

**NORTH BEACH WATER DISTRICT  
PACIFIC COUNTY, WASHINGTON**

RESOLUTION NO. 03-2018

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF NORTH BEACH WATER DISTRICT, PACIFIC COUNTY, WASHINGTON, APPROVING AN AGREEMENT FOR ENGINEERING SERVICES FOR 2019 BAY AVENUE WATER MAIN REPLACEMENT WITH GRAY & OSBORNE, INC.

WHEREAS, North Beach Water District (NBWD) has experienced numerous water main breaks on Bay Avenue between Park Avenue and U Street; and

WHEREAS, the Board of Trustees (Board) has desires to replace the failing water main identified above;

NOW, THEREFORE, NORTH BEACH WATER DISTRICT BOARD OF COMMISSIONERS DOES HEREBY RESOLVE, as follows:

**SECTION 1** The NBWD Board does hereby declare the failing water main located on Bay Avenue between Park Avenue and U Street to be public health emergency and directs the General Manager to take all appropriate steps to initiate its replacement before June 1, 2019

**SECTION 2** The NBWD Board does hereby approve the Contract for Engineering Services, attached hereto and incorporated herein as Exhibit A, between NBWD and Gray & Osborne, Inc. (G&O) to engineer the Bay Avenue Water Main Replacement Project.

**SECTION 3** The General Manager is hereby authorized and directed to do any and all things and to execute and deliver any and all documents which may be required or advisable in order to consummate the Contract for Engineering Services between NBWD and G&O to engineer the Bay Avenue Water Main Replacement Project.

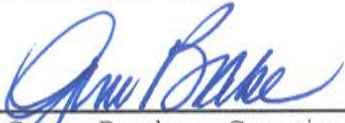
**ADOPTED** by the Board of Commissioners on North Beach Water District, Pacific County, Washington at its special meeting held on the 16<sup>th</sup> day of April, 2018.



Brian Sheldon, Commissioner  
Position #1



Glenn Ripley, Commissioner  
Position #3



Gwen Brake, Commissioner  
Position #2

**EXHIBT "A"**

**PROPOSAL AND CONTRACT  
FOR  
PROFESSIONAL ENGINEERING SERVICES**

**NORTH BEACH WATER DISTRICT  
WASHINGTON**

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**MARCH 2018**

**G&O Job. No. 20182.17**

**GRAY & OSBORNE, INC.  
CONSULTING ENGINEERS**

**CONTRACT FOR**  
**PROFESSIONAL ENGINEERING SERVICES**

THIS Contract, entered into this \_\_\_\_ day of \_\_\_\_\_ 2018, between the NORTH BEACH WATER DISTRICT, Washington, hereinafter called the "Agency"; and GRAY & OSBORNE, INC., Consulting Engineers, Seattle, Washington, hereinafter called the "Engineer".

WITNESSETH:

WITNESSETH THAT, the Agency now finds that it is in need for the engagement of professional engineering services. The purpose of this Contract is to define the scope of work to be performed, the conditions under which it shall be performed, and method of payment for professional engineering services authorized by the Agency.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**ARTICLE 1**

**EMPLOYMENT OF THE ENGINEER**

The Agency, acting pursuant to its vested authority, does hereby engage the Engineer and the Engineer agrees to furnish the engineering services as requested by the Agency in connection with the Bay Avenue Water Main Project, hereinafter also called the "Project." These services are outlined in this Contract and shall be undertaken upon request by the Agency to the Engineer.

**ARTICLE 2**

**CHARACTER & EXTENT OF ENGINEERING SERVICES**

Upon execution of this Contract, and authorization of the Agency to proceed, the Engineer shall provide engineering services more fully described in Exhibit "A."

**SPECIAL SERVICES**

The Engineer may employ competent professionals to assist in the completion of the work as described as scope of work and budget herein.

The information so secured shall be made available to the Agency and the Engineer for the use and development of the Agency's projects.

