant to this Grant Agreement.
- 6.1.4 The Grantee agrees that within thirty (30) days following completion of the restoration and construction the Grantee will submit either five hard copies or one hard copy and one digital copy of a final report of accomplishments, including pre and post project photographs and a final design or site plan of the project pursuant to the Grant Agreement, to the Grantor.
- 6.1.5 The Grantee agrees to work and consult with the Department of Fish and Game on implementing the construction and restoration effort. Further, the Grantee agrees that all final inspections will be made in consultation with the Department of Fish and Game and the WCB.
- 6.1.6 If any of the terms and conditions of this Agreement are violated by the Grantee, the Grantor shall be reimbursed in an amount equal to that of the remaining portion of the grant. The reimbursement shall be determined by the following Payback Formula:

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"Payback Formule"

Formula: Dollar amount of grant divided by the life of the project (Project Life), times the number of years remaining in the project.

Example: A \$50,000.00 grant is awarded for the restoration and enhancement of wetland and riparian habitat, and the Project Life is 25 years. With ten years remaining on the Project Life, if the Grantee is not able to carry out the provisions of the agreement, the following payback calculations would be made:

$$(\$50,000.00 \div 25 \text{ years}) \times 10 \text{ years} = \$20,000$$

Using this example, the Grantee would owe the Grantor \$20,000.

**6.2 Landowner Responsibility**

Upon completion of Capital Improvements, the Landowner shall refrain from activities that would compromise the values of the restored habitats. The Landowner shall permit employees of the Grantor and/or the Grantee access to the subject property for purposes of project development, inspections and project monitoring during the life the project. Such access shall be mutually agreed to by the Landowner and the requesting agency and shall be preceded with a written or verbal request to the Landowner.

**7. TERMS OF GRANT AGREEMENT**

**7.1 Use of Subcontractors**

The Grantee is fully responsible for all work performed under this Agreement, including subcontracted work. Grantee shall submit subcontracts over \$10,000 to the Grantor prior to commencing work. All agreements between the Grantee and subcontractors must be in writing. The grantee is responsible for ensuring this agreement contains language that establishes the right of the auditors of the State of California to examine the records of the subcontractor relative to the services and materials provided under this agreement.

**7.2 Liability**

The Grantee shall indemnify, protect, hold harmless, and defend the Wildlife Conservation Board and the State of California, and their respective officers,

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agents, and employees, against any and all claims, demands, damages, losses, costs, expenses, or liability arising out of the performance or failure to observe or perform any obligation of the Grantee under this agreement.

**7.3 Indemnification By Grantee For Landowner**

Reasonable precautions shall be exercised by Grantee to avoid damage to persons and property. Grantee shall indemnify, protect, hold harmless and defend Landowner and their respective officers, agents, representatives and employees against any and all claims, demands, damages, losses, costs, expenses, or liability arising out of the performance or failure to observe or perform any obligation of the Grantee under this agreement, or otherwise proximately caused by Grantee.

**7.4 Amendments**

This Grant Agreement may be modified only upon written approval of the Executive Director of the Wildlife Conservation Board, the Grantee, and the Landowner. No oral understanding or agreement not incorporated in this document shall be binding on any of the parties.

**7.5 Accounting/Records/Audits**

The Grantee shall maintain financial accounts, documents, and records relating to the Grant Agreement. The accounting information must accurately reflect fiscal transactions so that the total cost of the project can be readily determined and records readily available upon demand. The Grantee must retain all project records for three years after final payment is made by the Grantor. The documents may be subject to examination and audit by the Wildlife Conservation Board or the State of California during this period.

**7.6 Use of Grant Funds to Secure Additional Funding**

The Grantee agrees that the funding provided under this agreement shall not be used as matching funds for other grants, or to secure loans or other monetary awards without written approval from the Executive Director, Wildlife Conservation Board. Such approval shall not be unreasonably withheld as long as the purpose for which the grant was awarded is maintained.

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### 7.7 Cancellation of Grant Agreement

All parties, including the Grantor, Grantee, or Landowner may terminate the agreement for any reason by providing the other parties with 30 days written notice. If the Grantor elects or agrees to terminate this agreement as provided herein, the Grantee shall take all reasonable measures to prevent further costs to the Grantor under this agreement. The Grantor shall be responsible for non-refundable obligations or expenses incurred by the Grantee in the performance of this agreement prior to the date of the notice to terminate, but only up to the unpaid balance of funding authorized in this agreement.

### 7.8 Resolution of Grant Agreement Disputes

The State Project Manager has initial jurisdiction over each controversy arising under or in connection with the interpretation, performance or payment under this agreement. The Grantee will diligently pursue with the State Project Manager a mutually agreeable settlement of any such controversy.

If the controversy cannot be resolved at this stage, the Grantee and/or Landowner must direct the grievance together with any evidence, in writing, to the Executive Director of the Wildlife Conservation Board. The grievance must state the issues in the dispute, the legal authority or other basis for the Grantee's and/or Landowner's position and the remedy sought.

The Executive Director or designee shall meet with the Grantee and/or Landowner to review the issues. A written decision signed by the Executive Director or designee shall be returned to the Grantee and/or Landowner within twenty (20) working days of receipt of the Grantee's and/or Landowner's letter.

### 7.9 Drug-Free Workplace Certification

By signing this grant agreement, the contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

7.9.1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

7.9.2 Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:

Carmel River Riparian Restoration, Monterey County  
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- a) the dangers of drug abuse in the workplace;
- b) the person's or organization's policy of maintaining a drug-free workplace;
- c) any available counselling, rehabilitation and employee assistance programs; and,
- d) penalties that may be imposed upon employees for drug abuse violations.

7.9.3 Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed contract:

- a) will receive a copy of the company's drug-free policy statement; and,
- b) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both and the contractor or grantee may be ineligible for award of any future state contracts if the department determines that any of the following has occurred: (1) the contractor or grantee has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

#### 7.10 Union Organizing

The Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this Agreement. Furthermore, the Grantee, by signing this Agreement, hereby certifies that:

- 7.10.1 No state funds disbursed by this Grant will be used to assist, promote or deter union organizing.
- 7.10.2 The Grantee shall account for state funds disbursed for a specific expenditure by this Grant, to show those funds were allocated to that expenditure.
- 7.10.3 The Grantee shall, where state funds are not designated as described in 7.9.2 above, allocate, on a pro-rata basis, all disbursements that support the grant program.
- 7.10.4 If the Grantee makes expenditures to assist, promote or deter union organizing, the Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that the Grantee shall provide those records to the Attorney General upon request.



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**7.11 California Code Regulations**

State grants may be subject to California Labor Code requirements, which include prevailing wage provisions. Certain State grants administered by the California Wildlife Conservation Board and the California Department of Fish and Game are not subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code. For more details, please refer to California Fish and Game Code Section 1501.5 and to the Department of Industrial Relations (DIR) website at <http://www.dir.ca.gov>.

**7.12 Data Storage**

All informational products (e.g. data, studies, findings, management plans, manuals, photos etc.) relating to California's natural environment and produced with the use of public funds shall be cataloged in the California Environmental Information Catalog (<http://gis.ca.gov/catalog>) maintained by the CERES Program ([www.ceres.ca.gov](http://www.ceres.ca.gov)).

**7.13 Constructive Notice**

The terms, conditions and restrictions of this agreement and the provisions of the project shall be binding upon, and inure to, the benefit of the parties hereto and their personal representatives, heirs, successors, and assigns and shall continue as a servitude running with the land for the Project Life, until June 1, 2036. A separate document, in a form substantially as shown in Exhibit F, Notice of Unrecorded Grant Agreement, providing constructive notice of this agreement, shall be signed by the Grantee and the Landowner and recorded with the appropriate County Recorder's Office.

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8. AUTHORIZATION

The signature of the Executive Director certifies that at a meeting of the Wildlife Conservation Board held on June 2, 2011, the Board authorized the expenditure of up to \$2,500,000.00 for the purpose of awarding a grant to the Big Sur Land Trust. The Agreement shall be deemed executed and effective when signed by all parties, received in the office of the Wildlife Conservation Board and the Grantee has received a Notice to Proceed from the Board. The Wildlife Conservation Board, the Grantee and the Landowner do hereby agree to the terms and conditions referenced herein.

**Non-Availability of Funds.** Grantor shall not be obligated to disburse any Grant Funds under this Agreement unless and until the bond cash proceeds identified for allocation to the Project (as further specified in the Funding Certification attached to this Agreement) are released by the State Treasurer's Office to Grantor for expenditure for this grant. Despite any contrary provision of this Agreement, no request for disbursement submitted prior to the release of such bond cash proceeds to Grantor shall be effective.

STATE OF CALIFORNIA  
WILDLIFE CONSERVATION BOARD

By: John P. Donnelly Date: 7/13/11  
John P. Donnelly  
Executive Director

GRANTEE  
BIG SUR LAND TRUST

By: William Leahy Date: 5/18/11  
William Leahy  
Executive Director

SIGNATURES OF LANDOWNERS

Clinton Eastwood Date: 5/20/11  
Clinton Eastwood

Signed in Counterpart Date: \_\_\_\_\_  
Margaret Eastwood

Carmel River Riparian Restoration, Monterey County  
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8. AUTHORIZATION

The signature of the Executive Director certifies that at a meeting of the Wildlife Conservation Board held on June 2, 2011, the Board authorized the expenditure of up to \$2,600,000.00 for the purpose of awarding a grant to the Big Sur Land Trust. The Agreement shall be deemed executed and effective when signed by all parties, received in the office of the Wildlife Conservation Board and the Grantee has received a Notice to Proceed from the Board. The Wildlife Conservation Board, the Grantee and the Landowner do hereby agree to the terms and conditions referenced herein.

**Non-Availability of Funds.** Grantor shall not be obligated to disburse any Grant Funds under this Agreement unless and until the bond cash proceeds identified for allocation to the Project (as further specified in the Funding Certification attached to this Agreement) are released by the State Treasurer's Office to Grantor for expenditure for this grant. Despite any contrary provision of this Agreement, no request for disbursement submitted prior to the release of such bond cash proceeds to Grantor shall be effective.

STATE OF CALIFORNIA  
WILDLIFE CONSERVATION BOARD

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John P. Donnelly  
Executive Director

GRANTEE  
BIG SUR LAND TRUST

By: William Leahy Date: 5/18/11  
William Leahy  
Executive Director

SIGNATURES OF LANDOWNERS

Clinton Eastwood Date: 5/20/11  
Clinton Eastwood

Margaret Eastwood Date: 5/24/11  
Margaret Eastwood

Carmel River Riparian Restoration, Monterey County  
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EXHIBIT A

LOCATION

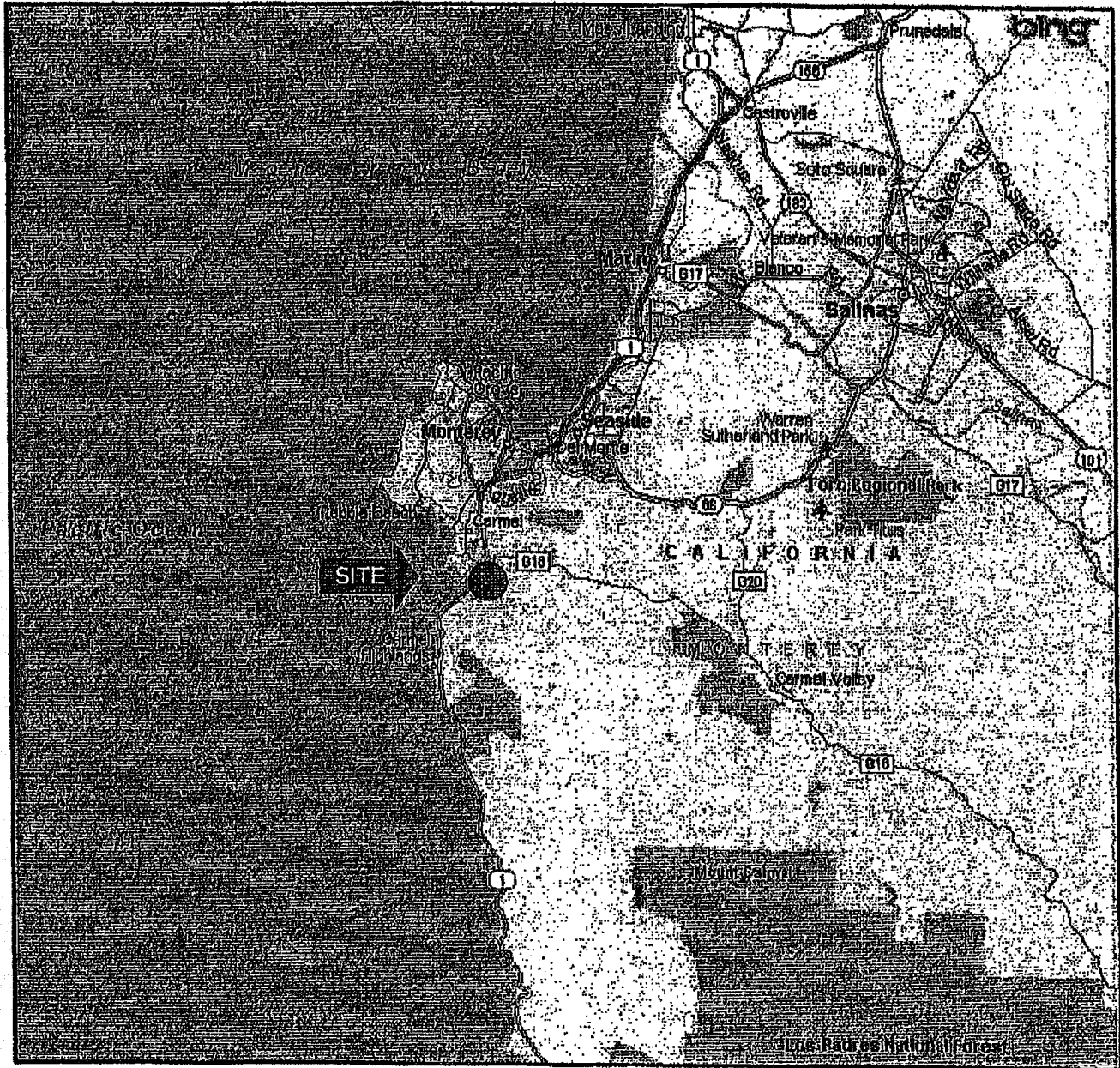


EXHIBIT B

Carmel River Riparian Restoration, Monterey County  
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Project Budget

