

**AMENDMENT NO. 9
TO REIMBURSEMENT AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
DOMAIN CORPORATION**

THIS AMENDMENT NO. 9 to the Reimbursement Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Domain Corporation (hereinafter, "PROJECT APPLICANT") is hereby entered into between the County and the PROJECT APPLICANT (collectively, the County and PROJECT APPLICANT are referred to as the "Parties").

WHEREAS, PROJECT APPLICANT entered into a Reimbursement Agreement with County on July 21, 2006 (hereinafter "Agreement"); and

WHEREAS, Agreement was amended by the Parties on July 21, 2006 (hereinafter, "Amendment No. 1"), December 31, 2007 (hereinafter, "Amendment No. 2"), October 21, 2008 (hereinafter, "Amendment No. 3"), April 9, 2009 (hereinafter, "Amendment No. 4"), December 10, 2009 (hereinafter, "Amendment No. 5"), September 22, 2010 (hereinafter, "Amendment No. 6"), April 29, 2011 (hereinafter, "Amendment No. 7"), and May 3, 2012 (hereinafter, "Amendment No. 8"); and

WHEREAS, PROJECT APPLICANT has applied to the County for approval of various development permits for the Ferrini Ranch Subdivision (hereinafter, "PROJECT") requiring an Environmental Impact Report (EIR); and

WHEREAS, County engaged Pacific Municipal Consultants (hereinafter, "CONTRACTOR") to prepare the EIR for the PROJECT; and

WHEREAS, the EIR has not been completed; and

WHEREAS, additional funding is required for completion of new additional tasks associated with final editing and preparation of the EIR which require review, completion and inclusion into the EIR prior to publication; and

WHEREAS, the Parties wish to further amend the Agreement to increase the amount by \$22,022.40 to continue to allow reimbursement by the PROJECT APPLICANT to the County for costs incurred by the CONTRACTOR and County departments for services identified in the Agreement and as amended by this Amendment No. 9.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. Amend the second sentence of Paragraph B of "Recitals", to read as follows:

CONTRACTOR shall perform the Scope of Work specified in the Professional Services Agreement between COUNTY and CONTRACTOR, attached to this AGREEMENT as Exhibit 1, as amended by Exhibit 1-A, Exhibit 1-B and Exhibit 1-C, and incorporated herein by reference as if fully set forth.

2. Amend the first sentence of Paragraph 1, "Engagement of CONTRACTOR", to read as follows:

COUNTY shall engage CONTRACTOR in accordance with the contract between COUNTY and CONTRACTOR dated April 25, 2006, attached hereto and incorporated by this reference as Exhibit 1, as amended by Exhibit 1-A, Exhibit 1-B and Exhibit 1-C.

3. Amend Paragraph 2a., "CONTRACTOR'S Invoices", to read as follows:

- a. CONTRACTOR'S Invoices

PROJECT APPLICANT shall reimburse COUNTY the full cost of employing CONTRACTOR in accordance with the terms of Exhibits "1-A", "1-B" and "1-C" of this AGREEMENT.

4. Amend Paragraph 2b., "COUNTY Surcharge", to include the following:

- b. COUNTY Surcharge

Under Amendment No. 9, PROJECT APPLICANT shall pay COUNTY an additional sum each month equal to forty-eight percent (48%) of the amount of each monthly invoice from CONTRACTOR based on the total Base Budget increase amount of \$14,880.00. The additional amount of COUNTY Surcharge shall be \$7,142.40.

Total COUNTY Surcharge shall not exceed \$231,626.40.

5. Amend "Maximum Reimbursement Under AGREEMENT" section of Paragraph 2c., "Project Contingency", to read as follows:

Maximum Reimbursement Under AGREEMENT

The maximum which may be charged to PROJECT APPLICANT under this AGREEMENT is \$797,742.40.