## ARTICLE 3

### SCOPE OF OWNER SERVICES

The AGENCY shall provide or perform the following:

Provide full information as to the Agency's requirements for the Project. Assist the Engineer by placing at his disposal all available information pertinent to the site of the Project, including previous reports, drawings, plats, surveys, utility records, and any other data relative to the Project. Absent specific written direction to the contrary, the Engineer shall be entitled to rely upon the completeness and accuracy of such documentation.

Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the Engineer.

## ARTICLE 4

### COMPENSATION

It is mutually agreed that the Agency will compensate the Engineer for services furnished based on the cost reimbursement method.

The total cost of these services shall not exceed the amount shown in Exhibit "B" without further written authorization by the Agency.

Total compensation is based on the following:

- (a) Cost Ceiling: The total amount of compensation for engineering services as described herein, and as further defined in letters or exhibits to this Contract including profit (fee), out-of-pocket expenses, direct labor costs, direct overhead and indirect overhead shall not exceed the total dollar cost agreed upon, without a formal amendment to this Contract.
- (b) Compensation Determination: Payment for work accomplished is on the basis of the Engineer's fully burdened labor cost plus direct non-salary costs.
  - 1. Fully burdened labor costs are determined by multiplying the hours spent by employees on the project, times the employee's fully burdened billing rate. The fully burdened billing rates are identified on Exhibit "C" and include direct salary cost, overhead, and profit. Overhead includes federal, state, and local taxes; insurance and medical; professional development and education; vacations and holidays; secretarial and clerical work; GIS, CADD,

and computer equipment; owned survey equipment and tools; attendance at non-project-specific public meetings for the purpose of keeping the public informed in regard to infrastructure improvements in the community and how the public will be affected; rent, utilities, and depreciation; office expenses; recruiting; professional services; incentive and retirement; and facilities cost of capital.

2. The direct non-salary costs are those costs directly incurred in fulfilling the terms of this Contract including, but not limited to travel, reproduction, supplies and fees for special professional services of outside consultants. If the Engineer is directed to employ special, professional expertise, the Agency will be billed by the Engineer for the special service invoiced amount plus ten percent (10%) for administrative overhead.

Payment of compensation shall be upon submittal to the Agency of a bill by the Engineer at approximate monthly intervals for services rendered during the preceding time period, plus a proportionate percentage of the fee amount stipulated above.

The cost records and accounts pertaining to this Contract are to be kept available for inspection by representatives of the Agency for a period of three (3) years after final payment. In the event any audit or inspection identifies any discrepancy in the financial records, the Engineer shall provide clarification and/or make adjustments accordingly.

## **ARTICLE 5**

### **ADDITIONAL WORK**

If during the performance of this contract, or subsequent to completion of the work under this contract, other or additional services other than those previously specified, including but not limited to additions or revisions by the Agency are ordered in writing by the Agency, the Engineer agrees to provide the services and the Agency agrees to compensate the Engineer under the same method of Compensation Determination described herein, to be determined at the time the additional services are ordered. The Engineer agrees not to proceed with the additional services until such time as the costs for the additional services have been approved by the Agency.

## **ARTICLE 6**

### **PUBLIC RECORDS REQUESTS**

The Engineer shall comply with Agency requests for documents which are the result of public records requests made under the Public Records Act. The Agency hereby acknowledges that gathering, copying and transmitting documents requested in this manner is Additional Work and agrees to compensate the Engineer accordingly.

## **ARTICLE 7**

### **MAJOR REVISIONS**

If, after the design has been approved by the Agency, and the Engineer has proceeded with the final design, and has performed work in processing same and the Agency authorizes new or substantially alters the design, the Agency will pay the Engineer a just and equitable compensation as mutually agreed upon by the Agency and the Engineer, or if an agreement cannot be reached within thirty (30) days, the equitable compensation shall be determined by mediators.