Project Elements	Unit Price	Units	Quant.	Total Project Costs	WCB Grant Request	Local Sources (BSL/ Mon. County)	Other Sources Secured: EPA [1] SCC [2] USFWS [3] CalTrans [4]	Other Sources Not yet secured* Urban Streams 84 - IRWMP Prop 1E
<b>Project Man. &amp; Admin. - not Construction CM</b>								
Staff Time				\$200,000	\$50,000	\$10,000	\$40,000 [1,2,4]	\$100,000
Overhead				\$20,000	\$0	\$20,000	\$0	\$0
<b>Subtotal</b>				<b>\$220,000</b>	<b>\$50,000</b>	<b>\$30,000</b>	<b>\$40,000</b>	<b>\$100,000</b>
<b>Engineering, Design &amp; Permitting Consultants (civil, bridge, flood, ecological)</b>								
Permit Costs				\$1,100,000	\$900,000	\$0	\$0	\$200,000
				\$15,000	\$0	\$0	\$0	\$16,000
<b>Subtotal</b>				<b>\$1,115,000</b>	<b>\$900,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$216,000</b>
<b>Environmental Compliance</b>								
Consultants				\$100,000	\$20,000	\$0	\$10,000 [4]	\$70,000
Permits				\$10,000	\$0	\$0	\$10,000 [4]	\$0
<b>Subtotal</b>				<b>\$110,000</b>	<b>\$20,000</b>	<b>\$0</b>	<b>\$20,000</b>	<b>\$70,000</b>
<b>Subtotal P.M. Design, Permitting Costs</b>				<b>\$1,445,000</b>	<b>\$970,000</b>	<b>\$30,000</b>	<b>\$60,000</b>	<b>\$385,000</b>
<b>Implementation/Construction</b>								
<b>1. Flood Conveyance Structure (Causeway)</b>								
<b>ITEM: Earthwork</b>								
Roadway Excavation	\$50.00	CY	11,400	\$570,000				
Roadway Excavation (AC Removal)	\$60.00	CY	550	\$32,986				
Clearing & Grubbing	\$10,000	acre	3.0	\$30,000				
Pave & Compact Embankment	\$40.00	CY	4,000	\$160,000				
<b>Subtotal Earthwork</b>				<b>\$792,986</b>				
<b>ITEM: Pavement Structural Section</b>								
Asphalt Concrete	\$120.00	Ton	1,370	\$164,450				
Aggregate Base	\$60.00	CY	1,701	\$102,089				
Cold Plan Asphalt Concrete	\$30.00	SY	364	\$10,928				
<b>Subtotal Pavement Structural Section</b>				<b>\$277,466</b>				
<b>ITEM: Project Drainage</b>								
<b>Subtotal Drainage</b>				<b>\$19,000</b>				
<b>ITEM: Specialty Items</b>								
Water Pollution Control	\$25,000	LS	1	\$25,000				
ESA Fencing	\$10	LF	2500	\$25,000				
Transition Railing	\$4,000	EA	4	\$16,000				
Terminal System	\$3,000	EA	4	\$12,000				
Rock Slope Protection	160	CY	1,250	\$187,500				



EXHIBIT C

Carmel River Riparian Restoration, Monterey County  
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 Project ID 2010174

Letterhead (include Name, address, telephone, contact person name)

Invoice Date: \_\_\_\_\_  
 Invoice No: \_\_\_\_\_

Project Name: \_\_\_\_\_  
 Agreement Number: \_\_\_\_\_  
 Term of Project: \_\_\_\_\_  
 Invoice Period Covered: \_\_\_\_\_  
 Amendments: \_\_\_\_\_  
 WCB Project Manager: \_\_\_\_\_

Name on Grant Document  
 WCB Grant Agreement No.  
 Beginning and End dates  
 Beginning and End Date  
 describe if any, along with date

PROJECT TASK	TOTAL COST	TOTAL NON-WCB WCB INVOICES ALLOCATION	WCB PRIOR INVOICED AMOUNT	CURRENT WCB INVOICE	Remaining Balance of WCB allocation available for expenditure on this task
Task 1 (describe)					
Task 2 (describe)					
Task 3 (describe)					
...					
...					
<b>TOTAL</b>	Sum of all items	Sum of all items	Sum of all items	Sum of all items	Sum of all items

\$ \_\_\_\_\_  
 \$ ( )  
 \$ \_\_\_\_\_

Total Current Invoice: \$ \_\_\_\_\_  
 Less Retention\*: \$ \_\_\_\_\_  
**TOTAL PAYMENT DUE:** \$ \_\_\_\_\_

**CURRENT RETENTION** \$ \_\_\_\_\_  
**PREVIOUS RETENTION:** \$ \_\_\_\_\_  
**TOTAL RETENTION WITHHELD TO DATE:** \$ \_\_\_\_\_

\*Retention: Unless otherwise approved in advance by WCB, 10% of total current invoice will be retained by WCB until the end of the project. Each invoice should be accompanied by the following:

1. A detailed statement of services for the period covered by the invoice (photos may also be included if appropriate).
2. Supporting or back-up documentation for all charges on the invoice, including receipts for all materials and supplies, all Grants staff time shown by number of hours worked and hourly rate, and all sub-contractor services.
3. Clearly reconcile all supporting documents and identify them with the charges reflected in the invoice. If the attached supporting document includes a charge that will be reimbursed in part by the WCB and another funding source, clearly indicate the portion being paid by the WCB, and reconcile this amount with the invoice.

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EXHIBIT D

## WORKPLAN

The project is a second phase in a series of habitat conservation and restoration activities occurring in the lower floodplain and lagoon since the 1990s including the Carmel River Lagoon Riparian Restoration Project completed in 2000 and the Carmel River Lagoon South Arm Restoration Project completed in 2004. Both of these projects were completed by California State Parks in partnership with the State Department of Transportation and the Big Sur Land Trust. Partners in this phase of restoring the floodplain and associated riparian and wetland habitats include California State Parks, State Coastal Conservancy, Department of Transportation, Monterey County Water Resources Agency, Monterey County Public Works, Monterey Peninsula Water Management District, Big Sur Land Trust, US Environmental Protection Agency, US Fish and Wildlife Service, and WCB.

The Carmel River Riparian Restoration Project will be completed on the 131-acre historic floodplain located just upstream of the Carmel River Lagoon and east of Highway One on land known as the Odello East property. The land is the floodplain for the Carmel River but has not been available for a typical flooding regime for over 75-years due to agricultural production on the land. Prior to the 1930s, earthen levees were built by the farmer-landowner and the entire expanse of land surrounding the Carmel River Lagoon and Odello East was put into agricultural production for artichokes. The levees kept flood events out of the fields in most years with only larger flows (20-year storms and larger) spreading onto the floodplain. The construction of Highway One in the later 1930s further diminished the ecological condition of the entire coastal ecosystem by placing a physical barrier between the Carmel River Lagoon and the larger floodplain thereby preventing hydrologic connectivity across the floodplain. Today the lower Carmel River is confined by levees on both sides, beginning near the river's mouth and running 1.2 miles upstream.

The purpose of this project is to restore a more regular flooding regimen to approximately 90-acres of the Odello East property and provide a causeway by which to reconnect the west and east sides of the floodplain both hydrologically and for habitat connectivity and wildlife movement. The remaining 41 acres of the property will remain as an agricultural preserve for an organic farming operation and native plant nursery and a public trail will be located along the southern edge of the agricultural preserve. The overall environmental goal is to restore cohesiveness and natural ecological function to the lower floodplain/estuary system.

The main project actions will include the following:

- Completion of 100% design and engineering plans to result in a biddable set of plans and specifications for project construction.
- Restoration of approximately 90 acres of historic floodplain to riparian and wetland habitat. The width of the restoration area is approximately 600 feet. Expected habitat types within the 90 acres include palustrine forested, palustrine



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EXHIBIT D

scrub-shrub, and palustrine emergent wetlands totally 80 acres and approximately 10 acres of riverine wetlands.

- Retention of approximately 36 acres of active agricultural land for organic operations. This agricultural preserve will utilize soils from floodplain grading and shaping resulting from the project.
- Removal of one half mile of levee along the south side of the Carmel River to allow flood flows to access the restoration area.
- Grading for a trail along the south edge of the farm field adjacent to Palo Corona Regional Park. This area will be approximately 5 acres in total.
- Replaces 500 feet of earthen fill under State Route 1 with a causeway which will connect the east side of the floodplain to Carmel River State Beach on the west side of Highway One. The causeway specifically will allow wildlife traveling down from Palo Corona Regional Park to safely go under the highway to Carmel River State Beach and the lagoon and estuary.

The riparian habitat and wetland habitats restored on the project site will provide habitat favorable for California red legged frog which has been documented on both Carmel River State Beach and Palo Corona Regional Park. The expansion of riparian forest species will be very beneficial to avian species that are both residents and visitors to the lagoon, estuary and riparian areas of the parklands surrounding the project site.

Restoration activities will involve grading to restore the land to a more naturally functioning floodplain, along with some native seeding and planting. As noted, approximately 36 acres of land will be graded and retained as active agricultural land restricted to organic farming. This 36-acre agricultural preserve will be raised approximately 3 feet above the restored floodplain/riparian area immediately to the north. Several off channel seasonal wetlands will be constructed at the east edge of the project site to accommodate sediment deposition during large flood events. The remaining portion of the floodplain will be graded to historic elevations with the assumption that off channel wetlands will re-establish with annual flood events. Riparian and wetland plantings will be used to encourage scour and floodplain depressions so that small wetlands can re-establish with hydrologic function.

The project will achieve the following key objectives:

- Increase habitat: The project will restore riparian and wetland habitat on the historic floodplain, providing important habitat for sensitive species including steelhead trout, California red-legged frog, and western pond turtle, as well as six additional state species of concern. The project will provide increased quantity and quality of breeding and/or foraging habitat for an additional 27 avian species that have been identified by one or more bird conservation plans as species of concern.

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EXHIBIT D

- Recharge groundwater and base flows to the Carmel River: The project will address one of the watershed's most critical environmental problems by enabling increased recharge of groundwater on the restored floodplain
- Improve water quality: The project will provide additional filtration for sediment and nutrients through a functioning floodplain and associated riparian habitat and wetlands, resulting in increased water quality entering the Carmel River Lagoon, the Carmel Bay (state-designated Area of Special Biological Significance, Marine Protected Area, and Critical Coastal Area) and the Monterey Bay National Marine Sanctuary.
- Reduce flood flows in urban areas: County Services Area 50 (CSA-50) is a developed area located along the north side of the lower Carmel River. Of the 147 acres of developed land in CSA-50, approximately 105 acres flood during the 50-year flood event and all 147 acres flood during the 100-year event. The project will significantly reduce flood flows and help protect private property from flood damage.

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EXHIBIT E

## MANAGEMENT PLAN

The Project is expected to achieve the following objectives:

1. Increase riparian and wetland habitat
2. Recharge groundwater and base flows to the Carmel River
3. Provide habitat connection across the floodplain
4. Protect agricultural land from flooding
5. Reduce flood flows in urban areas
6. Improve water quality
7. Create Public trails and recreation

Existing conditions for flood elevations, habitat conditions, and agricultural operations have been documented and monitored through the following studies and analyses:

- Philip Williams and Associates and California Coastal Conservancy, Carmel River Reach 2: (Eastwood/Big Sur Land trust Property): Conceptual Enhancement Plan, 2000. Prepared for Big Sur Land Trust and California Coastal Conservancy.
- Big Sur Land Trust, Carmel River Parkway Vision Plan, 2005.
- Balance Hydrologics, Inc., Design Alternatives Analysis for Floodplain Restoration at the Odello Property, 2007. Prepared for Big Sur Land Trust.
- Balance Hydrologics Inc., Supplemental Analysis for Floodplain Restoration at the Odello Property, 2008. Prepared for Big Sur Land Trust.
- Whitson Engineers, Project Study Report to request Conceptual Approval, 2010. Prepared for Big Sur Land Trust, County of Monterey and Cal Trans.
- Balance Hydrologics, Inc., Groundwater Investigation and Initial Results of Monitoring at the Odello East Property, Carmel River Valley, June 2, 2010.
- Nikki Nedeff, Wetland Delineation for Odello East Property, 2010. Prepared for the Big Sur Land Trust.

These reports provide a baseline for conditions associated with pre-project conditions at the Project site and associated quantitative outcomes with regards to habitat restoration, groundwater recharge, flood protection, and water quality. These four project objectives are most appropriately used for quantified performance measures as "pre-project" conditions are documented to compare against "post-project" conditions. The following assessment and performance criteria will be used for these Project Objectives. BSLT will provide WCB with annual reports for the first three years of the project and will then provide a five year summary report.