CONTRACTOR'S Budget:	\$485,554.00
County Surcharge:	\$231,626.40
Project Contingency:	\$ 80,562.00

Maximum to be Reimbursed Under AGREEMENT: \$797,742.40

6. All other terms and conditions of the Agreement remain unchanged and in full force.
7. This Amendment No. 9 shall be attached to Agreement and incorporated therein as if fully set forth in the Agreement.


IN WITNESS WHEREOF, the Parties hereby execute this Amendment No. 9 as follows:

THE COUNTY OF MONTEREY

By: 
Director of Planning


Date: 8/23/12

PROJECT APPLICANT* DOMAIN CORPORATION

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

Its: Mark Kelton Vice President
(Printed Name and Title)

Date: 5/18/12

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

Its: Mark Leekley, Vice President & Assistant Secretary
(Printed Name and Title)

Date: 5/18/12

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

By: 
Deputy County Counsel

Date: 6-5-12

*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.

EXHIBIT 1-C

**AMENDMENT NO. 9 TO THE
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
PACIFIC MUNICIPAL CONSULTANTS
AND THE COUNTY OF MONTEREY
FOR THE
FERRINI RANCH SUBDIVISION EIR**

**AMENDMENT NO. 9
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
PACIFIC MUNICIPAL CONSULTANTS**

THIS AMENDMENT NO. 9 to the Professional Services Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Pacific Municipal Consultants (hereinafter, "CONTRACTOR") is hereby entered into between the County and the CONTRACTOR (collectively, the County and CONTRACTOR are referred to as the "Parties").

WHEREAS, CONTRACTOR entered into a Professional Services Agreement with County on July 21, 2006 (hereinafter, "Agreement"); and

WHEREAS, Agreement was amended by the Parties on July 21, 2006 (hereinafter, "Amendment No. 1"), December 31, 2007 (hereinafter, "Amendment No. 2"), October 21, 2008 (hereinafter, "Amendment No. 3"), April 1, 2009 (hereinafter, "Amendment No. 4"), December 16, 2009 (hereinafter, "Amendment No. 5"), September 22, 2010 (hereinafter, "Amendment No. 6"), April 29, 2011 (hereinafter, "Amendment No. 7"), and May 3, 2012 (hereinafter, "Amendment No. 8"); and

WHEREAS, the Ferrini Ranch Subdivision Environmental Impact Report (EIR) (hereinafter, "PROJECT") has not been completed; and

WHEREAS, additional funding is required for completion of new additional tasks associated with final editing and preparation of the EIR which require review, completion and inclusion into the EIR prior to publication; and

WHEREAS, the Parties wish to further amend the Agreement to increase the amount by \$14,880.00 to continue to provide tasks identified in the Agreement and as amended by this Amendment No. 9.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. Amend the first sentence of Paragraph 1, "Services to be Provided", to read as follows:

The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibits A-1, A-2 and A-3** in conformity with the terms of this Agreement.

Amendment No. 9 to Professional Services Agreement
Pacific Municipal Consultants
Ferrini Ranch Subdivision EIR
RMA - Planning Department
Term: July 11, 2006 - February 28, 2013
Not to Exceed: \$566,116.00

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

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibits A-1, A-2 and A-3, subject to the limitation as set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$566,116.00.

3. Amend Paragraph 4, "Additional Provisions/Exhibits", by adding "Exhibit A-3, Scope of Services/Payment Provisions".
4. All other terms and conditions of the Agreement remain unchanged and in full force.
5. This Amendment No. 9 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.