## **ARTICLE 8**

### **COST ESTIMATE**

The Agency is herewith advised that the Engineer has no control over the cost of labor, material, and equipment, including the contractors' and suppliers' methods of producing and delivering such goods and services; or over the methods and styles of competitive bidding or market conditions; and, accordingly, the Engineer's cost estimates are made and furnished on the basis of his experience and qualifications and represent only his best judgment as a design professional and within his familiarity with the construction industry, and, as such, the Engineer cannot and does not warrant, in any other manner or style, the accuracy of the cost estimates, nor that the estimates will or will not vary significantly with bids received by or construction costs realized by the Agency.

## **ARTICLE 9**

### **FACILITIES TO BE FURNISHED BY THE ENGINEER**

The Engineer shall furnish and maintain a central office, work space and equipment suitable and adequate for the prosecution of the work that is normal to the functioning of an established operating engineering practice.

## **ARTICLE 10**

### **OWNERSHIP OF PLANS**

All reports, designs, drawings and specifications prepared by the Engineer, as provided under this Contract shall be and do become the property of the Agency upon payment to the Engineer of his compensation as set forth in this Contract. Reuse of any of the instruments of services of the Engineer by the Agency on extensions of this project or on any other project without the written permission of the Engineer shall be at the Agency's risk and the Agency agrees to defend, indemnify and hold harmless the Engineer from all claims, damages and expenses including attorney's fees arising out of such unauthorized

reuse of the Engineer's instruments of service by the Agency or by others acting through the Agency.

## **ARTICLE 11**

### **SEVERABILITY**

If any provision of this Contract is held invalid, the remainder of this Contract shall not be affected thereby, if such remainder would then continue to conform to the terms and requirements of the applicable law.

## **ARTICLE 12**

### **MEDIATION**

All claims, disputes and other matters in question between Agency and Engineer shall, in the first instance, be subject to mediation. Either party may notify the other, by certified mail, of the existence of a claim or dispute. If such claim or dispute cannot promptly be resolved by the parties, the Engineer shall promptly contact the Judicial Arbitration and Mediation Service, Inc., or any other recognized mediation service agreed to by the parties, to arrange for the engagement and appointment of a mediator for the purpose of assisting the parties to amicably resolve the claim or dispute. The cost of the mediator shall be borne equally by the parties. The Agency and Engineer further agree to cooperate fully with the appointed mediator's attempt to resolve the claim or dispute, and also agree that litigation may not be commenced, by either party, for a period of ninety calendar days following the receipt by the other party of the written notice of claim or dispute. This mediation provision may be asserted by either party as grounds for staying such litigation.

## **ARTICLE 13**

### **ASSIGNABILITY**

The Engineer shall not assign nor transfer any interest in this Contract without the prior written consent of the Agency.

## **ARTICLE 14**

### **EQUAL EMPLOYMENT OPPORTUNITY**

The Engineer agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

The parties hereby incorporate 41 C.F.R. 60-1.4(a)(7); 29 C.F.R. Part 471, Appendix A to Subpart A; 41 C.F.R.60-300.5(a)11; and 41 C.F.R. 60-741.5(a)6; if applicable.

**This contractor and subcontractor shall abide by the requirements of 41 C.F.R. 60-300.5(a) and 41 C.F.R. 741.5(a). These regulations prohibit discrimination against qualified protected veterans, and qualified individuals on the basis of disability, respectively, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities, respectively.**

## **ARTICLE 15**

### **COVENANT AGAINST CONTINGENT FEES**

The Engineer warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fees, excepting bona fide employees. For breach or violation of this warranty, the Agency shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

## **ARTICLE 16**

### **SAFETY**

The duty and/or Services furnished hereunder by the Engineer, does not include a review of the adequacy of any contractor's safety measures in, on, or near a project construction site. The contractor alone shall have the responsibility and liability thereof, and shall be insured accordingly. Neither the activities of the Engineer, nor the presence of the Engineer's employees at a site, shall relieve the contractor of their obligations, duties, and responsibilities with any health or safety precaution required to ensure the safety of the jobsite.