**Habitat Restoration (riparian and wetland habitats):** Restoration plantings will be monitored and managed by BSLT following installation. Irrigation utilizing the existing well on site will be provided for the plantings until establishment is successful. Plants will be protected by appropriate deer and gopher protection and BSLT will mow the site for invasive weed control seasonally. Prior to installation BSLT will be conducting test plots to ascertain the seed bank associated with the existing agricultural soils and will

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EXHIBIT E

plan grading activities accordingly to accommodate as weed free soil as possible for plantings. BSLT monitoring activities will include review of the amount of acreage converted to native wetland and riparian species compared against existing land conditions (now primarily agricultural fields). Additional success will be measured by ratio of survival versus failure of plantings as well as assessment of recruitment of natives through invasive species control. USFWS, BSLT's partners in the project, will assist in monitoring also by conducting surveys for songbirds, amphibians, and bats as the site reestablishes to riparian and wetland habitats.

**Groundwater Recharge:** Implement a monitoring network of groundwater monitoring devices as available to identify appropriate design for restoration and storage features on floodplain. Utilize remnant monitoring wells to assess potential infiltration and recharge post-project. BSLT will be working with academic partners to provide this assessment in the future.

**Water Quality:** Through funding provided by the EPA, the Project site will be monitored for water quality parameters related to sediment and nutrients (see Table 6 for actual parameters). A water quality monitoring plan has been developed for the project and will be implemented by a qualified laboratory beginning in 2011. This work will document pre-project water quality conditions on the Project site. Sampling will also occur post-project according to the same monitoring plan. BSLT will provide this data to WCB.

The remaining Project objectives are more qualitative in nature and performance reporting will be whether the project was actually built and how it is being used or changes related to morphology or actual use of an area.

**Connection Across the Floodplain:** Results for this objective are expected in wildlife use and possible re-habitation of wetland areas in the Project area especially by California red-legged frogs. This performance assessment approach will be done for the causeway for use by wildlife through installing a wildlife camera at the causeway if approval is secured from Cal Trans for such monitoring. Use of wetland areas by new populations of species such as the California red-legged frog will be done by onsite wildlife monitoring and surveys by BSLT and our partners. An additional measure of success for the connectivity will be scour of the lagoon restoration area completed in 2004. This can be measured through monitoring conducted by California State Parks and Monterey Peninsula Water Management District for the lagoon restoration project.

**Protect Agricultural Land from Flooding:** This objective can be reported based on flood events.

**Public Trails and Recreation:** This objective can be reported once construction of trail is complete and public use is estimated or quantified. Monitoring and assessment of Project success will largely be completed by the Big Sur Land Trust with partner agencies including Monterey County Water Resources Agency,

**EXHIBIT C – WILDLIFE CONSERVATION BOARD GRANT AGREEMENT WC-1059CF**

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**EXHIBIT E**

**Monterey Peninsula Water Management District, Monterey Peninsula Regional Park District, California State Parks, and Cal Trans.**

Objectives	Desired Outcome	Output Indicators	Outcome Indicators	Tools/Measurement Methods	Targets	Target Units & Timeframe
Reduce flood flows in urban areas	Reduce public and private property damages from flood flows greater than a 20-year event	Complete flood protection capital improvements: (1) flood conveyance causeway; (2) levee removal and regrading	Flood damage costs and FEMA repetitive loss reports	Review of annual flood repetitive loss reports at Monterey County Water Resources Agency; review of gauging for flood flow events	Average 0.5 foot reduction in flood elevations for 100-year event	flood elevations and gauge data initiated after 2013
Increase riparian and wetland habitat	Restore 80 acres of riparian and wetland habitats	100% design plans indicating restoration features and locations for plantings and habitat features such as recharge wetlands	% of native riparian and wetland species present on site	Vegetation mapping	85% success for restoration planting	number of plants surviving initiated after 2013
Provide habitat connection across the floodplain	Provide 500 feet of additional clearance under Highway One to connect the east side of floodplain with the west side of floodplain	600 foot causeway is constructed at Highway One	Movement of species such as California red-legged frog to East Odello	Annual red-legged frog surveys	Occupation of 1 wetland area in Odello East by California red-legged frog	1 population initiated after 2015
Protect Agricultural Land from Flooding	Remove 36-acres of Agricultural land from the 100-year floodplain	Agricultural land on south edge of Odello east is raised out of 100-year floodplain with fill from levees	Crop damages are reduced to \$0	Post flood event assessments and observations	\$0 in damages to crop values	Initiated 2011
Recharge groundwater and base flows to the Carmel River	Restoration actions result in areas for establishing storage areas for recharge of groundwater	Floodplain restoration design includes areas for storage and recharge to the aquifer	Recharge estimated utilizing existing monitoring wells in the floodplain	Monitoring wells and pit percolation tests correlating with restoration design for storage and recharge wetlands	Groundwater elevations at NGVD29 minimum at 4.5 feet and maximum at 20 feet	Measured groundwater elevations initiated after 2015

*Carmel River Riparian Restoration, Monterey County  
 Grant Agreement Number WC-1059CF  
 Project ID 2010174*

**EXHIBIT E**

Improve water quality	Restored floodplain provides area for sediment and nutrients to deposit in flood events thus preventing deposition in lagoon habitat	Riparian and wetland habitats are created in 90-acres of floodplain	Sediment and nutrient levels are monitored and reported for floodplain area	EPA approved water quality monitoring program to be conducted beginning 2011/2012 through and post project construction	Measurement of pre-project and post-project for the following parameters: nitrate and nitrite, total phosphate, turbidity, total suspended sediments	Measured water quality parameters initiated 2011
Public Trails and Recreation	Provide a new 1.2 mile trail along the south edge of the floodplain and trail connections to Palo Corona Regional Park	Public trail is constructed	Public use of trail	NA	15 users monthly	2015

Carmel River Riparian Restoration, Monterey County  
Grant Agreement Number – WC-1059CF  
Project ID - 2010174

EXHIBIT F  
Page 1

When recorded mail to:

STATE OF CALIFORNIA  
Department of Fish and Game  
Wildlife Conservation Board  
1807 13<sup>th</sup> Street, Suite 103  
Sacramento, California 95811

\_\_\_\_\_ Space above this line for Recorder's Use \_\_\_\_\_  
Project: NAME  
County: Project ID:

**NOTICE OF UNRECORDED GRANT AGREEMENT**

A Grant Agreement titled for reference purposes as NAME (Agreement No. XXXX), was entered into by and between the State of California, by and through the Wildlife Conservation Board (Board), NAME (Grantee) and NAME (Landowner).

The Board, Grantee and Landowner entered into said Grant Agreement (No. WC-XXXX), pursuant to which the Board granted funds to Grantee to perform certain activities on the certain real property in XXXX County owned by the Landowner, to BRIEF PROJECT DESCRIPTION, E.G., RESTORE WETLAND HABITAT. The Grant Agreement term runs from DATE, through DATE, for capital improvements and restoration activities and from DATE, through DATE, for management practices. The terms, conditions and restrictions of the Grant Agreement are binding upon and inure to the benefit of the Landowner, and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running for the project life span of the project on the subject lands as described in Exhibit "A" attached hereto and incorporated herein by this reference. For additional terms and conditions of the Grant, reference should be made to the Grant Agreement which is on file with the Wildlife Conservation Board, 1807 13<sup>th</sup> Street, Suite 103, Sacramento, California 95811.

**SIGNATURE OF WILDLIFE CONSERVATION BOARD**

\_\_\_\_\_  
John P. Donnelly, Executive Director DATE \_\_\_\_\_

**SIGNATURE OF GRANTEE (NAME)**

\_\_\_\_\_  
NAME, TITLE DATE \_\_\_\_\_

**SIGNATURE OF LANDOWNER (NAME)**

\_\_\_\_\_  
(This is an EXAMPLE NOUGA – Do Not sign this copy)  
NAME, TITLE DATE \_\_\_\_\_

*Carmel River Riparian Restoration, Monterey County  
Grant Agreement Number – WC-1059CF  
Project ID - 2010174*

**EXHIBIT F**  
Page 2

**EXHIBIT A**

**LEGAL DESCRIPTION**

All that certain real property situate in the County of XXXX, State of California,  
described as follows:



EXHIBIT D - MONTEREY COUNTY DRUG-FREE WORKPLACE POLICY

Before the Board of Supervisors in and for the  
County of Monterey, State of California

Resolution No. 91-384 --- )  
Establishing the "Monterey )  
County Drug-Free Workplace )  
Policy". . . . . )

WHEREAS, the County of Monterey is desirous of providing and maintaining a safe workplace for all its employees; and

WHEREAS, the County of Monterey desires to protect the health, safety and well-being of employees and of the public,

BE IT RESOLVED THAT, the County does hereby establishes the following policy for all its employees and volunteers, which shall be known as the "Monterey County Drug-Free Workplace Policy."

POLICY

1. The unlawful manufacture, sale or distribution, dispensing, possession, use or being under the influence of a controlled substance is prohibited while on County property, at a County location, or while on duty as a County employee or volunteer.
2. In the case of any County employee or volunteer found to have violated any of the prohibitions contained in Section 1, appropriate disciplinary action consistent with any applicable collective bargaining agreement covering that employee and/or consistent with the current Monterey County Personnel Resolution, as amended, will be taken.
3. In addition to compliance with Section 1 of this policy, any County employee or volunteer engaged in the performance of duties or services pursuant to a federal grant or contract must as a condition of employment, notify the appointing authority (or his/her designee) of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction. If the violation occurred at a work site where work is/was being done in connection with a specific federal grant or contract, the appointing authority shall inform the grant administrator and the granting agency within ten (10) days of such notification.
4. If any appointing authority (or his/her designee) becomes aware of any criminal drug statute conviction for a violation occurring in the workplace through some means other than Section 3 of this policy, and if the violation occurred at a work site where work is/was being done with a specific federal grant or contract, the appointing authority (or his/her designee) shall inform the granting agency within ten (10) days.
5. If the appointing authority (or his/her designee) becomes aware of any criminal drug statute conviction for a violation occurring in the workplace, it will take appropriate disciplinary action against such employee, up to and including

**EXHIBIT D - MONTEREY COUNTY DRUG-FREE WORKPLACE POLICY**

termination, as provided for in any applicable collective bargaining agreement covering the employee and/or the Monterey County personnel Resolution, as amended and/or will require that the convicted employee participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement or other appropriate agency.

6. In order to assure employee drug-free awareness and policy, the County shall provide the following program for all County employees and volunteers: distribution to each County employee and volunteer of (1) a brochure on the dangers of drug abuse; (2) distribution to all County employees and volunteers of a copy of this policy, and (3) dissemination of information regarding the County Employee Assistance program, in order to provide counseling and/or referral for extended counseling and/or treatment of drug-related problems. In addition, copies of applicable Monterey County collective bargaining agreements and of the current Monterey County Personnel Resolution, as amended, shall be available at each department work site for County employee and volunteer review.
7. The County will make good faith efforts to continue to maintain a drug-free workplace as described above.

PASSED AND ADOPTED on this 23rd day of July, 1991, upon motion of Supervisor Del Piero, seconded by Supervisor Strasser Kauffman, by the following vote, to-wit:

AYES: Supervisors Del Piero, Shipnuck, Perkins, Karas & Strasser Kauffman.

NOES: None.

ABSENT: None.

I, ERNEST K. MORISHITA, 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 at page 65 of Minute Book 65, on July 23, 1991

Dated: July 23, 1991

ERNEST K. MORISHITA, Clerk of the Board  
of Supervisors, County of Monterey,  
State of California.

By [Signature] Whitson and Associates, Inc. dba Whitson Engineers  
Final Design of CERREE Project  
Deputy RMA

ACORD™

Client#: 434 WHITSENGH1  
**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
 11/19/2015

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

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

PRODUCER Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090	CONTACT NAME: <b>Jo Lusk</b> PHONE (A/C, No, Ext): <b>510 465-3090</b>	FAX (A/C, No): <b>510 452-2193</b>	
	E-MAIL ADDRESS: <b>jlusk@dealeyrenton.com</b>		
INSURED Whitson and Associates, Inc. dba Whitson Engineers 9699 Blue Larkspur Lane, Suite 105 Monterey, CA 93940	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: <b>Travelers Indemnity Co. of Conn</b>		<b>25682</b>
	INSURER B: <b>Travelers Property Casualty Co</b>		<b>25674</b>
	INSURER C: <b>Navigators Insurance Company</b>		<b>42307</b>
	INSURER D:		
	INSURER E:		

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	6808D065908	11/01/2015	11/01/2016	EACH OCCURRENCE    \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence)    \$300,000 MED EXP (Any one person)    \$5,000 PERSONAL & ADV INJURY    \$1,000,000 GENERAL AGGREGATE    \$2,000,000 PRODUCTS - COMP/OP AGG    \$2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	X	BA3E066334	11/01/2015	11/01/2016	COMBINED SINGLE LIMIT (Ea accident)    \$1,000,000 BODILY INJURY (Per person)    \$ BODILY INJURY (Per accident)    \$ PROPERTY DAMAGE (Per accident)    \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$	X	X	CUP8D068578	11/01/2015	11/01/2016	EACH OCCURRENCE    \$3,000,000 AGGREGATE    \$3,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			UB4171T432	11/01/2015	11/01/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT    \$1,000,000 E.L. DISEASE - EA EMPLOYEE    \$1,000,000 E.L. DISEASE - POLICY LIMIT    \$1,000,000
C	Professional Liability			CM15DPL054051V	11/01/2015	11/01/2016	\$1,000,000 per claim \$3,000,000 annl aggr.