Amendment No. 9 to Professional Services Agreement
Pacific Municipal Consultants
Ferrini Ranch Subdivision EIR
RMA - Planning Department
Term: July 11, 2006 - February 28, 2013
Not to Exceed: \$566,116.00

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 9 to the Professional Services Agreement as of the day and year written below:

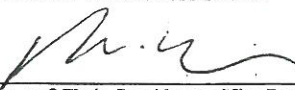
COUNTY OF MONTEREY

CONTRACTOR*

By: 
Director of Planning

Pacific Municipal Consultants
Contractor's Business Name

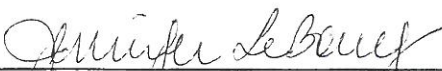
Date: 8/23/12

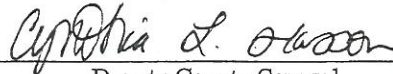
By: 
(Signature of Chair, President or Vice President)

Its: Philip O. Carter, President
(Printed Name and Title)

Date: May 18, 2012

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

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

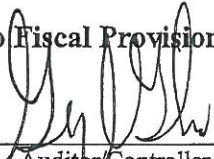
By: 
Deputy County Counsel

Its: Jennifer Leboeuf, Secretary
(Printed Name and Title)

Date: 6-5-12

Date: May 18, 2012

Approved as to Fiscal Provisions

By: 
Auditor Controller

Date: 5-22-12

Approved as to Indemnity, Insurance Provisions

By: _____
Risk Management

Date: _____

*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.

Amendment No. 9 to Professional Services Agreement
Pacific Municipal Consultants
Ferrini Ranch Subdivision EIR
RMA - Planning Department
Term: July 11, 2006 - February 28, 2013
Not to Exceed: \$566,116.00

fw

EXHIBIT A-3 – SCOPE OF SERVICES/PAYMENT PROVISIONS



March 28, 2012

Carl Holm, Assistant Director
MONTEREY COUNTY RMA
168 W. Alisal Street
Salinas, CA 93901

RE: FERRINI RANCH DRAFT EIR COMPLETION

Dear Carl:

Based on our meetings of November 21, 2011 and March 26, 2012, we understand that the County is considering additional edits or clarifications within the Ferrini Ranch EIR document prior to public review. Both the County and PMC understand that the Administrative Draft EIR as delivered to the County in November 2011 meets the conditions of our contract, incorporating early rounds of County comments. However, we also understand that this is a large and complex document that requires adequate review and attention. Additional edits at this juncture are understandable, but represent an additional round of review not anticipated in the scope of work. As such, additional text or figure edits will require additional PMC staff time and budget to complete.

The revisions will address the following issues. We understand that discussions with other departments may be necessary prior to public review.

TASK A – Make Final EIR Edits and Prepare Document for Publication

1. **Oak Woodlands.** County and PMC to consider method of calculation of oak woodland habitat impacted. PMC to consult with in-house biologist on biology issues raised by applicant.
2. **Aesthetics.** County to review and consider treatment of development in areas of "critical viewshed" to ensure that County policy is being applied consistently to all local projects. County will also review treatment of impacts relative to common public viewing areas, impact of berms, and proposed height limits. We anticipate modifications to the Aesthetics analysis based on this information and our discussions.
3. **Visual Simulations.** County to consider if images adequately serve the purpose of assessing potential environmental impacts. May result in modifications to simulations to address materials or colors used.
4. **Water Use.** County to research if "capping" water use for entire subdivision is feasible mitigation based on system design and operations.
5. **Existing Well.** County to confirm that existing well on property will continue to be used for grazing livestock.

EXHIBIT A-3 – SCOPE OF SERVICES/PAYMENT PROVISIONS

Carl Holm, Assistant Director

March 28, 2012

Page 2

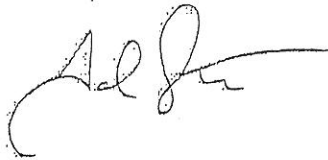
6. **Hazards.** County and PMC to review mitigation requirements relative to past farming practices in the context of the subdivision design.
7. **Noise.** PMC to explore mitigation alternatives for construction noise.
8. **Cultural Resources.** County to review data recovery plan with PMC relative to resulting significance after mitigation.
9. **Traffic.** County to review "one trip" impact at policy level. Consistent application and language regarding payment of traffic impact fees also to be reviewed relative to other recent projects.
10. **Air Quality/GHG Mitigation.** County to review mitigation language relative to Title 24 requirements. PMC to review GHG analysis to ensure use of current analysis methods.
11. **Alternatives.** Any and all EIR text changes will need to be compared to the Alternatives section to ensure internal consistency.
12. **General.** PMC to make minor changes/edits/clarifications based on continued reviews. All changes will require formatting and cross referencing of document prior to public review.