## **ARTICLE 17**

### **INDEMNITY AGREEMENT**

The Engineer shall hold the Agency harmless from, and shall indemnify the Agency against, any and all claims, demands, actions or liabilities caused by or occurring by reason of any negligent act or omission of the Engineer, its agents, employees or subcontractors, arising out of or in connection with the performance of this Contract.

The Engineer shall be required to indemnify the Agency in those cases where damages have been caused by the concurrent negligence of the Agency and Engineer, its agents, employees or subcontractors. In those cases, the liability of the Engineer for indemnifications shall be limited to that portion of the damages caused by the negligence of the Engineer, its agents, employees or subcontractors.



The Engineer has no duty to indemnify the Agency where damages were caused by the negligence of the Agency.

## **ARTICLE 18**

### **INSURANCE**

#### **A. Public Liability**

The Engineer shall provide evidence of comprehensive Public Liability and Property Damage Insurance which includes but is not limited to, operations of the Engineer, commercial general liability, and blanket limited contractual liability with limits of not less than:

##### **COMPREHENSIVE GENERAL LIABILITY**

Bodily Injury & Property Damage:   \$1,000,000 each person  
  \$1,000,000 each occurrence  
  \$1,000,000 each aggregate

##### **AUTOMOBILE LIABILITY**

Bodily Injury:                               \$1,000,000 each person  
  \$1,000,000 each occurrence

Property Damage:                       \$1,000,000 single limit

The Agency shall be named as an additional insured as respects this Contract. In conjunction therewith, the Engineer shall furnish a certificate of such insurance to the Agency at the time of execution of this Contract.

#### **B. Professional Liability**

The Engineer shall provide Professional Errors and Omissions Liability Insurance which shall provide coverage for any negligent professional acts, errors or omissions for which the Engineer is legally responsible, with limits of not less than:

**PROFESSIONAL ERRORS**               \$1,000,000 each occurrence  
**AND**

**OMISSIONS LIABILITY**               \$1,000,000 aggregate

The Engineer shall furnish a certificate of such insurance to the Agency at the time of execution of this Contract.

## **ARTICLE 19**

### **STATUS OF ENGINEER**

The Engineer is an independent contractor operating for its own account, and is in no way and to no extent an employee or agent of the Agency. The Engineer shall have the sole judgment of the means, mode or manner of the actual performance of this Contract. The Engineer, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing this Contract.

## **ARTICLE 20**

### **CERTIFICATION OF ENGINEER**

Attached hereto is Exhibit "D" Certification Regarding Debarment, Suspension and Other Responsibility Matters.

## **ARTICLE 21**

### **CHOICE OF LAW/JURISDICTION/VENUE**

This Contract shall be governed as to validity, interpretation, construction and effect, and in all other respects, by the laws of the State of Washington. Jurisdiction of any suit or action arising out of or in connection with this Contract shall be in the State of Washington, and the venue thereof be in the same County as the Agency.

## **ARTICLE 22**

### **NOTICES**

In every case where, under any of the provisions of this Contract or in the opinion of either the Agency or the Engineer or otherwise, it shall or may become necessary or desirable to make, give, or serve any declaration, demand, or notice of any kind or character or for any purpose whatsoever, the same shall be in writing, and it shall be sufficient to either (1) deliver the same or a copy thereof in person to the General Manager, if given by the Engineer, or to the President or Secretary of the Engineer personally, if given by the Agency; or (2) mail the same or a copy thereof by registered or certified mail, postage prepaid, addressed to the other party at such address as may have theretofore been designated in writing by such party, by notice served in the manner herein provided, and until some other address shall have been so designated, the address of the Agency for the purpose of mailing such notices shall be as follows:

NORTH BEACH WATER DISTRICT  
2212 272<sup>nd</sup> Street  
Ocean Park, Washington 98640

and the address of the Engineer shall be as follows:

GRAY & OSBORNE, INC.  
701 Dexter Ave. North  
Suite 200  
Seattle, Washington 98109-4339

### ARTICLE 23

#### ATTORNEY'S FEES

The parties agree that in the event a civil action is instituted by either party to enforce any of the terms and conditions of this Contract, or to obtain damages or other redress for any breach hereof, the prevailing party shall be entitled to recover from the other party, in addition to its other remedies, its reasonable attorney's fees in such suit or action and upon any appeal therefrom.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year written below.

