

## **AGREEMENT BETWEEN COUNTY OF MONTEREY AND KITCHELL/CEM, INC.**

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County", and **KITCHELL/CEM, INC.**, hereinafter referred to as "CONTRACTOR."

### **RECITALS**

WHEREAS, County has invited submittal of qualifications through the Request for Qualifications RFQ# 10458 for to provide **"ON-CALL" SERVICES OVER \$100,000 FOR ARCHITECTURAL AND ENGINEERING DESIGN SERVICES FOR VARIOUS CORRECTIONAL PROJECTS LOCATED IN MONTEREY COUNTY, CALIFORNIA**, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible qualifications package to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

### **1.0 PERFORMANCE OF THE AGREEMENT**

- 1.1 After consideration and evaluation of the CONTRACTOR'S qualifications package, the County hereby engages CONTRACTOR to provide the services set forth in RFQ #10458 and in this AGREEMENT on the terms and conditions contained herein and in RFQ #10458. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

This AGREEMENT with Attachment K: Fee Schedule/Pricing Sheet

The following documents are on file with the Office of Contracts/Purchasing:

RFQ #10458 plus all associated Addenda

CONTRACTOR's Qualifications Package March 7, 2014

Certificate of Insurance

Additional Insured Endorsements

- 1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: plus

RFQ Addenda #1, CONTRACTOR's Qualifications Package, Certificate of Insurance and Additional Insured Endorsements.

- 1.3 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.
- 1.4 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.
- 1.4.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.
- 1.5 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.

## 2.0 SCOPE OF SERVICE

- 2.1 The SCOPE OF WORK includes but is not limited to the following:

The scope of work shall include, in general, the full range of professional architectural or engineering pre-planning and design services including services of all types of sub-consultant design disciplines typically required for correctional projects in the public sector. Tasks required for each individual project may vary and may include but are not limited to the following architectural or engineering design tasks:

- Program Development to Program Validation including Concept Development and Spatial Programming Studies
- Feasibility Studies/Project Definition
- Bid Scoping Documents
- All Phases of Project Design and Disciplines
- Specifications
- Design Reviews
- Cost Estimating
- Value Engineering
- Constructability Reviews
- Building Evaluations

- Troubleshooting
- Construction Support Services
- BIM/CADD/Drafting Work
- General Engineering Services
- Project Management [if appropriate and if applicable]
- Construction Management [if appropriate and if applicable]

2.2 Specific requirements include but are not limited to the following:

2.2.1 Services will be provided on an on-call basis. The process will consist of the County contacting the CONTRACTOR(S) and requesting services related to an individual project. CONTRACTOR(S) will then prepare a detailed scope and cost.

2.2.2 The County is implementing a Job Order Contracting (JOC) construction delivery method. Not all construction projects will use the JOC program. For those projects that elect to use the JOC program, CONTRACTOR(S) must become familiar with the quality and workmanship required by the applicable Construction Task Catalogs (CTC) and coordinate and adjust specifications and details produced by the JOC contractor.

2.3 CONTRACTOR will advocate for the County and ensure the project produced is in the best interest of the County. CONTRACTOR is expected to deliver products on or ahead of the required schedule and within budget.

2.4 All work shall be done in conformance with all applicable County, State and Federal laws, County Design Manuals, County Standard Plans, all Caltrans manuals, policies, State Standard Plans and Specifications, Manual of Uniform Control Devices, California Building Code, (Fire, Electrical), Board of State and Community Corrections, Americans with Disabilities Act (ADA), California Green Building Standards Code (Part 11, Title 24, California Code of Regulations); and as revised and amended by County ordinance.

### **3.0 TERM OF AGREEMENT**

3.1 The initial term shall commence with the signing of this AGREEMENT for a period of 3 year(s) with the option to extend the AGREEMENT for two (2) additional one (1) year period(s).

3.2 CONTRACTOR shall commence negotiations for any desired fee changes a minimum of ninety (90) days prior to the expiration of this AGREEMENT in order to be considered.

3.2.1 Both parties shall agree upon changes to fees in writing.

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

#### **4.0 COMPENSATION AND PAYMENTS**

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto (Attachment K). The total aggregate amount payable to the CONTRACTOR under this AGREEMENT shall not exceed the sum of \$5,000,000.
- 4.2 Prices shall remain firm for the initial term of this AGREEMENT and, thereafter, may be adjusted annually as provided in this paragraph. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- 4.3 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- 4.4 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- 4.5 Tax:  
4.5.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.  
4.5.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

#### **5.0 INVOICES AND PURCHASE ORDERS**

- 5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the Resource Management Agency at the following address:

County of Monterey  
Resource Management Agency – Department of Public Works  
Attn: Finance Division  
168 West Alisal Street, 2nd Floor  
Salinas, CA. 93901

- 5.2 CONTRACTOR shall reference RFQ #10458 on all invoices submitted to County. CONTRACTOR shall submit such invoices 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. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County



Auditor- Controller shall pay the amount certified within 30 days of receiving the certified invoice.

- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.
- 5.5 In addition to any information and documentation otherwise required, invoices shall contain information and documentation satisfactory to County and Grantor (if project is grant funded) to facilitate expeditious reimbursement to County by Grantor for project expenses, and for Grantor project auditing purposes. County may require from time to time that supporting documentation or more detailed information be submitted in such format as may be required by applicable Federal or State granting agencies.

## **6.0 DESIGN PROFESSIONAL INDEMNIFICATION**

- 6.1 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 County under this Indemnity Agreement that is permitted by law shall be provided by CONTRACTOR.
- 6.2 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 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 County, or defect in a design furnished by County.
- 6.3 Indemnification for All Other Claims or Loss:  
For any claim, loss, injury, damage, expense or liability other than claims arising out of 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 County, or defect in a design furnished by County.

## 7.0 INSURANCE REQUIREMENTS

### 7.1 Evidence of Coverage:

7.1.1 Prior to commencement of this AGREEMENT, 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, CONTRACTOR, upon request, shall provide a certified copy of the policy or policies.

7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. 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 County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

### 7.2 Qualifying Insurers:

7.2.1 All coverages, 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 County's Purchasing Officer.

### 7.3 Insurance Coverage Requirements:

7.3.1 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:

7.3.1.1 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.

7.3.2 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

7.3.3 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.

- 7.3.4 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, 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.

7.4 Other Insurance Requirements:

- 7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to 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.
- 7.4.2 Each liability policy shall provide that 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.
- 7.4.3 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.

- 7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. 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.
- 7.4.5 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.

## **8.0 RECORDS AND CONFIDENTIALITY**

- 8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- 8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.
- 8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.
- 8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its

subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the Federal or State Auditor (as applicable) pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

- 8.5 CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this AGREEMENT for County will be kept confidential and not be disclosed to any other person. CONTRACTOR agrees to immediately notify County in accordance with the Notices Section of this AGREEMENT, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this AGREEMENT. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to County hereunder.

## 9.0 NON-DISCRIMINATION

- 9.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination.
- 9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., 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.
- 9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all agreements with subcontractors to perform work under the contract.

## 10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 10.1 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.

- 10.2 Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total AGREEMENT amount, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT amount before computing the amount of work required to be performed by CONTRACTOR with his own organization or per a consortium.
- 10.3 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of County.
- 10.4 Any subcontractor shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in AGREEMENT.
- 10.5 No CONTRACTOR or sub- contractor (or consultant or sub-consultant) is permitted to work on the same project in more than one capacity. CONTRACTORS that have staff or sub-contractors in common may not work on the same project. This prohibition includes, but is not limited to, a CONTRACTOR performing work under its own contract and performing work as a sub-consultant under a separate contract on the same project. Work on a single project by a CONTRACTOR in its capacity as the primary CONTRACTOR as well as sub-consultant or sub-contractor is presumed to constitute a conflict of interest.

## 11.0 CONFLICT OF INTEREST

- 11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with County that CONTRACTOR has no present, and will have no future, conflict of interest between providing County services hereunder and any other person or entity (including but not limited to any federal or state environmental or regulatory agency) which has any interest adverse or potentially adverse to County, as determined in the reasonable judgment of the Board of Supervisors of County.

## 12.0 COMPLIANCE WITH APPLICABLE LAWS

- 12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
- 12.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.
- 12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.
- 12.4 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT. If work or services will be performed under this AGREEMENT has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this AGREEMENT, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

## 13.0 PREVAILING WAGE

### 13.1 Contractor/General Requirements

CONTRACTOR shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720 and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any "public works" (as that term is defined in the statutes) performed on the project funded by this AGREEMENT. For purpose of compliance with prevailing wage law, the CONTRACTOR shall comply with provisions applicable to an awarding body. Compliance with state prevailing wage law includes without limitation: payment of at least prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and other obligations as required by law.