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

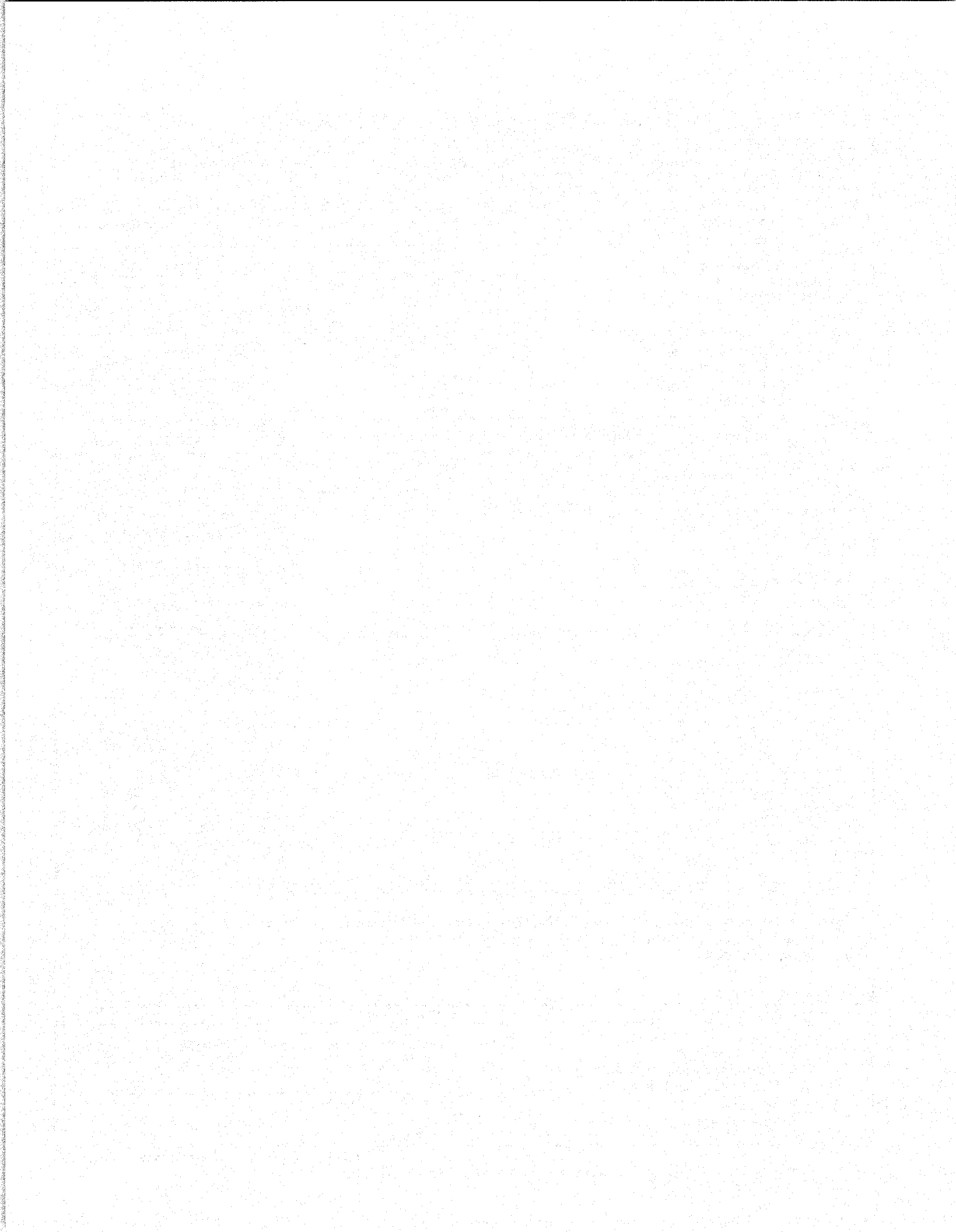
Re: Carmel River Flood Plain  
 The County of Monterey, its agents, officers and employees are named as additional insureds as respects general and auto liability for claims arising from the operations of the named insured. Insurance is primary and non-contributory.

**CERTIFICATE HOLDER**

**CANCELLATION**

County of Monterey Contracts Purchasing Department 168 West Alisal Street, 3rd Floor Salinas, CA 93905	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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POLICY NUMBER: 6808D065908

COMMERCIAL GENERAL LIABILITY  
ISSUE DATE: 11/01/2015

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

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

### SCHEDULE

NAME OF PERSON(S) OR ORGANIZATION(S): County of Monterey  
Contracts Purchasing Department  
168 West Alisal Street, 3rd  
Floor

### PROJECT/LOCATION OF COVERED OPERATIONS:

Name of additional insureds, cont'd: The County of Monterey, its agents, officers and employees

### PROVISIONS

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

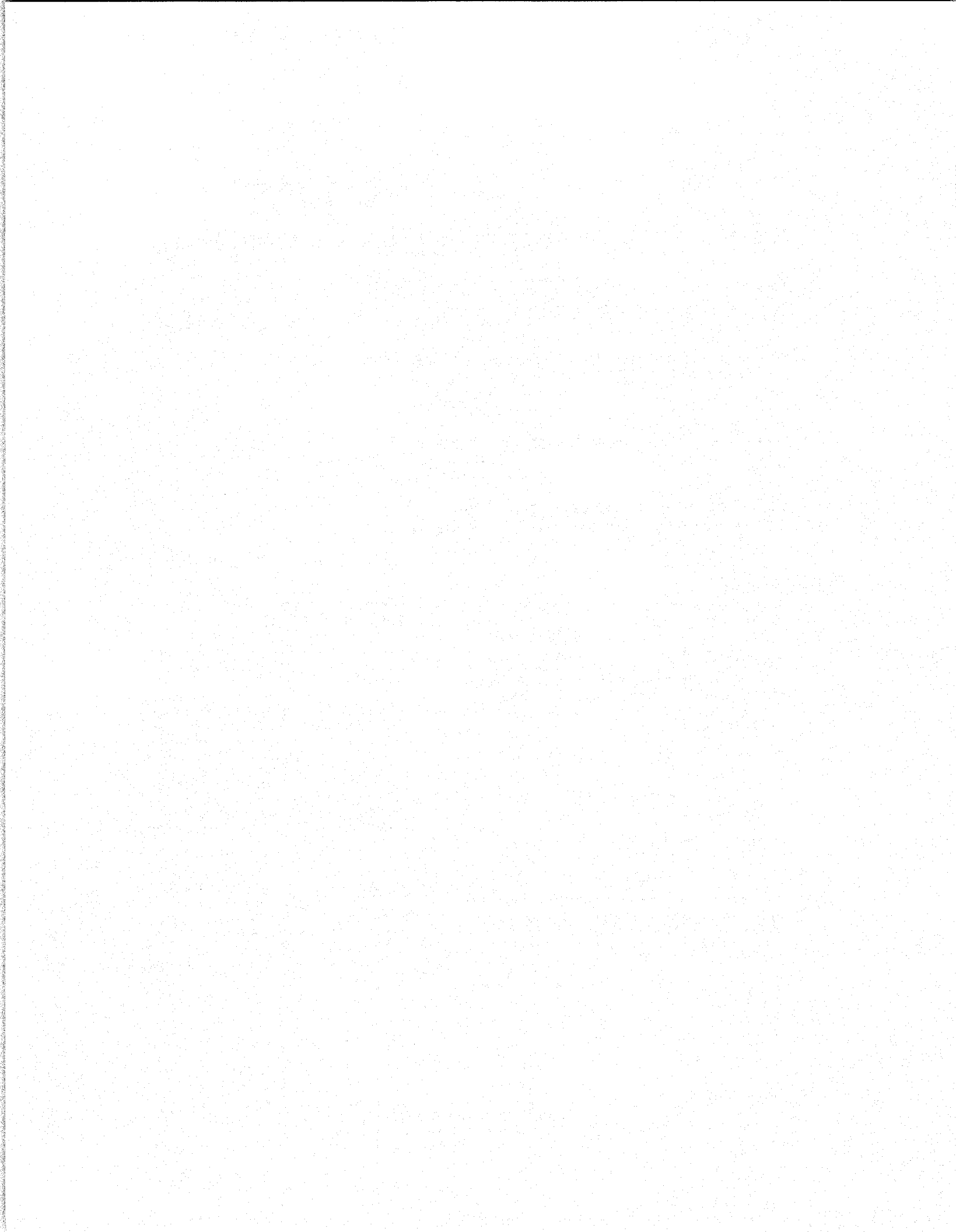
The person or organization shown in the Schedule above is an additional insured on this Coverage Part, but only with respect to liability for bodily injury, property damage or personal injury caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf.

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with your work and included within the "products-completed operations hazard."

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

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

- d. This insurance does not apply to the rendering of or failure to render any "professional services".
  - e. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the LIMITS OF INSURANCE (Section III) for this Coverage Part.
- B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):  
However, if you specifically agree in a contract or agreement requiring insurance that, for the additional insured shown in the Schedule, the insurance provided to that additional insured under this



## COMMERCIAL GENERAL LIABILITY

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

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

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

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

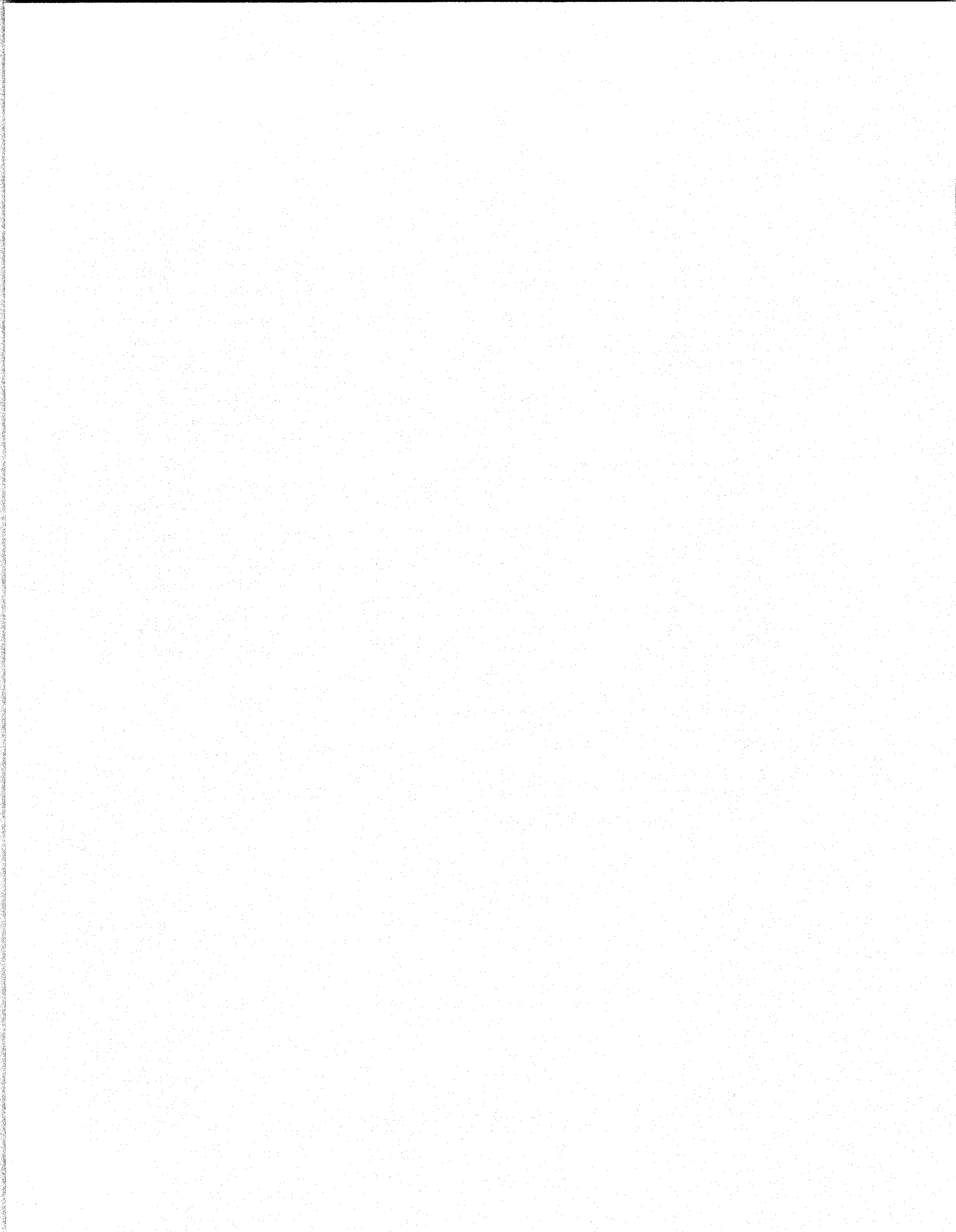
We waive any rights of recovery we may have against the additional insured shown in the Schedule above because of payments we make for "bodily injury", "property damage" or "personal

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

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

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

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





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

## DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

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

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

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement effective 11/01/2015	
Named Insured Whitson and Associates, Inc.	Countersigned by <i>Michael King</i> (Authorized Representative)