**ENGINEER: Gray & Osborne, Inc.**

**AGENCY: North Beach Water District**

By:   
(Signature)

By: \_\_\_\_\_  
(Signature)

Name/Title: Michael B. Johnson, P.E., President

Name/Title: \_\_\_\_\_  
(Print)

Date: 3/27/18

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

"Equal Opportunity/Affirmative Action Employer"

## **EXHIBIT “A”**

### **SCOPE OF WORK**

#### **NORTH BEACH WATER DISTRICT BAY AVENUE WATER MAIN PROJECT**

##### **PROJECT OVERVIEW**

The North Beach Water District (NBWD) would like to replace a portion of the existing 8-inch asbestos concrete waterline along Bay Avenue with a new 8-inch PVC waterline. The proposed work will replace a segment of water main that has experienced recurring breaks on account of its age and condition. The proposed projects include the following waterline segment:

1. Bay Avenue Water Main: Install approximately 2,200 linear feet of 8-inch water main from Park Avenue to “U” Street.

Gray & Osborne proposes to provide the following design engineering services to assist the NBWD with completion of this project.

##### **Task 1 – Provide Project Management**

Provide project management services during the design engineering phase of the project. This task will include coordinating and managing the schedule and budget for the project team. The NBWD will be provided with budget updates on a monthly basis. This task will also include coordination with the NBWD, regulatory agencies, and funding agencies.

##### **Task 2 – Research Existing Utilities**

Contact utility providers in the area to obtain record drawing information of existing utilities in the project area. Call for underground locates to be completed in the project area prior to completing topographic survey.

##### **Task 3 – Complete Topographic Survey and Identify Right-of-Way**

Complete a field topographic survey of the proposed water main alignments. Identify existing marked utilities, roadway, and right-of-way.

##### **Task 4 – Complete Water Main Design**

Complete engineering design of the water main projects. This task includes completing the engineering analysis and calculations necessary to complete the design. This task also includes preparation of detailed plans, specifications, and cost estimates to

adequately describe the work for a public works contractor. Gray & Osborne will provide the following services to complete this task.

A. Identify Preliminary Alignment

Identify a preliminary alignment for the proposed water main in each segment based upon right-of-way, roadway, and utility constraints. Provide preliminary alignment to NBWD for review and comment.

B. Prepare 50 Percent Submittal

Prepare 50 percent plans, specifications, and construction cost estimates for the Water Main Project. Plans and specifications will be suitable for public works bid. Specifications will be prepared in CSI format. 50 percent plans, specifications, and cost estimates will be submitted to the NBWD for review and comment.

C. Prepare 90 Percent Submittal

Prepare 90 percent plans, specifications, and construction cost estimates for the Water Main Project. Plans and specifications will be suitable for public works bid. Specifications will be prepared in CSI format. 90 percent plans, specifications, and cost estimates will be submitted to the NBWD for review and comment.

D. Prepare Final Submittal

Prepare final plans, specifications, and construction cost estimates for the Water Main Project. Plans and specifications will be suitable for public works bid. Specifications will be prepared in CSI format. Final plans, specifications, and cost estimates will be submitted to the Agencies for regulatory approval and will be distributed to contractors.