## 13.2 **Flow down Requirements**

Contractor shall ensure that all agreements with its subcontractors to perform work pursuant to this AGREEMENT contain the following provisions:

- 13.2.1 Contractor shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for all construction, alteration, demolition, installation, repair or maintenance work over \$1,000 performed under the contract. Contractor's obligations under prevailing wage laws include without limitation: pay at least the applicable prevailing wage for public works activities performed on the project; comply with overtime and working hour requirements; comply with apprenticeship obligations; comply with payroll recordkeeping requirements; and comply with other obligations as required by law.
- 13.2.2 CONTRACTOR shall ensure that the above requirements are included in all its contracts and any layer of subcontracts for activities performed pursuant to this AGREEMENT.
- 13.2.3 Copies of the determination of the general prevailing rate of per diem wages are available to interested parties at:  
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>

## **14.0 DRUG FREE WORKPLACE**

- 14.1 CONTRACTOR and CONTRACTOR'S employees shall comply with the County's policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads no contest to a criminal drug statute violation occurring at a County facility or work site, the CONTRACTOR shall, within five days thereafter notify the head of the County department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

## **15.0 TIME OF ESSENCE**

- 15.1 Time is of the essence in respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.

## **16.0 PERFORMANCE ASSURANCE AND WAIVER OF BREACH**

- 16.1 Assurance of Performance: If at any time County believes CONTRACTOR may not be adequately performing its obligations under this AGREEMENT or that CONTRACTOR may fail to complete the Services as required by this AGREEMENT, County may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in CONTRACTOR'S performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this AGREEMENT. If County accepts the plan it shall issue a signed waiver.
- 16.1.1 Waiver: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this AGREEMENT shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

## **17.0 TRAVEL REIMBURSEMENT**

- 17.1 If travel expenses are to be reimbursed, they must be approved in writing in advance.
- 17.2 If County approves travel, lodging and meal reimbursement, CONTRACTOR shall receive compensation for travel expenses as per the "Monterey County Travel and Business Expense Reimbursement Policy". A copy of the policy is available online at: [http://www.co.monterey.ca.us/auditor/pdfs/County\\_Travel\\_Business\\_Expense\\_Policy\\_12-5-12.pdf](http://www.co.monterey.ca.us/auditor/pdfs/County_Travel_Business_Expense_Policy_12-5-12.pdf) . To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

## **18.0 EMERGENCY SITUATIONS**

- 18.1 CONTRACTOR shall provide the name and contact information of a representative who shall be available 24 hours a day, 7 days a week, in the event of an emergency. During the emergency, CONTRACTOR shall provide County with all available supplies, materials, equipment and/or services on a priority basis.
- 18.2 County expects emergency deliveries to occur within 4 hours of order placement and may be required during evenings, weekends, and holidays. Time is of the essence for delivery during emergency situations. Delivery location(s) and estimated arrival will be mutually

agreed upon, by County and CONTRACTOR, at time of order and will be determined based on need and existing conditions. It is understood that current conditions, such as power outages, road closures, and damages to CONTRACTOR's facility and/or equipment, will be taken into consideration.

## **19.0 NON-APPROPRIATIONS CLAUSE**

- 19.1 Notwithstanding anything contained in this AGREEMENT to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for County for any reason whatsoever in any fiscal year, for payments due under this AGREEMENT, County will immediately notify CONTRACTOR of such occurrence, and this AGREEMENT shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for County or are otherwise available for payments.

## **20.0 WARRANTY BY CONTRACTOR**

- 20.1 CONTRACTOR shall perform all services and provide all drawing and documents in accordance with applicable codes and regulations, and shall be fully responsible for the content of all design documents prepared or provided under this AGREEMENT.

## **21.0 NOTICES**

- 21.1 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.
- 21.2 Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:  
Contracts/Purchasing Officer  
County of Monterey, Contracts/Purchasing  
168 W. Alisal Street, 3<sup>rd</sup> Floor  
Salinas, CA 93901-2439

TO CONTRACTOR:  
Kitchell/CEM, Inc.  
255 West Julian Street, Suite 400  
San Jose, CA. 94110



Tel. No.: (831)755-4990  
FAX No.: (831) 755-4969  
[derrm@co.monterey.ca.us](mailto:derrm@co.monterey.ca.us)

Tel.No. (408)280-7889  
FAX No. (408)280-7192  
— [grogers@kitchell.com](mailto:grogers@kitchell.com)

## 22.0 LEGAL DISPUTES

- 22.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
- 22.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.
- 22.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.
- 22.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

IN WITNESS WHEREOF, the County and CONTRACTOR execute this AGREEMENT as follows:

MONTEREY COUNTY

  
Debra Burton, MS  
Contracts/Purchasing Officer  
County of Monterey

Dated: 5/12/14

Approved as to Fiscal Provisions:

  
Deputy Auditor/Controller

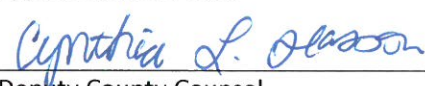
Dated: 4-16-14

Approved as to Liability Provisions:

Risk Management

Dated:

Approved as to Form:

  
Cynthia L. Olson  
Deputy County Counsel


Dated: 4-16-14

CONTRACTOR

By:   
Signature of Chair, President, or  
Vice-President

DAVID GARSEN, Sr. Vice President  
Printed Name and Title

Dated: 4/11/2014

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

MICHAEL A. BRUGGEMAN / ASST. SECRETARY  
Printed Name and Title

Dated: 4/11/2014

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.



### Attachment K: Fee Schedule

The undersigned, having read and understood all RFQ information, hereby submits hourly rates. It is understood that the basic design of each particular type of facility can be duplicated as the situation permits. It is also understood that the Fee Schedule will be used by the County as a criteria to select the firm(s) for possible interviews by the selection Committee, but that a final fee may be negotiated with the qualified firm(s) for the required services.

Company Name: Kitchell/CEM, Inc.

Position/Title*	Hourly Rate	
	(Indicate changes per year if any)	
(Indicate Below)	2013/2014	2014/2015
Principal/Owner	\$190	\$195
Engineering & Architectural Services Manager	\$185	\$190
Senior Project Manager	\$170	\$175
Architectural Design Manager	\$170	\$175
Project Manager II	\$144	\$150
Project Manager I	\$132	\$138
Senior Estimator	\$130	\$135
Estimator	\$120	\$125
Scheduler	\$128	\$133
Project Architect	\$128	\$133
Licensed Engineer (Civil, Struct., Mech., Elect.)	\$128	\$133
Senior Project Engineer	\$115	\$120
Project Engineer	\$100	\$105
BIM Manager/Specialist	\$113	\$118
BIM/CADD Operator	\$77	\$82
Specification Writer	\$128	\$133
Clerical	\$67	\$72

Reimbursable Items to be Billed (please list)	Estimated Cost Bills	
	(Markup not to exceed 10%)	
	Total Cost (if applicable at the time of RFQ )	% of Markup Calculated
MILEAGE per current IRS rate	\$0.56/mile	0%
ADD SERVICE - REPRODUCTION PRINTING:		
8.5 x11 blk/wht per page	\$0.10	0%
11 x 17 blk/wht per page	\$0.17	0%
8.5 x11 color per page	\$0.39	0%
11 x 17 color per page	\$0.89	0%
12 x 18 per sheet	See note below	0%
15 x 21 per sheet	See note below	0%
17 x 22 per sheet	See note below	0%
24 x 36 per sheet	See note below	0%
20 x 42 per sheet	See note below	0%
Outside Reproduction as invoiced by Printing Firm	At cost	0%
ADD SERVICE - MEDIA:		
24"X 36" Foam Core	\$55.00	0%
30" x 42" Foam Core	\$65.00	0%
CD	\$3.00	0%
DVD	\$3.00	0%
POSTAGE/FREIGHT/DELIVERY SERVICE:	At cost	0%

Note: Wide format documents are charged at \$0.39/sf





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/6/2014

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 ACIG Insurance Agency, Inc.  
2600 N. Central Expwy. Suite 800  
Richardson, TX 75080

CONTACT NAME:  
PHONE (A/C, No, Ext): (972)702-9004 FAX (A/C, No): (972)687-0604  
E-MAIL ADDRESS: accountmanagers@acig.com

www.acig.com

INSURED  
Kitchell CEM, Inc.  
255 W. Julian Street, #400  
San Jose CA 95110

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: American Contractors Ins. Co. RRG	12300
INSURER B: ACIG Insurance Company	19984
INSURER C: Steadfast Insurance Company	26387
INSURER D:	
INSURER E:	
INSURER F:	

## COVERAGES

CERTIFICATE NUMBER: 20087176

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	<input checked="" type="checkbox"/>	GL13P00002 primary GL13PX0002 excess follow form	7/1/2013  7/1/2013	6/1/2016  6/1/2016	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N N/A	WCA000005313	6/1/2013	6/1/2014	<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	Contractors Professional/Pollution Liability		EOC3999322-05	6/1/2013	6/1/2014	Per Claim: \$2,000,000 *Aggregate: \$2,000,000

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

County of Monterey, its officials, agents and employees are included as additional insured as respects general liability per additional insured endorsement attached.  
Re: To Provide "on-call" services over \$100,000 for Architectural & Engineering Services for Various Correctional Projects Located In Monterey County, California

## CERTIFICATE HOLDER

RFQ # 10458

County of Monterey  
168 W. Aisal St., 3rd Floor  
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

Michael J. O'Neill

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ACORD 25 (2014/01)

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# CERTIFICATE OF LIABILITY INSURANCE

6/1/2014

DATE (MM/DD/YYYY)

4/8/2014

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).