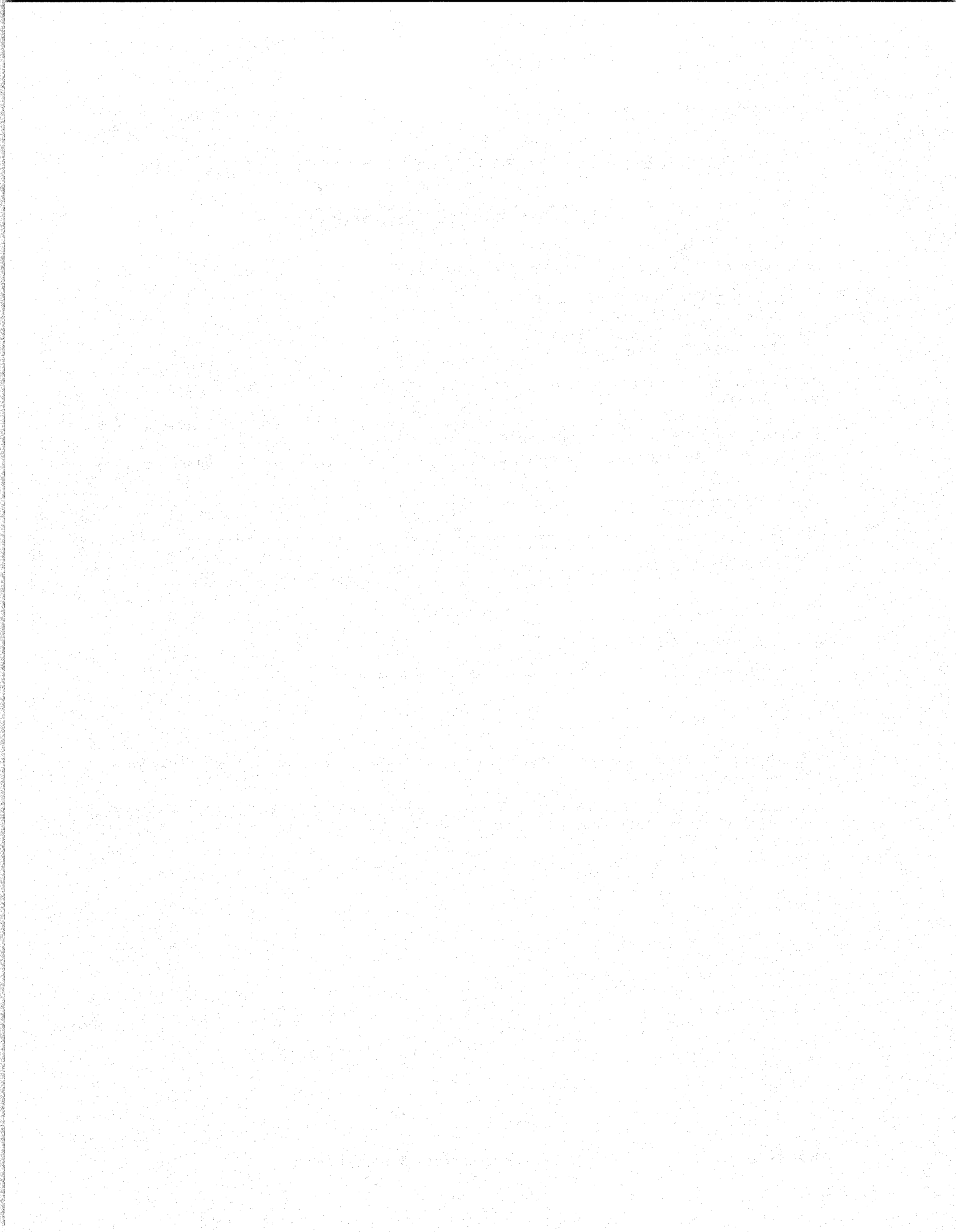
### SCHEDULE

**Name of Person(s) or Organization(s):**

Name of additional insureds, cont'd: The County of Monterey, its agents, officers and employees

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.



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

## BUSINESS AUTO COVERAGE FORM

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

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

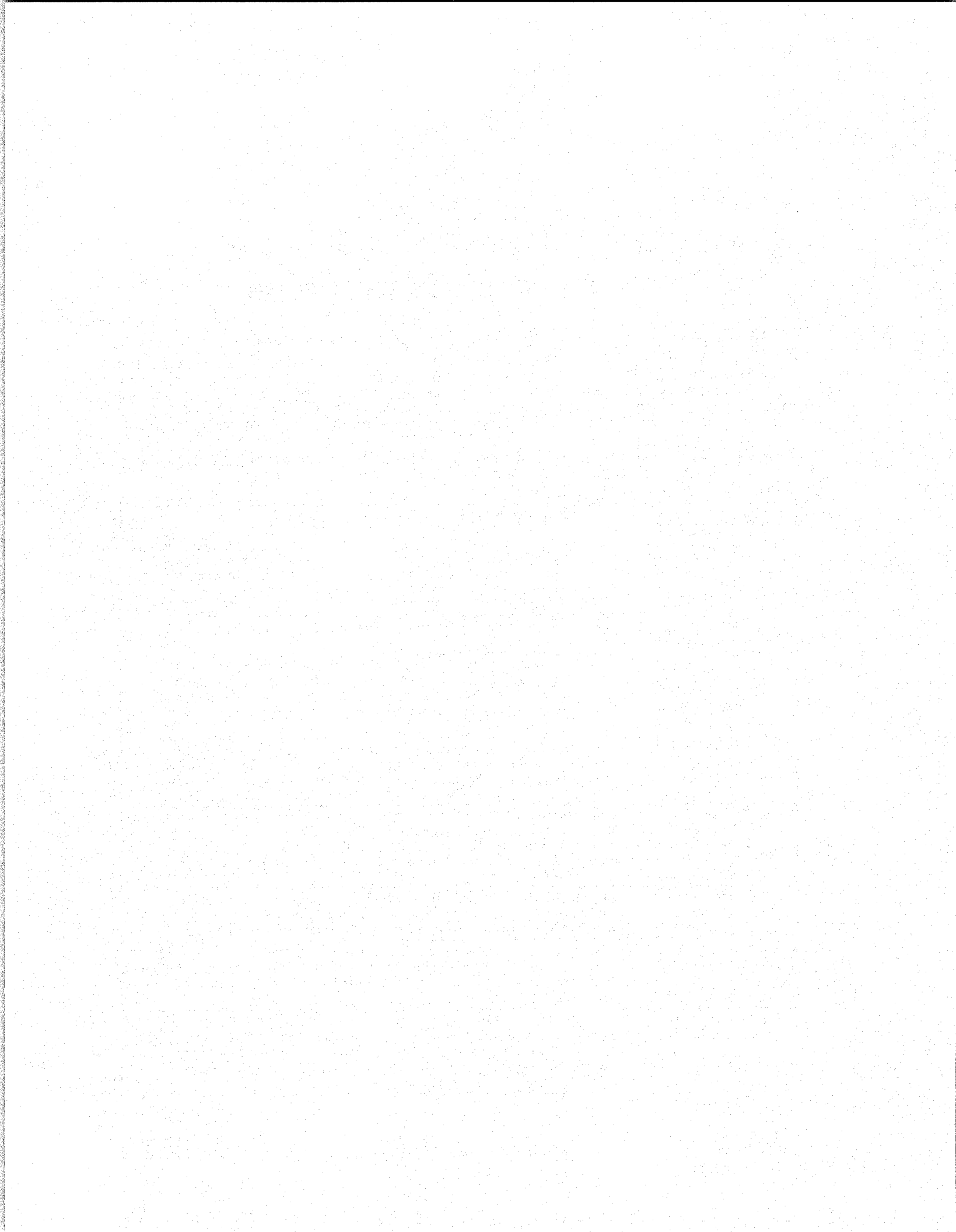
Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

### SECTION I - COVERED AUTOS

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

#### A. Description Of Covered Auto Designation Symbols

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



COMMERCIAL AUTO

19	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only	Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.
----	--	---

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

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

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

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

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

**SECTION II - COVERED AUTOS LIABILITY COVERAGE**

**A. Coverage**

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

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

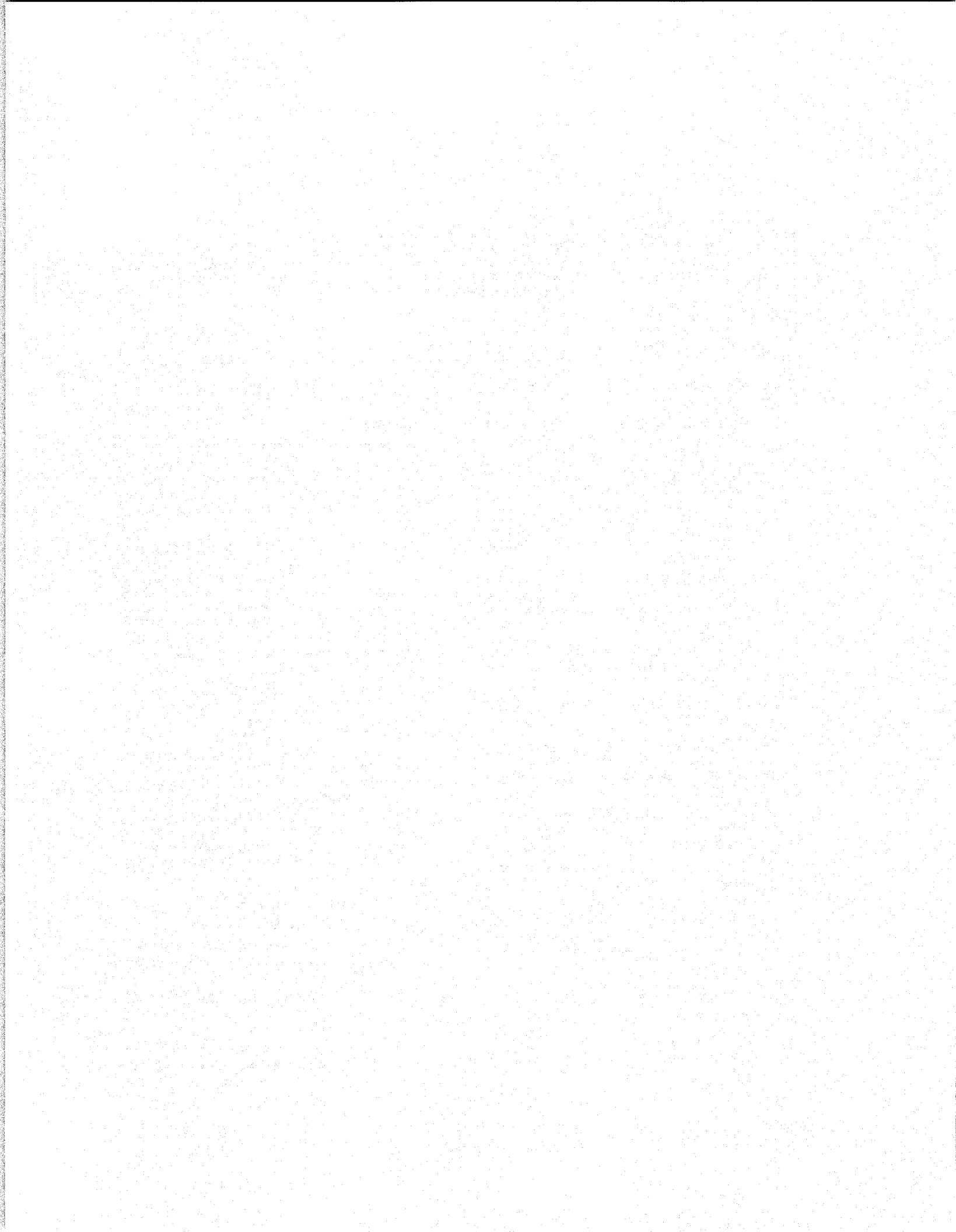
We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to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

**1. Who Is An Insured**

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
  - (1) The owner or anyone else from whom you hire or borrow a covered "auto".

This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.



## COMMERCIAL AUTO

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
  - (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
  - (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
  - (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.
- c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

### 2. Coverage Extensions

#### a. Supplementary Payments

We will pay for the "insured":

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

pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

#### b. Out-of-state Coverage Extensions

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

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

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

### B. Exclusions

This insurance does not apply to any of the following:

#### 1. Expected Or Intended Injury

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

#### 2. Contractual

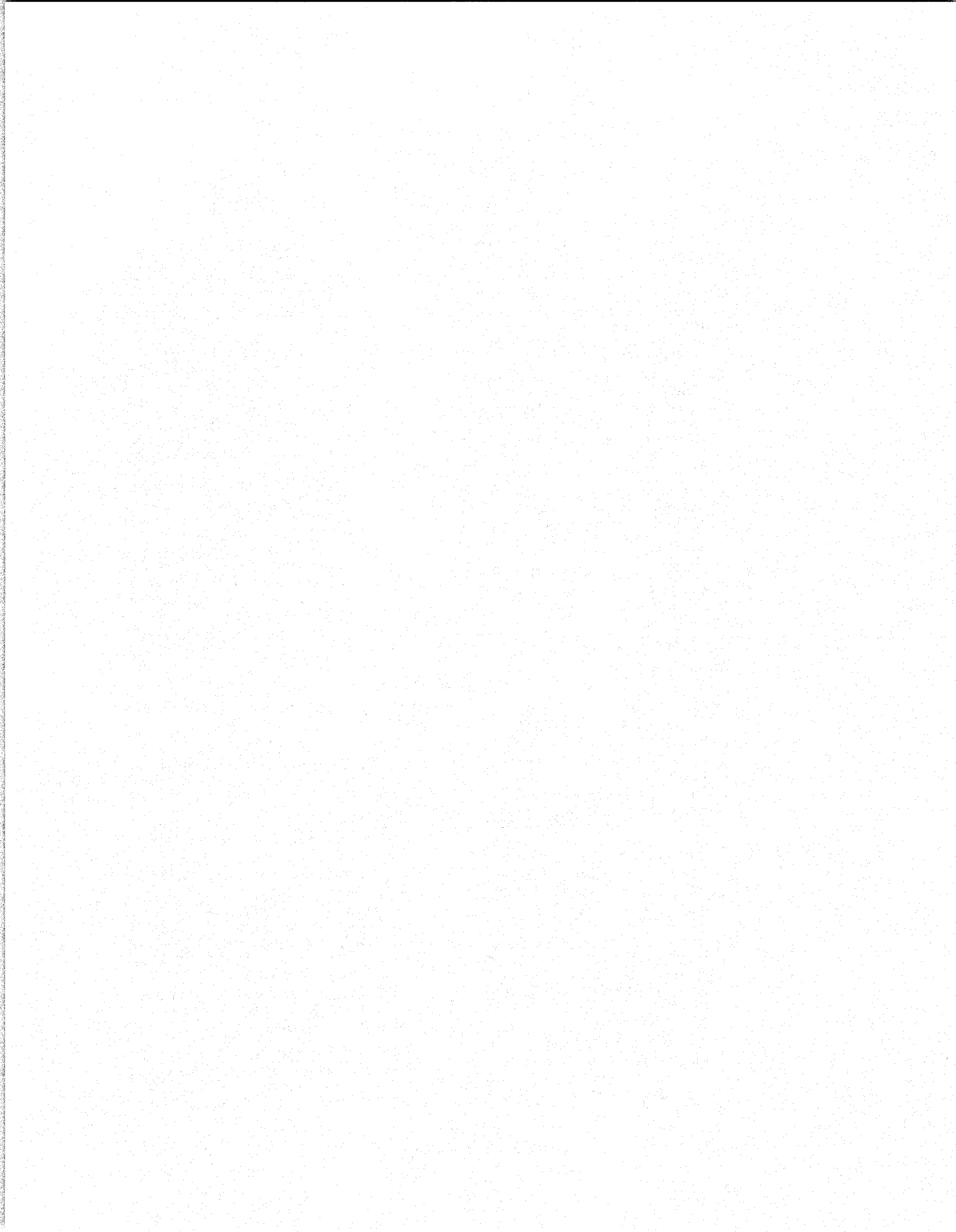
Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- b. That the "insured" would have in the absence of the contract or agreement, taxed

#### 3. Workers' Compensation

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





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or unemployment compensation law or any similar law.