## **Task 5 – Prepare Permit Applications**

Coordinate with the various permitting agencies and prepare the required permit applications for the project. Anticipated permit applications include the following:

- SEPA Checklist
- Pacific County Right-of-Way Permit
- Pacific County Utility Franchise Amendment
- WSDOT Right-of-Way Permit/Utility Franchise Amendment
- Construction Stormwater NPDES Permit

Permit application and review fees have not been included in this scope of work. It has been assumed that these will be paid directly by the NBWD.

#### **Task 6 – Complete QA/QC Review**

Conduct internal Quality Assurance/Quality Control reviews of the 50 percent submittal, 90 percent submittal, and final submittal for the Bay Avenue Water Main Project.

#### **Task 7 – Attend Meetings and Site Visits**

Attend meetings with NBWD staff during development of the plans and specifications to discuss project issues and review draft deliverables. Complete site visits to verify site conditions.

- 50 Percent Design Review Meeting
  - 90 Percent Design Review Meeting
  - Site Visits (2)

#### **DELIVERABLES**

- 50 Percent Design Review Meeting
  - 90 Percent Design Review Meeting

#### **BUDGET**

Based on the Scope of Work described above, the total estimated cost for engineering services is **\$52,400** as shown in the attached Exhibit B.

#### **SCHEDULE**

The anticipated schedule of work is as follows:

Notice to Proceed	May 1, 2018
Provide Preliminary Alignment	June 15, 2018
Submit 50% Plans, Specifications and Cost Estimate	July 27, 2018
Submit 90% Plans, Specifications and Cost Estimate	September 7, 2018
Submit Final Plans	October 19, 2018

Note that schedule for construction is dependent upon the WSDOT and Pacific County permit review.

## **DELIVERABLES**

Deliverables will be provided in the following format:

- Preliminary Alignment – three copies
- 50 Percent Plans, Specifications, and Cost Estimate – three copies
- 90 Percent Plans, Specifications, and Cost Estimate – three copies
- Final Plans, Specifications, and Cost Estimate – three copies

## **ASSUMPTIONS**

1. Costs of permit and application fees have not been included. It has been assumed that these fees will be paid directly by NBWD.

# EXHIBIT "B"

## ENGINEERING SERVICES SCOPE AND ESTIMATED COST

### North Beach Water District Bay Avenue Water Main Project

Tasks	Principal Hours	Project Manager Hours	Civil Engineer Hours	AutoCAD Tech. Hours	Land Surveyor Hours	Field Survey Hours (2 person)
1. Provide Project Management		8				
2. Research Existing Utilities		1	4			
3. Complete Topographic Survey and Identify R/W			2	8	16	60
4. Complete Water Main Design						
a. Identify Preliminary Alignment	1	2	8	12		
b. Prepare 50% Submittal	2	10	32	40		
c. Prepare 90% Submittal	2	10	32	40		
d. Prepare Final Submittal	2	10	30	30		
5. Prepare Permit Applications	1	4	24			
6. Complete QA/QC Review	6	6	6			
7. Attend Meetings and Site Visits		16	16			
Hour Estimate:	14	67	154	130	16	60
Fully Burdened Billing Rate Range:*	\$112 to \$188	\$112 to \$188	\$96 to \$126	\$42 to \$120	\$108 to \$121	\$144 to \$193
Estimated Fully Burdened Billing Rate:	\$160	\$125	\$120	\$65	\$118	\$160
Fully Burdened Labor Cost:	\$2,240	\$8,375	\$18,480	\$8,450	\$1,888	\$9,600

Total Fully Burdened Labor Cost: \$ 49,033

Direct Non-Salary Cost:

Mileage & Expenses (Mileage @ \$0.54/mile)

Printing

Subconsultant:

Geotech

Subconsultant Overhead (10%)

**TOTAL ESTIMATED COST: \$ 52,400**

\* Actual labor cost will be based on each employees actual rate, estimated rates are for determining total estimated cost only. Fully burdened billing rates include direct salary cost, overhead, and profit.