<b>PRODUCER</b> Lockton Companies, LLC Denver 8110 E. Union Avenue Suite 700 Denver CO 80237 (303) 414-6000	<b>CONTACT NAME:</b>	
	<b>PHONE (A/C, No, Ext):</b> <b>FAX (A/C, No):</b>	
<b>INSURED</b> 1328704 Kitchell CEM Inc. 255 W. Julian Street, #400 San Jose CA 95110	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Travelers Property Casualty Co of America	
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
<b>INSURER E:</b>		
<b>INSURER F:</b>		
<b>NAIC #</b> 25674		

**COVERAGES** KITCO02 **CERTIFICATE NUMBER:** 12883625 **REVISION NUMBER:** XXXXXXXX

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
	<b>GENERAL LIABILITY</b>			NOT APPLICABLE			<b>EACH OCCURRENCE</b> \$ XXXXXXXX <b>DAMAGE TO RENTED PREMISES (Ea occurrence)</b> \$ XXXXXXXX <b>MED EXP (Any one person)</b> \$ XXXXXXXX <b>PERSONAL &amp; ADV INJURY</b> \$ XXXXXXXX <b>GENERAL AGGREGATE</b> \$ XXXXXXXX <b>PRODUCTS - COMP/OP AGG</b> \$ XXXXXXXX \$
	<b>COMMERCIAL GENERAL LIABILITY</b> CLAIMS-MADE <input type="checkbox"/> OCCUR <input type="checkbox"/>						
	<b>GEN'L AGGREGATE LIMIT APPLIES PER:</b> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/>						
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	N	N	DT8104265L772	6/1/2013	6/1/2014	<b>COMBINED SINGLE LIMIT (Ea accident)</b> \$ 2,000,000 <b>BODILY INJURY (Per person)</b> \$ XXXXXXXX <b>BODILY INJURY (Per accident)</b> \$ XXXXXXXX <b>PROPERTY DAMAGE (Per accident)</b> \$ XXXXXXXX \$ XXXXXXXX
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> <b>OCCUR</b> <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> <b>CLAIMS-MADE</b> <input type="checkbox"/> <b>DED</b> <input type="checkbox"/> <b>RETENTION \$</b> <input type="checkbox"/>			NOT APPLICABLE			<b>EACH OCCURRENCE</b> \$ XXXXXXXX <b>AGGREGATE</b> \$ XXXXXXXX \$ XXXXXXXX
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	NOT APPLICABLE			<b>WC STATUTORY LIMITS</b> <input type="checkbox"/> <b>OTHER</b> <input type="checkbox"/> <b>E.L. EACH ACCIDENT</b> \$ XXXXXXXX <b>E.L. DISEASE - EA EMPLOYEE</b> \$ XXXXXXXX <b>E.L. DISEASE - POLICY LIMIT</b> \$ XXXXXXXX
A	Hired Auto Physical Damage	N	N	DT8104265L772	6/1/2013	6/1/2014	Comp. Ded. \$1,000 Coll. Ded. \$1,000

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

RE: RFQ #10458 - To Provide "On-Call" Services Over \$100,000 for Architectural and Engineering Design Services For Various Correctional Projects Located in Monterey County, California.

## CERTIFICATE HOLDER

12883625

County of Monterey  
Contracts/Purchasing Dept.  
168 W. Alisal Street, 3rd Floor  
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

Charles M McDaniel



## ADDITIONAL INSURED – AUTOMATIC STATUS

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Any person or organization that you are required by contract to include as an additional insured on this policy if the contract is executed prior to the loss.