### 4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

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

This exclusion applies:

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

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

### 5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

### 6. Care, Custody Or Control

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

### 7. Handling Of Property

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

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

### 8. Movement Of Property By Mechanical Device

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

### 9. Operations

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

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

### 10. Completed Operations

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

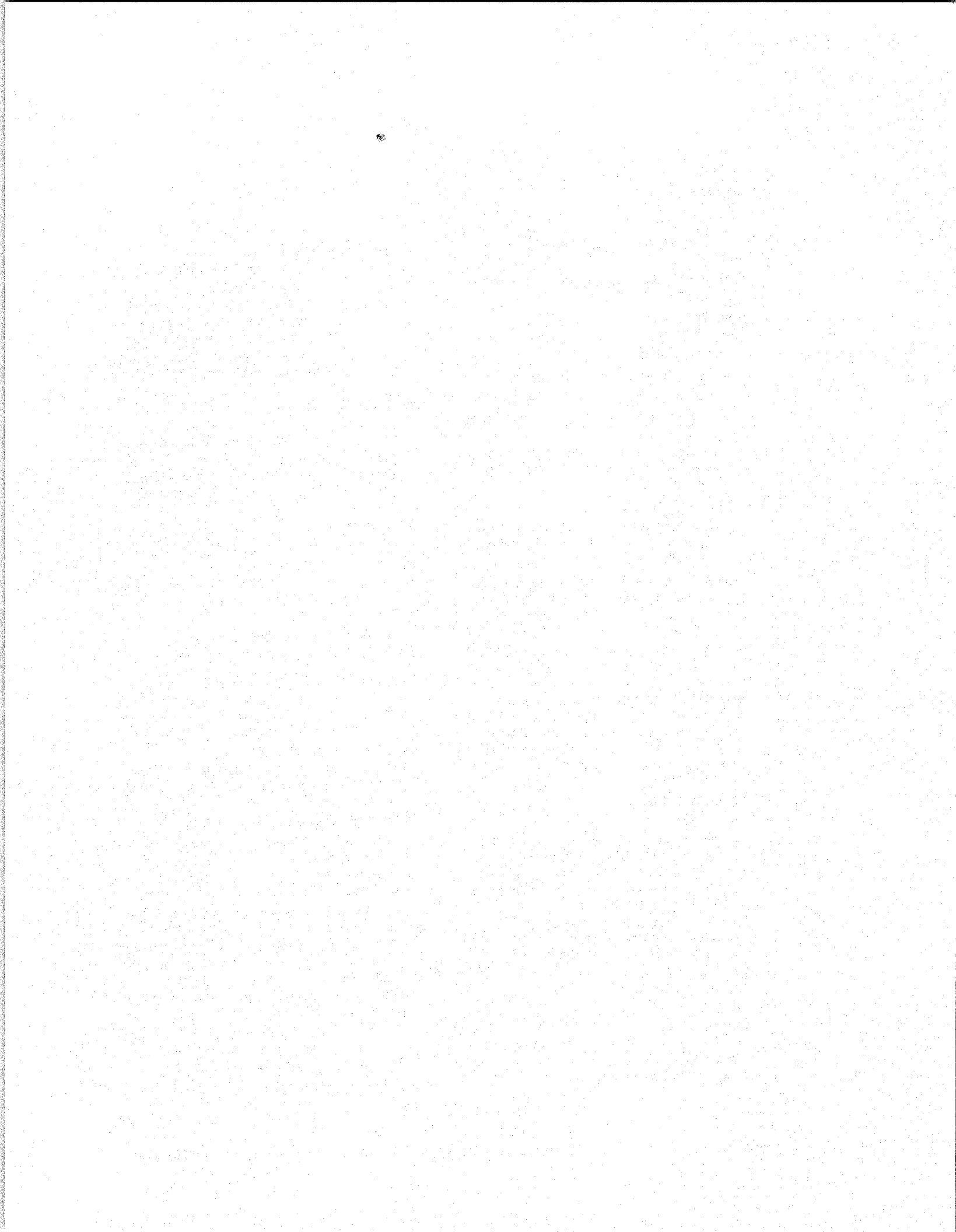
In this exclusion, your work means:

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

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

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

- (1) When all of the work called for in your contract has been completed;
- (2) When all of the work to be done at the site has been completed if your



contract calls for work at more than one site; or

- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

**11. Pollution**

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

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

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

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment".

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

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

**12. War**

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

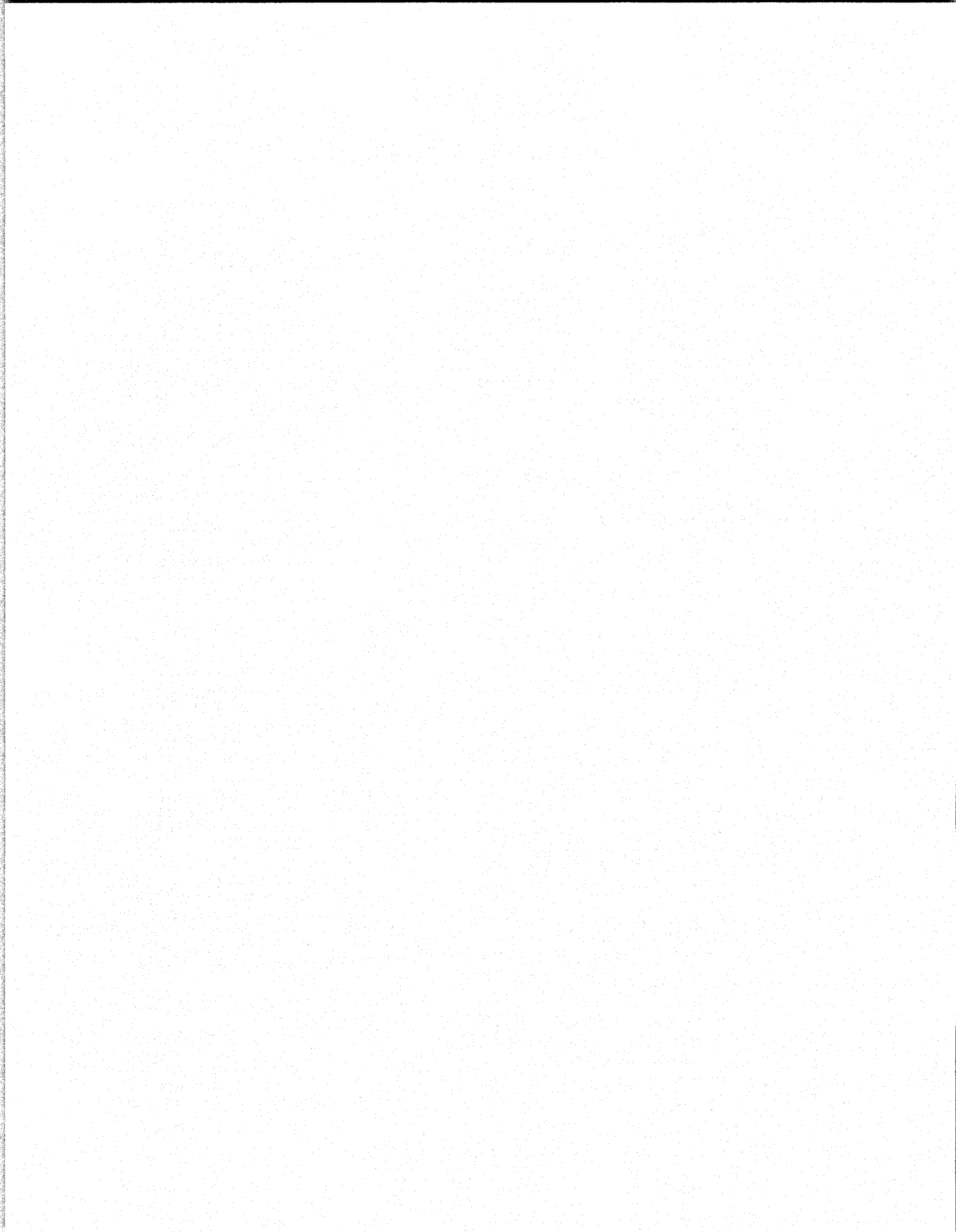
- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution,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

**13. Racing**

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

**C. Limit Of Insurance**

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



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

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

### SECTION III - PHYSICAL DAMAGE COVERAGE

#### A. Coverage

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

- a. **Comprehensive Coverage**

From any cause except:

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

- b. **Specified Causes Of Loss Coverage**

Caused by:

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

- c. **Collision Coverage**

Caused by:

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

2. **Towing**

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

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

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

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

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

4. **Coverage Extensions**

- a. **Transportation Expenses**

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

- b. **Loss Of Use Expenses**

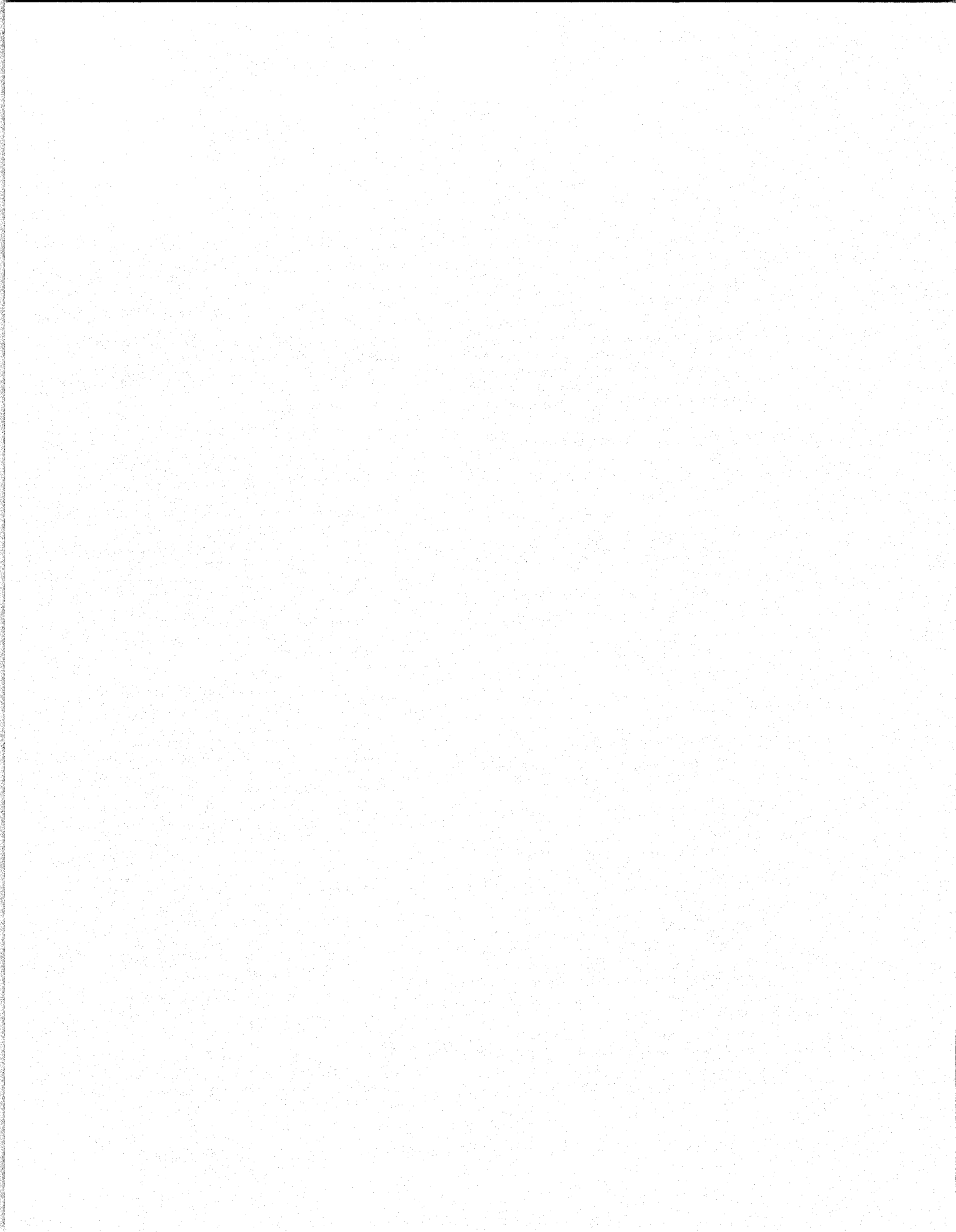
For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

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

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

#### B. Exclusions

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or



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event that contributes concurrently or in any sequence to the "loss".