## EXHIBIT "C"

### GRAY & OSBORNE, INC.

#### PROFESSIONAL ENGINEERING SERVICES CONTRACT FULLY BURDENED BILLING RATES\* THROUGH JUNE 15, 2018\*\*

<u>Employee Classification</u>	<u>Fully Burdened Billing Rates</u>		
AutoCAD/GIS Technician/Engineering Intern	\$ 42.00	to	\$120.00
Electrical Engineer	\$103.00	to	\$184.00
Structural Engineer	\$100.00	to	\$168.00
Environmental Technician/Specialist	\$ 80.00	to	\$115.00
Engineer-In-Training	\$ 80.00	to	\$123.00
Civil Engineer	\$ 96.00	to	\$126.00
Project Engineer	\$106.00	to	\$145.00
Project Manager	\$106.00	to	\$184.00
Principal-in-Charge	\$112.00	to	\$184.00
Resident Engineer	\$122.00	to	\$168.00
Field Inspector	\$ 77.00	to	\$142.00
Field Survey (2 Person)***	\$161.00	to	\$213.00
Field Survey (3 Person)***	\$238.00	to	\$290.00
Professional Land Surveyor	\$112.00	to	\$136.00
Secretary/Word Processor***	N/A		

\* Fully Burdened Billing Rates include overhead and profit.

\*\* Updated annually, together with the overhead.

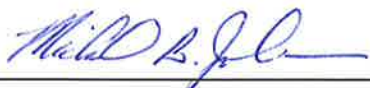
All actual out-of-pocket expenses incurred directly on the project are added to the billing. The billing is based on direct out-of-pocket expenses; meals, lodging, laboratory testing and transportation. The transportation rate is \$0.54 per mile or the current maximum IRS rate without receipt IRS Section 162(a).

\*\*\* Administration expenses include secretarial and clerical work; GIS, CADD, and computer equipment; owned survey equipment and tools (stakes, hubs, lath, etc. – Note: mileage billed separately at rate noted); miscellaneous administration tasks; facsimiles; telephone; postage; and printing costs, which are less than \$150.

## EXHIBIT "D"

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- I. The Engineer, Gray & Osborne, Inc., certifies to the best of its knowledge and belief, that it and its principals:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - B. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - C. Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (I)(B) of this certification; and
  - D. Have not within a 3-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

  
\_\_\_\_\_  
Michael B. Johnson, P.E., President  
Gray & Osborne, Inc.

3/29/18  
\_\_\_\_\_  
Date

The Agency may confirm the Engineer's suspension or debarment status on General Services Administration Excluded Parties List System website: [www.epls.gov](http://www.epls.gov).



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/28/2018

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> Hall & Company 19660 10th Ave NE Poulsbo WA 98370	<b>CONTACT</b> NAME: Allison Andrus PHONE (A/C, No, Ext): 360-626-2007 FAX (A/C, No): 360-598-3703 E-MAIL ADDRESS: aandrus@hallandcompany.com														
<b>INSURED</b> Gray & Osborne Inc 701 Dexter Avenue N #200 Seattle WA 98109	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A : Hartford Casualty Insurance Company</td><td>29424</td></tr><tr><td>INSURER B : Travelers Casualty and Surety Company</td><td>19038</td></tr><tr><td>INSURER C :</td><td></td></tr><tr><td>INSURER D :</td><td></td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Hartford Casualty Insurance Company	29424	INSURER B : Travelers Casualty and Surety Company	19038	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER B : Travelers Casualty and Surety Company	19038														
INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

**COVERAGES**

CERTIFICATE NUMBER: 707611396

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> OCP/XCU/BFPD <input checked="" type="checkbox"/> Separation Instds GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			52SBADU7303	9/10/2017	9/10/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" 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			52UECJS3276	9/10/2017	9/10/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			52SBADU7303	9/10/2017	9/10/2018	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
A	<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	Y/N	N/A	52SBADU7303	9/10/2017	9/10/2018	PER STATUTE <input checked="" type="checkbox"/> OTH-ER \$ WA Stop Gap E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional Liab: Claims Made Pollution Liab: Occurrence Form			105339819	9/10/2017	9/10/2018	\$1,000,000 Per Claim \$1,000,000 Aggregate

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

Re: Bay Avenue Water Main Project

The certificate holder is an additional insured per the attached.