- A. Who is an Insured (Section II) is amended to include as an insured any person or organization shown in the above SCHEDULE (called additional insured), but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of your premises or your operations for the additional insured.
- B. The insurance provided to the additional insured is subject to the following limitations:
1. Unless required by written contract, this insurance does not apply to "bodily injury" or "property damage" occurring after "your work" for the additional insured has been completed or after that portion of "your work" out of which the "bodily injury" or "property damage" arises has been put to its intended use by any person or organization.
  2. Unless required by written contract, this insurance does not apply to "bodily injury" or "property damage" arising out of the sole negligence, act or omission of the additional insured.
  3. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" for which the additional insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement except to the extent that the additional insured would have been obligated to pay such damages in the absence of the contract or agreement.
  4. This insurance is excess to any other insurance, whether primary, excess, contingent or on any other basis, available to the additional insured unless a written contract requires that this insurance be primary or primary and non-contributing. However, this insurance is always excess to other insurance, whether primary, excess, contingent or on any other basis, when the additional insured has been added to the other insurance as an additional insured.
  5. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional services, including:
    - a) The preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or,
    - b) Supervisory, inspection or engineering services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you or on your behalf with respect to the operations described above.
  6. This endorsement shall not apply to a person or organization if any other additional insured endorsement attached to this policy specifically applies to that person or organization.
  7. The insurance afforded herein only applies to the extent permitted by applicable state law, including statutes governing additional insured coverage in the construction industry.
- C. This insurance shall not exceed the scope of coverage, including limits, of this policy and in no event shall the insurance provided to the additional insured exceed the scope of coverage, including limits, required by the contract. If a written contract or agreement requires that additional insured status be provided by the use of ISO CG20101185, then the terms of that endorsement are incorporated into this endorsement as respects such additional insured and shall supersede the coverage grant and limitations in Sections A. and B. of this endorsement.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the mentioned policy, other than as above stated.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.  
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: Same as policy effective date unless otherwise indicated above.

Policy Effective: 7/1/2013

Policy No.: GL13P00002

Endorsement No.:

Insured: Kitchell CEM, Inc.

Premium \$

Insurance Company: American Contractors Insurance Co. RRG

Countersigned By



## NOTICE OF CANCELLATION, NONRENEWAL OR MATERIAL CHANGE – CERTIFICATE HOLDERS

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

The certificate of insurance holders shown in the schedule below have requested that they receive written notice of cancellation, nonrenewal or material change with respect to this policy. If we decide to cancel, nonrenew or make a material change to this policy, we agree to mail or deliver sixty (60) days advance written notice to the certificate of insurance holders shown in the schedule below. However, if we are cancelling or nonrenewing due to nonpayment of premium, we will only provide the certificate of insurance holders shown in the schedule below with ten (10) days advance written notice.

The notice of cancellation, nonrenewal or material change will be mailed to the addresses provided to us by the certificate of insurance issuer. Proof of mailing will be considered sufficient proof of our good faith attempt to provide notice of cancellation, nonrenewal or material change to the certificate of insurance holders shown in the schedule below.

### SCHEDULE

All certificate of insurance holders where written notice of cancellation, nonrenewal or material change to this policy is required by written contract, permit or agreement with the Named Insured.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the mentioned Policy, other than as above stated.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.  
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: Same as policy effective date unless otherwise indicated above.

Policy Effective Date: 7/1/2013

Policy No.: GL13P00002

Endorsement No.:

Insured: Kitchell CEM, Inc.

Premium \$

Insurance Company: American Contractors Insurance Co RRG

Countersigned By





Named Insured: **Kitchell Corporation, et al**  
Carrier: **Travelers Property Casualty Co. of America**  
Policy No. **DT8104265L772**  
Eff. Dates: **6/1/13-6/1/14**

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

## **BUSINESS AUTO EXTENSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

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

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |   |
|---|---|
| <b>A. BROAD FORM NAMED INSURED</b>                                  | <b>H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT</b>  |
| <b>B. BLANKET ADDITIONAL INSURED</b>                                | <b>I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</b> |
| <b>C. EMPLOYEE HIRED AUTO</b>                                       | <b>J. PERSONAL EFFECTS</b>  |
| <b>D. EMPLOYEES AS INSURED</b>                                      | <b>K. AIRBAGS</b>   |
| <b>E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</b>                 | <b>L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS</b>                    |
| <b>F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS</b> | <b>M. BLANKET WAIVER OF SUBROGATION</b>                               |
| <b>G. WAIVER OF DEDUCTIBLE – GLASS</b>                              | <b>N. UNINTENTIONAL ERRORS OR OMISSIONS</b>                           |

### **PROVISIONS**

#### **A. BROAD FORM NAMED INSURED**

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

#### **B. BLANKET ADDITIONAL INSURED**

The following is added to Paragraph c. in A.1., **Who Is An Insured**, of **SECTION II – LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the **Who Is An Insured** provision contained in Section II.