The budget to complete the additional changes prior to public review is based on the following:

Task/Issue	Hours	Cost
Review/Coordination Mtgs	16	\$2,400
Update 3.1 Aesthetics and Sims	16	\$2,400
Update Other Sections/Issues	30	\$4,500
PMC Biology Consult	6	\$900
GHG Review	6	\$900
Alternatives Edits	6	\$900
Document Format Revisions	24	\$2,880
Total	104	\$14,880

This work will be completed within four (4) weeks of authorization. If this approach and proposal is acceptable to both the County and the Applicant, we will work with you to immediately amend our Professional Services Agreement prior to the April 30, 2012 expiration date.

Sincerely,



Tad Stearn
Project Manager

Cc: David Mack, Monterey County
Phillip O. Carter, PMC

EXHIBIT A-3 – SCOPE OF SERVICES/PAYMENT PROVISIONS

Payment Provisions

Invoices for services performed under the AGREEMENT may be submitted monthly (by the tenth day of the month), but not more often than once monthly and shall include the following:

1. Invoice Coversheet

*Pacific Municipal Consultants
Ferrini Ranch Subdivision EIR*

Date: _____

Invoice No.: _____

Original Agreement Term: February 15, 2006 – December 31, 2007
Original Agreement Amount: \$ 507,113.00 (\$440,968 Base Budget plus \$66,145 Project Contingency)
Amendment #1:
Revised Agreement Term: July 11, 2006 – December 31, 2007
Revised Agreement Amount: \$ 496,655.00 (\$431,874 Base Budget plus \$64,781 Project Contingency)
Amendment #2: Extension of Term to September 30, 2008
Amendment #3: Extension of Term to March 31, 2009
Amendment #4: Extension of Term to December 31, 2009
Amendment #5: Extension of Term to September 30, 2010
Amendment #6: Extension of Term to April 30, 2011
Amendment #7: \$ 54,581.00 (\$38,800 Base Budget plus \$15,781 Project Contingency)
Extension of Term to April 30, 2012
Amendment #8: Extension of Term to February 28, 2013
Amendment #9: \$ 14,880.00 (\$14,880 Base Budget plus \$0 Project Contingency)
Total Agreement Amount: \$566,116.00 (\$485,554 Base Budget plus \$80,562 Project Contingency)

Remaining Balance \$ _____

Approved as to Work/Payment: _____
David Mack, Associate Planner

Date

PW

EXHIBIT A-3 – SCOPE OF SERVICES/PAYMENT PROVISIONS

All Invoices Are To Be Sent To:

Jaime Martinez, Accounting Technician
County of Monterey Resource Management Agency
Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

2. Transfer from Project Contingency Account

Transfer of funding from the Project Contingency Account (not increased for Amendment No. 9 for a total amount not to exceed \$80,562.00) requires the prior written approval of the Director of the Monterey County Planning Department, and the Project Applicant.

A recommendation for such a transfer shall be presented in writing by CONTRACTOR to the Project Planner, with a duplicate original delivered to the Contract Administrator, at the earliest possible date. The recommendation shall include:

- The dollar amount;
- The anticipated date the funded work would begin;
- The duration of the work;
- The entity (CONTRACTOR or subconsultant) to whom the funds would be transferred/allocated; and
- The justification for the expenditure.