### a. Nuclear Hazard

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

### b. War Or Military Action

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

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.
3. We will not pay for "loss" due and confined to:
  - a. Wear and tear, freezing, mechanical or electrical breakdown.
  - b. Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

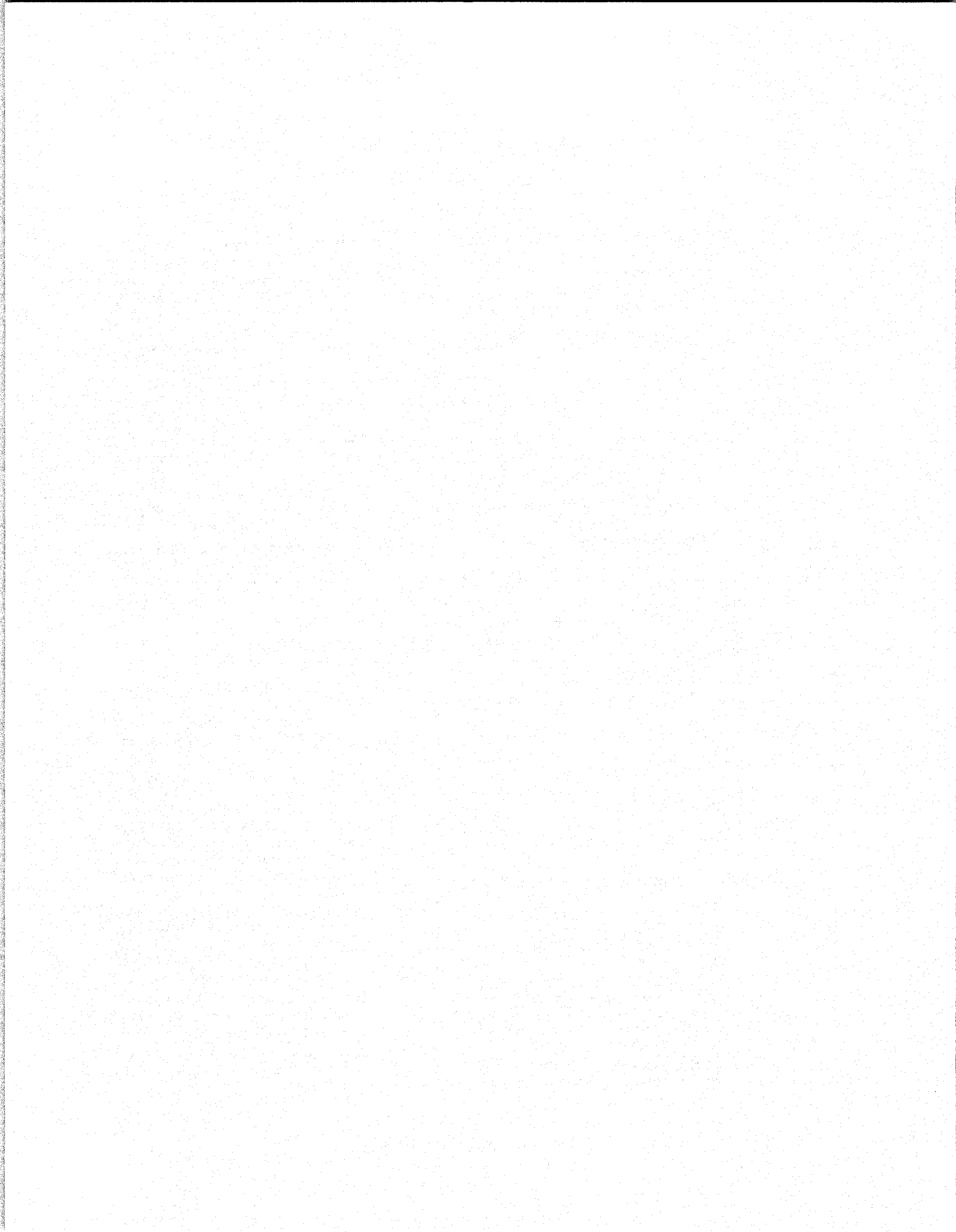
4. We will not pay for "loss" to any of the following:
  - a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
  - b. Any device designed or used to detect speed-measuring equipment, such as radar or laser detectors, and any jamming apparatus intended to elude or disrupt speed-measuring equipment.
  - c. Any electronic equipment, without regard to whether this equipment is permanently

installed, that reproduces, receives or transmits audio, visual or data signals.

- d. Any accessories used with the electronic equipment described in Paragraph c. above.
5. Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:
  - a. Permanently installed in or upon the covered "auto";
  - b. Removable from a housing unit which is permanently installed in or upon the covered "auto";
  - c. An integral part of the same unit housing any electronic equipment described in Paragraphs a. and b. above; or
  - d. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.
6. We will not pay for "loss" to a covered "auto" due to "diminution in value".

### C. Limits Of Insurance

1. The most we will pay for:
  - a. "Loss" to any one covered "auto" is the lesser of:
    - (1) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
    - (2) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
  - b. All electronic equipment that reproduces, receives or transmits audio, visual or data signals in any one "loss" is \$1,000, if, at the time of "loss", such electronic equipment is:
    - (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
    - (2) Removable from a permanently installed housing unit as described in Paragraph b.(1) above; or
    - (3) An integral part of such equipment as described in Paragraphs b.(1) and b.(2) above.





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2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

### D. Deductible

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

## SECTION IV - BUSINESS AUTO CONDITIONS

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

### A. Loss Conditions

#### 1. Appraisal For Physical Damage Loss

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

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

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

#### 2. Duties In The Event Of Accident, Claim, Suit Or Loss

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

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:
  - (1) How, when and where the "accident" or "loss" occurred;
  - (2) The "insured's" name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.

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

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

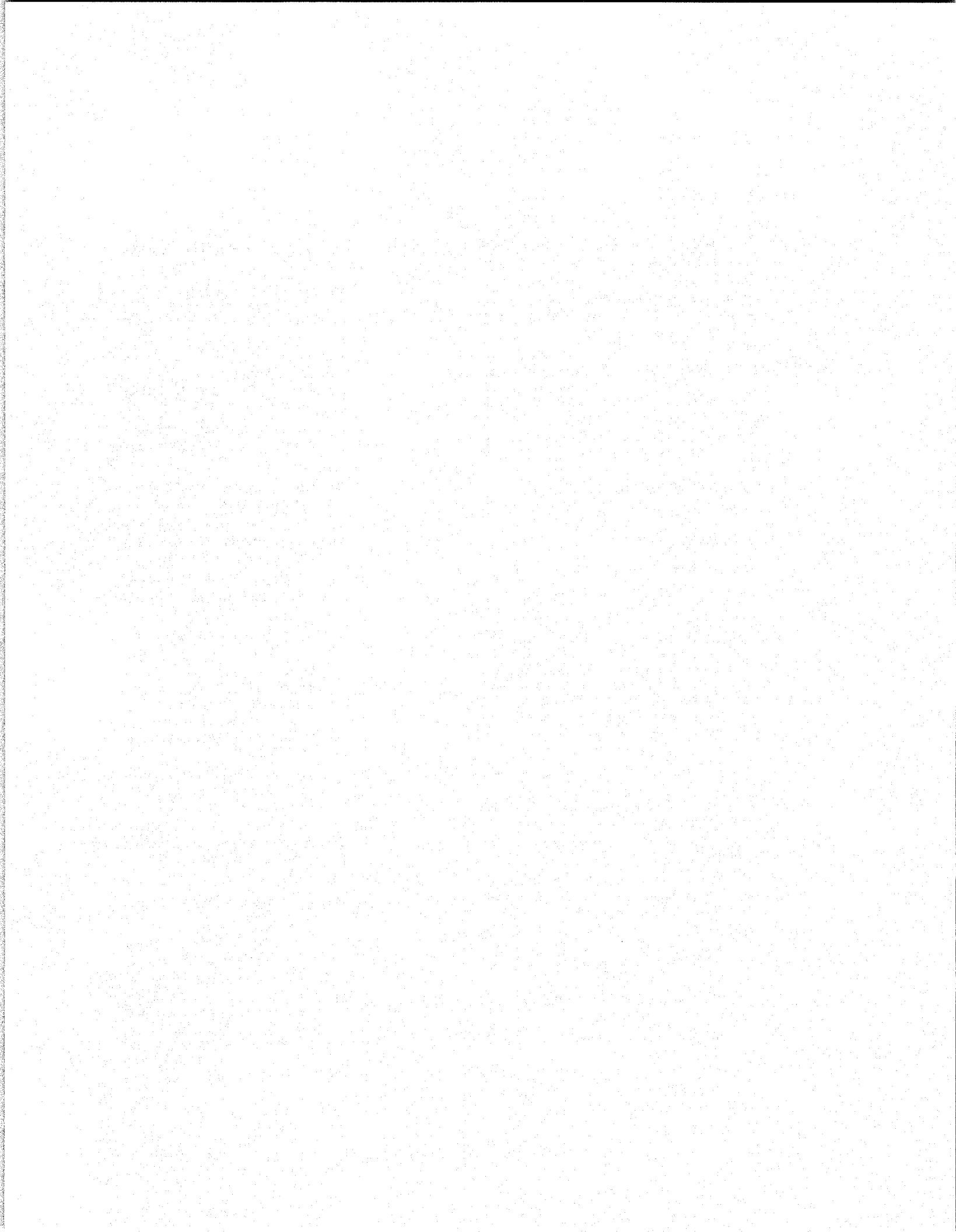
- c. If there is "loss" to a covered "auto" or its equipment, you must also do the following:

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

#### 3. Legal Action Against Us

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

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under Covered Autos Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.



**4. Loss-Payment**

ages

At our option, we may:

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

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

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

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

**B. General Conditions**

**1. Bankruptcy**

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

**2. Concealment, Misrepresentation Or Fraud**

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

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

**3. Liberalization**

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

**4. No Benefit To Bailee - Physical Damage Coverages**

We will not recognize any assignment or grant any coverage for the benefit of any per-

son or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

**5. Other Insurance**

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

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

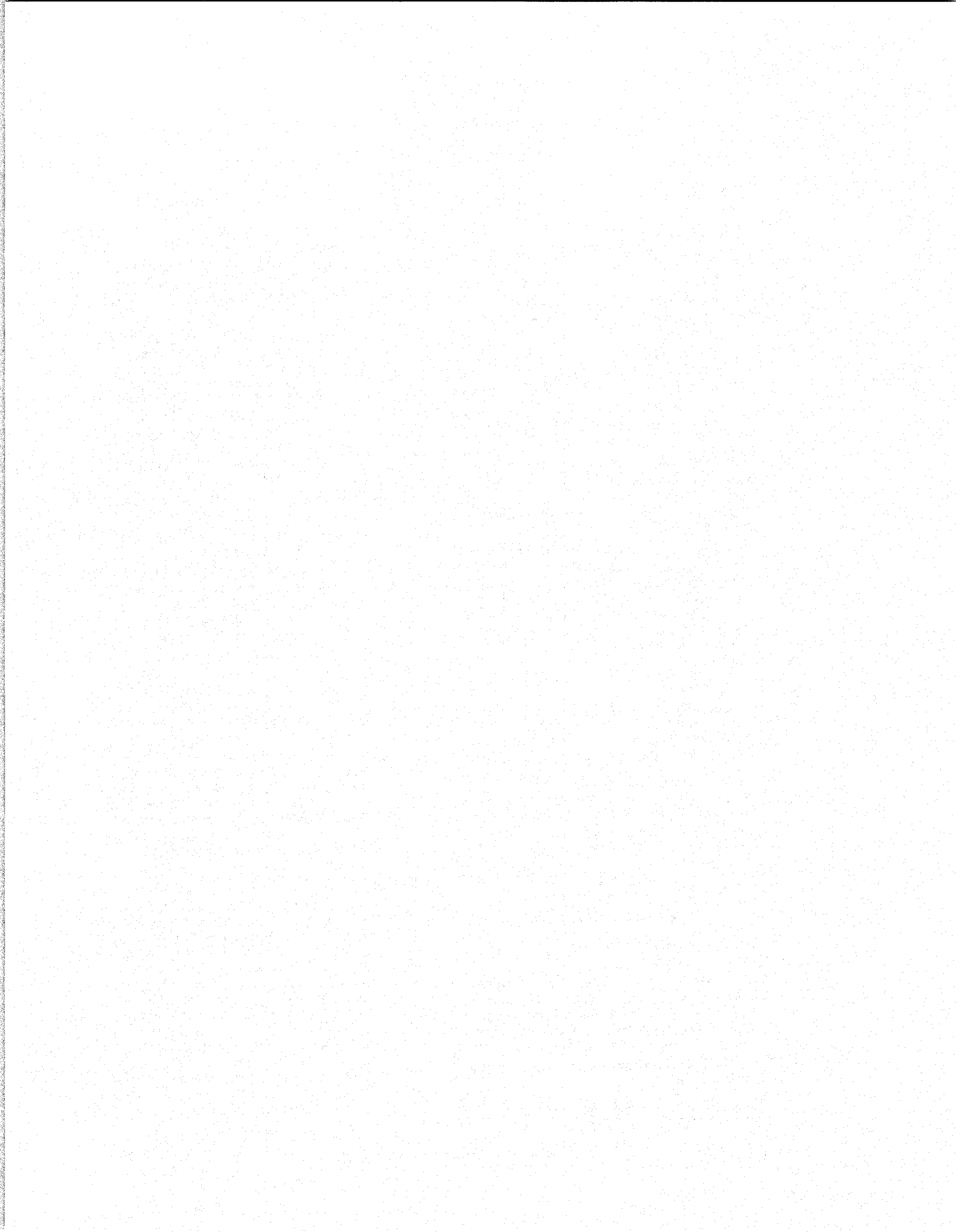
b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

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

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

**6. Premium Audit**

a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.