#### **C. EMPLOYEE HIRED AUTO**

1. The following is added to Paragraph A.1., **Who Is An Insured**, of

Named Insured: Kitchell Corporation, et al  
Carrier: Travelers Property Casualty Co. of America  
Policy No. DT8104265L772  
Eff. Dates: 6/1/13-6/1/14

**SECTION II - LIABILITY  
COVERAGE:**

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.6., Other Insurance, of SECTION IV - BUSINESS AUTO CONDITIONS:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**D. EMPLOYEES AS INSURED**

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II - LIABILITY COVERAGE:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

**E. SUPPLEMENTARY PAYMENTS -  
INCREASED LIMITS**

1. The following replaces Paragraph A.2.a.(2), of SECTION II - LIABILITY COVERAGE:

- (2) Up to \$3,000 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.

2. The following replaces Paragraph A.2.a.(4), of SECTION II - LIABILITY COVERAGE:

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

**F. HIRED AUTO - LIMITED WORLDWIDE  
COVERAGE - INDEMNITY BASIS**

The following replaces Subparagraph e. in Paragraph B.7., Policy Term, Coverage Territory, of SECTION IV - BUSINESS AUTO CONDITIONS:

- e. Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "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.

- (1) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

- (a) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

- (b) Neither you nor any other involved "insured" will make any settlement without our consent.

- (c) We may, at our discretion, participate in defending



Named Insured: Kitchell Corporation, et al  
Carrier: Travelers Property Casualty Co. of America  
Policy No. DT8104265L772  
Eff. Dates: 6/1/13-6/1/14

the "insured" against, or in the settlement of, any claim or "suit".

(d) We will reimburse the "insured";

(i) For sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., Limit Of Insurance, of SECTION II - LIABILITY COVERAGE;

(ii) For the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., Limit Of Insurance, of SECTION II - LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(2) This insurance is excess over any valid and collectible other insurance available to the

"insured" whether primary, excess contingent or on any other basis.

(3) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

(4) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

#### G. WAIVER OF DEDUCTIBLE - GLASS

The following is added to Paragraph D., Deductible, of SECTION III - PHYSICAL DAMAGE COVERAGE:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

#### H. HIRED AUTO PHYSICAL DAMAGE - LOSS OF USE - INCREASED LIMIT

The following replaces the last sentence of Paragraph A.4.b., Loss Of Use Expenses, of SECTION III - PHYSICAL DAMAGE COVERAGE:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

Named Insured: Kittell Corporation, et al  
Carrier: Travelers Property Casualty Co. of America  
Policy No. DT8104265L772  
Eff. Dates: 6/1/13-6/1/14

**I. PHYSICAL DAMAGE -  
TRANSPORTATION EXPENSES -  
INCREASED LIMIT**

The following replaces the first sentence in Paragraph A.4.a., Transportation Expenses, of SECTION III - PHYSICAL DAMAGE COVERAGE:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

**J. PERSONAL EFFECTS**

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III - PHYSICAL DAMAGE COVERAGE:

**Personal Effects**

We will pay up to \$400 for "loss" to wearing apparel and other personal effects which are:

- (1) Owned by an "insured"; and
- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Effects coverage.

**K. AIRBAGS**

The following is added to Paragraph B.3., Exclusions, of SECTION III - PHYSICAL DAMAGE COVERAGE:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

**L. NOTICE AND KNOWLEDGE OF  
ACCIDENT OR LOSS**

The following is added to Paragraph A.2.a., of SECTION IV - BUSINESS AUTO CONDITIONS:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

**M. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph A.5., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV - BUSINESS AUTO CONDITIONS:

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

We wave any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

**N. UNINTENTIONAL ERRORS OR  
OMISSIONS**

The following is added to Paragraph B.2., Concealment, Misrepresentation, Or Fraud, of SECTION IV - BUSINESS AUTO CONDITIONS:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.



Named Insured: Klitchell Corporation, et al  
Carrier: Travelers Property Casualty Co. of America  
Policy No. **DT8104265L772**

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## BUSINESS AUTO COVERAGE FORM

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

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

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

### SECTION I - COVERED AUTOS

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

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

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

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

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

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

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

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

## SECTION II - LIABILITY COVERAGE

### A. Coverage

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

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

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

#### 1. Who Is An Insured

The following are "insureds":

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

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

(2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.

(3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.

(4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".

(5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

## 2. Coverage Extensions

### a. Supplementary Payments

We will pay for the "insured":

(1) All expenses we incur.

(2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.

(5) All 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 taxed 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 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.



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### 3. Workers' Compensation

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

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

"Bodily injury" to:

a. An "employee" of the "insured" arising out of and in the course of:

- (1) Employment by the "insured"; or
- (2) Performing the duties related to the conduct of the "insured's" business; or

b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies:

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

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

clusion does not apply to liability assumed under a sidetrack agreement.

### 7. Handling Of Property

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

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

### 8. Movement Of Property By Mechanical Device

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

### 9. Operations

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

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

### 10. Completed Operations

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

In this exclusion, your work means:

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

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

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

- (1) When all of the work called for in your contract has been completed,

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

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

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

#### 11. Pollution

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

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

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from

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continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

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

### SECTION III - PHYSICAL DAMAGE COVERAGE

#### A. Coverage

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

- a. Comprehensive Coverage

From any cause except:

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

- b. Specified Causes Of Loss Coverage

Caused by:

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

- c. Collision Coverage

Caused by:

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

2. Towing

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

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

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

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

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

4. Coverage Extensions

- a. Transportation Expenses

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

- b. Loss Of Use Expenses

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

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

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

#### B. Exclusions

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

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

a. Nuclear Hazard

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

b. War Or Military Action

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

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.

3. We will not pay for "loss" 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-measurement 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. Limit Of Insurance

1. The most we will pay for "loss" in any one "accident" is the lesser of:

- a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
- b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

2. \$1,000 is the most we will pay for "loss" in any one "accident" to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- a. 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;
- b. Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- c. An integral part of such equipment.

3. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".



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4. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

### D. Deductible

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

## SECTION IV - BUSINESS AUTO CONDITIONS

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

### A. Loss Conditions

#### 1. Appraisal For Physical Damage Loss

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

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

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

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

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

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

- (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.

- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".

- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".

- (4) Authorize us to obtain medical records or other pertinent information.

- (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.

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

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.

- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.

- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.

- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

#### 3. Legal Action Against Us

No one may bring a legal action against us under this coverage form until:

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

#### 4. Loss Payment - Physical Damage Coverages

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;



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

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

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

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

### B. General Conditions

#### 1. Bankruptcy

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

#### 2. Concealment, Misrepresentation Or Fraud

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

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

#### 3. Liberalization

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

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

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

### 5. Other Insurance

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

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

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

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

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

### 6. Premium Audit

- a. The estimated premium for this coverage form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
- b. If this policy is issued for more than one year, the premium for this coverage form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

## COMMERCIAL AUTO

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

(b) 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".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other simi-



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

## COMMERCIAL AUTO

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.

## WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

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

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be \* % of the California workers' compensation premium otherwise due on such remuneration.

## Schedule

## Person or Organization

## Job Description

Any person or organization who the named insured is required by ~~written contract to waive rights of~~ recovery against. However, the written contract must be executed before any loss involving the person or organization occurs.

\* No Additional Premium to be applied

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

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: Same as policy effective date unless otherwise indicated above.

Policy Effective Date: 6/1/2013

Policy No.: WCA000005313

Endorsement No.:

Insured Kitchell CEM, Inc.

Premium \$

Insurance Company ACIG Insurance Company

Countersigned by

Nancy Spafford

WC 04 03 06

(Ed. 04-84)



**NOTICE OF CANCELLATION, NONRENEWAL OR MATERIAL CHANGE ENDORSEMENT**

In the event of cancellation, nonrenewal or other material change of the policy, we will mail advance notice to the person or organization named in the Schedule. The number of days advance notice is shown in the Schedule.

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

Schedule

1. Number of days advance notice:

60 days. However, in the case of cancellation or nonrenewal due to nonpayment of premium, only 10 days advance notice will be provided.

2. Notice will be mailed to:

All certificate holders where written notice of cancellation, nonrenewal or material change to this policy is required by written contract, permit or agreement with the Named Insured. The notice will be mailed to the addresses provided to us by the certificate of insurance issuer. Proof of mailing will be considered sufficient proof of our good faith attempt to provide written notice.

This endorsement is not applicable in the states of Arizona, Connecticut, New Jersey, North Carolina, Texas or Wisconsin.

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

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: Same as policy effective date unless otherwise indicated above.

Policy Effective Date: 6/1/2013

Policy No.: WCA000005313

Endorsement No.:

Insured: Kitchell CEM, Inc.

Premium \$

Insurance Company: ACIG Insurance Company

Countersigned By

*Nancy Sprafkin*