**CERTIFICATE HOLDER****CANCELLATION**

North Beach Water District  
2212 272nd Street  
Ocean Park WA 98640

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**BUSINESS LIABILITY COVERAGE FORM**

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

**b. Real Estate Manager**

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

**c. Temporary Custodians Of Your Property**

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

**d. Legal Representative If You Die**

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

**e. Unnamed Subsidiary**

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

**3. Newly Acquired Or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. 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; and

- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed

before you acquired or formed the organization.

**4. Operator Of Mobile Equipment**

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**5. Operator of Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

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

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written



**BUSINESS LIABILITY COVERAGE FORM**

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. - Optional Additional Insured Coverages.

**a. Vendors**

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

**b. Lessors Of Equipment**

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

**c. Lessors Of Land Or Premises**

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**d. Architects, Engineers Or Surveyors**

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In connection with your premises; or
- (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

**BUSINESS LIABILITY COVERAGE FORM**

**e. Permits Issued By State Or Political Subdivisions**

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

**f. Any Other Party**

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
- (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
- (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

**BUSINESS LIABILITY COVERAGE FORM**

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

## **D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**

### **1. The Most We Will Pay**

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

### **2. Aggregate Limits**

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

### **3. Each Occurrence Limit**

Subject to 2.a. or 2.b. above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

### **4. Personal And Advertising Injury Limit**

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

### **5. Damage To Premises Rented To You Limit**

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

### **6. How Limits Apply To Additional Insureds**

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

## **E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS**

### **1. Bankruptcy**

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

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

#### **a. Notice Of Occurrence Or Offense**

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

#### **b. Notice Of Claim**

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

#### **c. Assistance And Cooperation Of The Insured**

You and any other involved insured must:

## **BUSINESS LIABILITY COVERAGE FORM**

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

### **d. Obligations At The Insured's Own Cost**

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### **e. Additional Insured's Other Insurance**

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

### **f. Knowledge Of An Occurrence, Offense, Claim Or Suit**

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.



**BUSINESS LIABILITY COVERAGE FORM**

This Paragraph f. applies separately to you and any additional insured.

**3. Financial Responsibility Laws**

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

**4. Legal Action Against Us**

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

**5. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

**6. Representations****a. When You Accept This Policy**

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

**b. Unintentional Failure To Disclose Hazards**

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

**7. Other Insurance**

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

**b. Excess Insurance**

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

**(1) Your Work**

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

**(2) Premises Rented To You**

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

**(3) Tenant Liability**

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

**(4) Aircraft, Auto Or Watercraft**

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. – Coverages.

**(5) Property Damage To Borrowed Equipment Or Use Of Elevators**

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

**(6) When You Are Added As An Additional Insured To Other Insurance**

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

**(7) When You Add Others As An Additional Insured To This Insurance**

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

**(a) Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

**\* (b) Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

**BUSINESS LIABILITY COVERAGE FORM**

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

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

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

**c. Method Of Sharing**

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

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

**8. Transfer Of Rights Of Recovery Against Others To Us****a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

**\* b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.



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

## **ADDITIONAL INSURED AND RIGHTS OF RECOVERY AGAINST OTHERS**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

- A. Any person or organization whom you are required by contract to name as additional insured is an "insured" for LIABILITY COVERAGE but only to the extent that person or organization qualifies as an "insured" under the WHO IS AN INSURED provision of Section II - LIABILITY COVERAGE.
- B. For any person or organization for whom you are required by contract to provide a waiver of subrogation, the Loss Condition - TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US is applicable.