Within five working days of receipt of the recommendation, the Project Planner and Contract Administrator will have contacted CONTRACTOR to discuss its recommendation and will have made a recommendation to the Director of the Monterey County Planning Department, or in his absence, the Assistant Director. Within ten working days thereafter, the Director of the Monterey County Planning Department or the Assistant Director will approve, deny, or approve a revised version of the recommendation received from CONTRACTOR, and will send his decision in writing to the Project Applicant, and CONTRACTOR.

Unless he denies the recommended transfer, the Director or Assistant Director of Planning Department will ask the Project Applicant to make a decision within five working days regarding the recommended transfer from the Project Contingency Account. If necessary, reasonable efforts will be made to reach a compromise.

Upon receipt of the Project Applicant's written approval by the Director of the Monterey County Planning Department or the Assistant Director, the funding transfer will be made. At the same time, a letter authorizing the work funded by the approved transfer will be sent to CONTRACTOR.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

Date (MM/DD/YR)
7/4/2012

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 require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Heffernan Professional Practice Insurance Brokers License No. 0564249 6 Hutton Centre Dr., Ste 500 Santa Ana, CA 92707	CONTACT NAME: Sherry Young		
	PHONE (A/C, No, Ext): 714-361-7700	FAX (A/C, No): 714-361-7711	
EMAIL ADDRESS: sherry@heffins.com			
INSURED Pacific Municipal Consultants DBA: PMC 2729 Prospect Park Dr., Ste 220 Rancho Cordova, CA 95670	INSURERS AFFORDING COVERAGE		NAIC #
	INSURER A:	Citizens Insurance Co of America	31534
	INSURER B:	Hanover American Insurance Co.	36034
	INSURER C:	Massachusetts Bay Insurance Co	22306
	INSURER D:	Continental Casualty Co.	20443
	INSURER E:		

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT 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	GENERAL L LIABILITY	X		OBF914666101	07/01/12	07/01/13	EACH OCCURRENCE	\$2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$5,000
	GEN'L. AGGREGATE LIMIT APPLIES PER						PERSONAL & ADV INJURY	\$2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						GENERAL AGGREGATE	\$4,000,000
							PRODUCTS - COMP/OP AGG	\$4,000,000
								\$
A	AUTOMOBILE LIABILITY	X		OBF914666101	07/01/12	07/01/13	COMBINED SINGLE LIMIT (Ea accident)	2,000,000
	ANY AUTO						BODILY INJURY (Per person)	\$
	ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			OBF914666101	07/01/12	07/01/13	EACH OCCURRENCE	\$2,000,000
	EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE						AGGREGATE	\$2,000,000
	DED <input checked="" type="checkbox"/> RETENTION \$10,000							\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	N/A	WZF912749001 (CA, AZ)	07/01/12	07/01/13	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	
	ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? (Mandatory in N.H.)						E.L. EACH ACCIDENT	\$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below.						E.L. DISEASE - EA EMPLOYEE	\$1,000,000
C				WDF912749601 (OR)	07/01/12	07/01/13	E.L. DISEASE - POLICY LIMIT	\$1,000,000
D	Professional Liability			MCH288307507	07/01/12	07/01/13	Per Claim Aggregate	\$2,000,000 \$3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Projects as on file with the insured including but not limited to Ferrini Rancho Subdivision EIR. County of Monterey, its agents officers & employees are named as additional insureds & primary/non-contributory clause applies to the general liability policy, including the non-owned & hired auto liability-see attached endorsement.

CERTIFICATE HOLDER County of Monterey Contracts/Purchasing Department 168 W. Alisal St., 3rd Fl. Salinas, CA 93901	CANCELLATION 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 

Policy Number: OBF914666101

Insured: Pacific Municipal Consultants
DBA: PMC

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY SUPPLEMENTARY ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

I. **Additional Insured by Contract, Agreement or Permit**

Under **SECTION II – LIABILITY, C. Who Is An Insured**, Paragraph 4, is added as follows:

- a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract, agreement or permit that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf,

but only with respect to:

- (3) "Your work" for the additional insured(s) at the location designated in the contract, agreement or permit; or

- (4) Premises you own, rent, lease, control or occupy.