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

### 7. Policy Period, Coverage Territory

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

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

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;
- (4) Canada; and
- (5) Anywhere in the world if a covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less,

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

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

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

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

## SECTION V - DEFINITIONS

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B. "Auto" means:

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

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

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

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

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

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

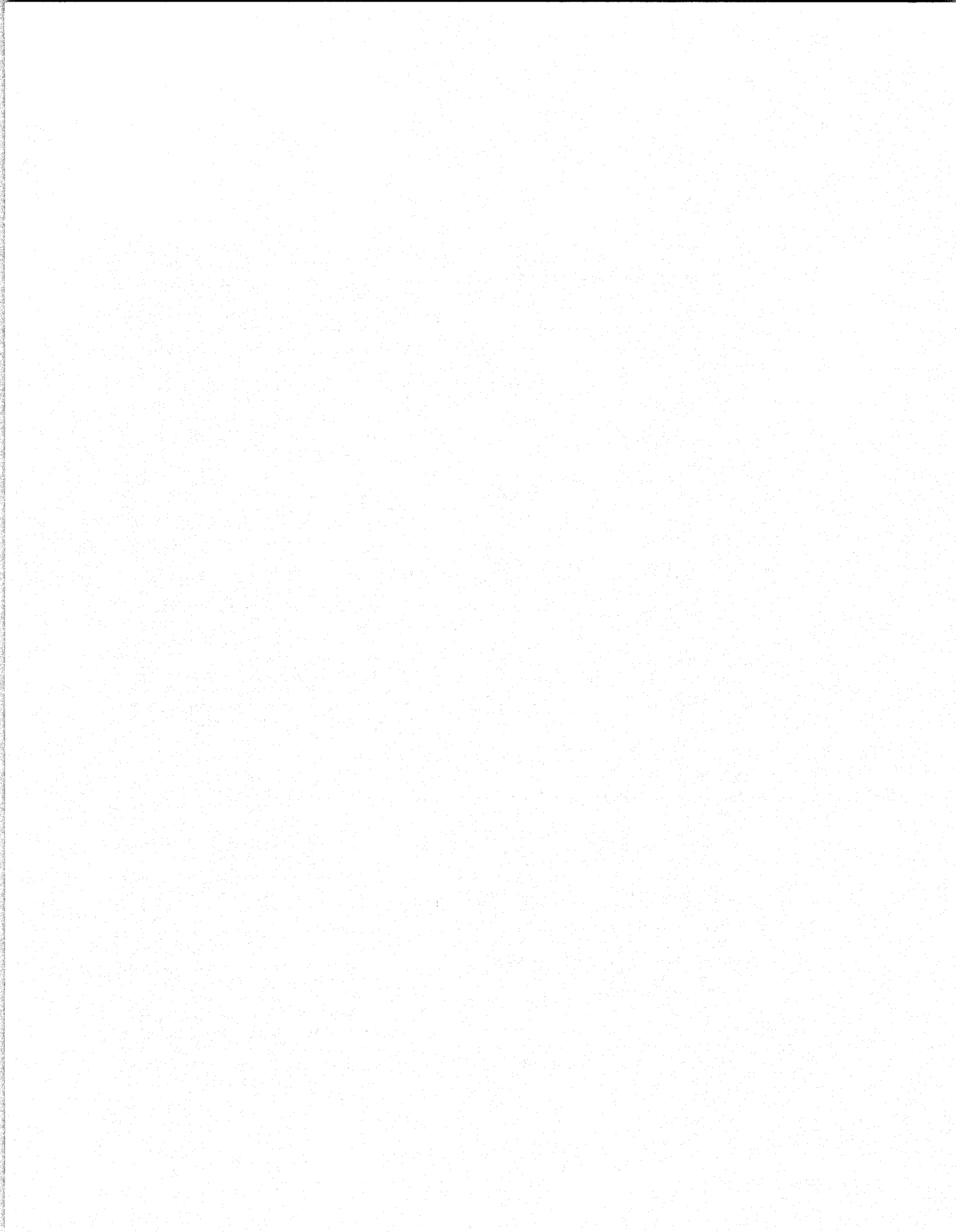
"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

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

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

- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

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



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

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

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

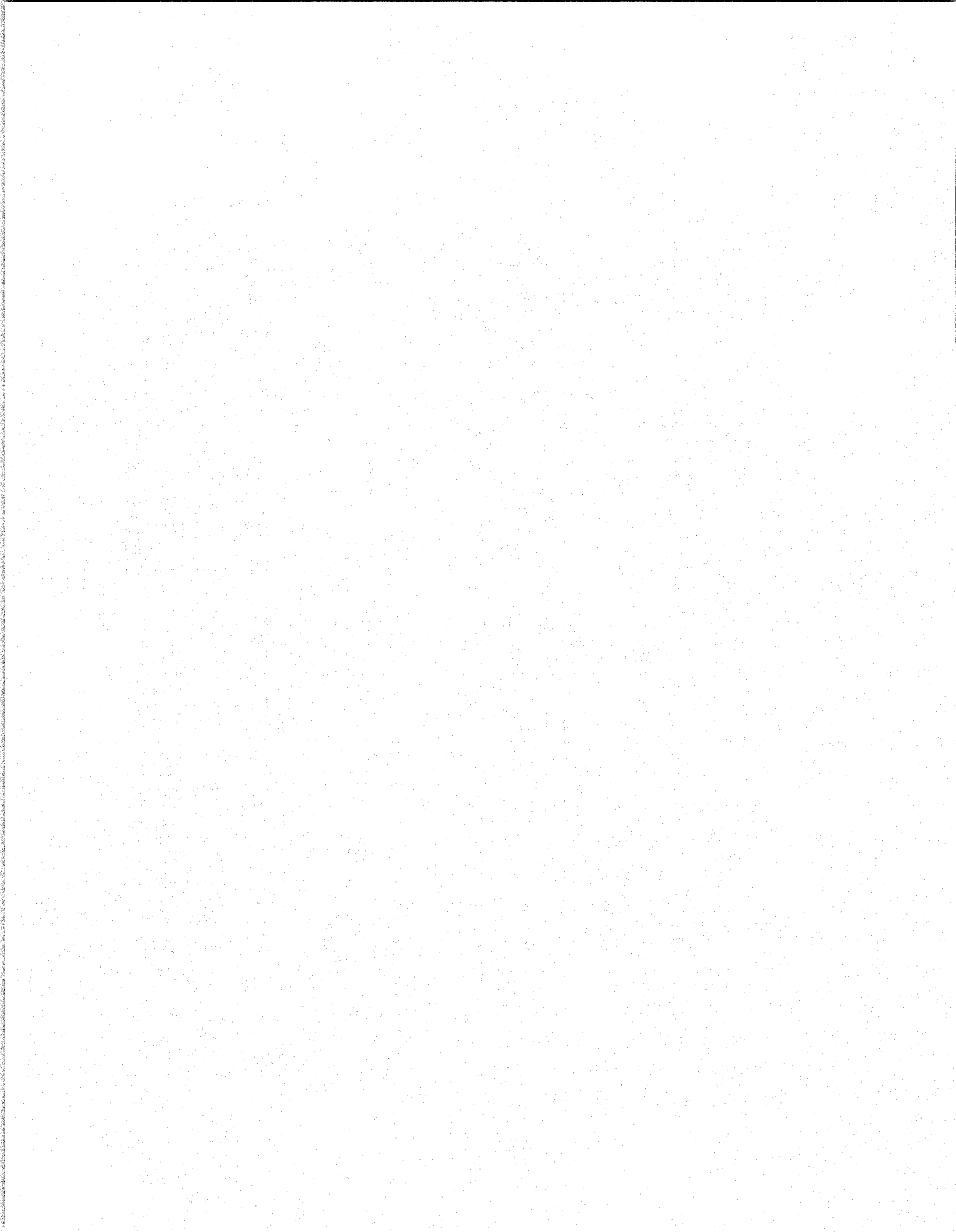
- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn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

- E. "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- F. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- G. "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.
- H. "Insured contract" means:
1. A lease of premises;
  2. A sidetrack agreement;
  3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or
6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

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

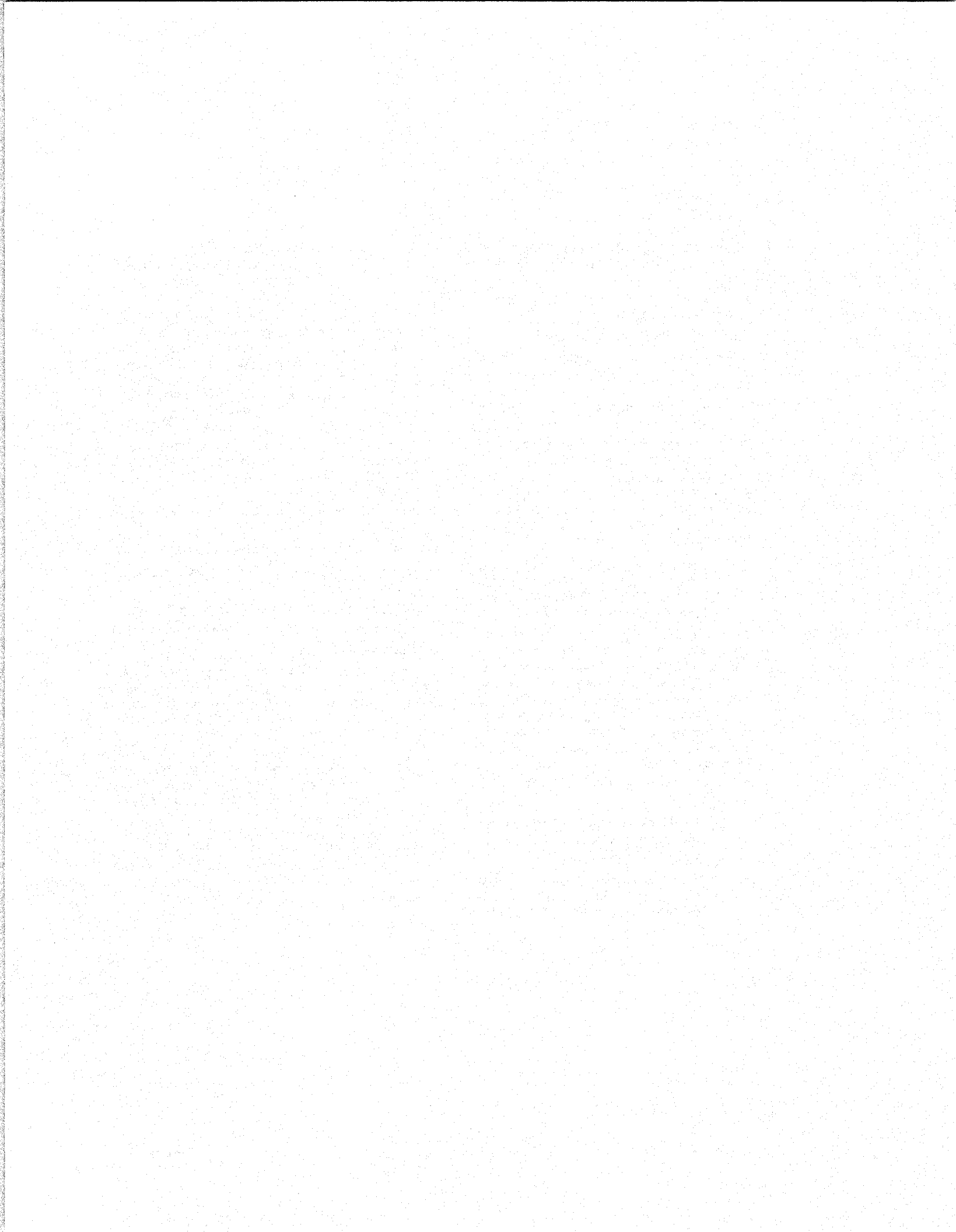
- a. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
  - b. That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
  - c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
- I. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- J. "Loss" means direct and accidental loss or damage.
- K. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:





## COMMERCIAL AUTO

1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  2. Vehicles maintained for use solely on or next to premises you own or rent;
  3. Vehicles that travel on crawler treads;
  4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - a. Power cranes, shovels, loaders, diggers or drills; or
    - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
  5. Vehicles not described in Paragraph 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
    - b. Cherry pickers and similar devices used to raise or lower workers; or
  6. Vehicles not described in Paragraph 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
    - a. Equipment designed primarily for:
      - (1) Snow removal;
      - (2) Road maintenance, but not construction or resurfacing; or
      - (3) Street cleaning;
    - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well-servicing equipment.
- However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".
- L. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
  - M. "Property damage" means damage to or loss of use of tangible property.
  - N. "Suit" means a civil proceeding in which:
    1. Damages because of "bodily injury" or "property damage"; or
    2. A "covered pollution cost or expense";to which this insurance applies, are alleged.
- "Suit" includes:
- a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.
- O. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
  - P. "Trailer" includes semitrailer.



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

## **BLANKET WAIVER OF SUBROGATION**

This endorsement modifies insurance provided under the following:

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

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

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

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

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

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