This insurance applies on a primary basis if that is required by the written contract, agreement or permit.

- b. This provision does not apply:

- (1) Unless the written contract or written agreement has been executed or permit has been issued prior to the "bodily injury", "property damage" or "personal and advertising injury";

- (2) To any person or organization included as an insured by an endorsement issued by us and made part of this Policy;

- (3) To any lessor of equipment:

- (a) After the equipment lease expires; or

- (b) If the "bodily injury", "property damage" or "personal and advertising injury" arises out of the sole negligence of the lessor;

- (4) To any:

- (a) Owners or other interests from whom land has been leased which takes place after the lease for that land expires; or
- (b) Managers or lessors of premises if:
 - (i) The occurrence takes place after you cease to be a tenant in that premises; or
 - (ii) The "bodily injury", "property damage" or "personal and advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor; or
- (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services. This includes but is not limited to any professional services as an architect or engineer arising out of any construction agreement or activities under which any insured or anyone acting on any insured's behalf provides or provided service, advice, expertise or work. Construction includes, but is not limited to, the plan, conception, design, build, construct, assembly, development,

safety, erection, formation, reconstruct, rehabilitation, repair, or any improvement made to real property. Construction also includes the hiring, supervision or management of any of these activities. However, this exclusion does not apply to liability arising out of an insured's presence at a jobsite that was not caused by professional activities listed in the above paragraph.

- c. Additional insured coverage provided by this provision will not be broader than coverage provided to any other insured.
- d. All other insuring agreements, exclusions, and conditions of the policy apply.

II. Additional Insured by Contract, Agreement or Permit – Primary and Non-contributory

The following is added to **SECTION III – COMMON POLICY CONDITIONS:**

M. Other Insurance

1. Additional Insureds

If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under **SECTION II - LIABILITY, Part C – Who is An Insured**, is primary and non-contributory, the following applies:

If other valid and collectible insurance is available to the Additional Insured for a loss we cover under **SECTION II - LIABILITY, Part A. Coverages, Paragraph 1., Business Liability** our obligations are limited as follows:

a. Primary Insurance

This insurance is primary to other insurance that is available to the Additional Insured which covers the Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

- (1) For the sole negligence of the Additional Insured;
- (2) When the Additional Insured is an Additional Insured under another primary liability policy; or
- (3) When b.(2) below applies.

If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b.(3) below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

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

(b) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;

(c) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner; or

(d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of **SECTION II - LIABILITY, Part A. Coverages, 1. Business Liability.**

When this insurance is excess, we will have no duty under **SECTION II – LIABILITY, Part A. Coverages, 1. Business Liability** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

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

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

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

c. Method Of Sharing

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

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

III. Aggregate Limit of Insurance (Per Project)

- a. For purposes of the coverage provided by this endorsement, **D. Liability and Medical Expenses Limits of Insurance** under **Section II – Liability** is amended by adding the following:

The General Aggregate Limit under **D. Liability and Medical Expenses Limits of Insurance** applies separately to each of "your projects" or each location listed in the Declarations.

- b. For purposes of the coverage provided by this endorsement **F. Liability And Medical Expenses Definitions** under **Section II - Liability** is amended by adding the following:

- a. "Your project" means:
 - i. Any premises, site or location at, on, or in which "your work" is not yet completed; and
 - ii. Does not include any location listed in the Declarations.

IV. Blanket Waiver of Subrogation

Paragraph **K. Transfer Of Rights Of Recovery Against Others To Us** in **Section III – Common Policy Conditions** is amended by the addition of the following:

We will waive any right of recovery we may have against any person or organization when you have agreed in a written contract, permit or agreement to waive any rights of recovery against such person or organization because of payments we make for injury or damage

arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard".