



**DESIGN PROFESSIONAL SERVICES AGREEMENT (SINGLE)**  
**WITH CUMMING MANAGEMENT GROUP, INC.**

**1. PARTIES**

This Agreement is made by and between the City of Cupertino, a municipal corporation (“City”), and Cumming Management Group, Inc. (“Consultant”), a Corporation for Design & Construction Management for City Hall Annex Project (“Project”), and is effective on the last date signed below (“Effective Date”).

**2. SERVICES**

**2.1 Basic Services.** Consultant agrees to provide the Basic Services for the Project, which are set forth in detail in the Scope of Services, attached here and incorporated as **Exhibit A**, and as further specified in Consultant’s written Proposal as approved by City, except for any provision in the Proposal which conflicts or is inconsistent with this Agreement and the Exhibits hereto, or as otherwise expressly rejected by City. Consultant further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

**2.2 Additional Services.** City may request at any time during the Contract Time that Consultant provide additional services for the Project, which are not already encompassed, expressly or implicitly, in the Agreement, the Scope of Services, or the Proposal (“Additional Services”). Additional Services must be authorized in writing by City and Consultant will not be paid for unauthorized Additional Services rendered. Additional Services are subject to all the provisions applicable to Basic Services, except and only to the extent otherwise specified by City in writing.

All references to “Services” in the Agreement include Basic Services and Additional Services, unless otherwise stated in writing. The Services may be divided into separate sequential tasks, as further specified in this Agreement, the Scope of Services, and Consultant’s Proposal.

Consultant is solely responsible for its errors and omissions and those of its subconsultants, and must promptly correct them at its sole expense. Consultant must take appropriate measures to avoid or mitigate any delay, liability, and costs resulting from its errors or omissions.

**3. TIME OF PERFORMANCE**

**3.1 Term.** This Agreement begins on the Effective Date and ends on January 28, 2026, unless terminated earlier as provided herein (“Contract Time”). The City’s appropriate department head or City Manager may extend the Contract Time through a written amendment to this Agreement, provided such extension does not include additional contract funds. Extensions requiring additional contract funds are subject to the City’s purchasing policy.

**3.2 Schedule of Performance.** All Services must be provided within the times specified in **Exhibit B**, Schedule of Performance, attached and incorporated here. Consultant must promptly notify City of any actual or potential delay in providing the Services as scheduled to afford the Parties adequate opportunity to address or mitigate delays. If the Services are divided by tasks, Consultant must begin

work on each separate task upon receiving City's Notice to Proceed ("NTP"), and must complete each task within the time specified in **Exhibit B**.

**3.3 Time is of the essence** for the performance of all the Services. Consultant must have sufficient time, resources, and qualified staff to deliver the Services on time.

#### **4. COMPENSATION**

**4.1 Maximum Compensation.** City will pay Consultant for satisfactory performance of the Basic Services and Additional Services, if approved, a cumulative total amount that will be capped so as not to exceed \$431,766.00 ("Contract Price"), as specified in **Exhibit C, Compensation**, attached and incorporated here. The Contract Price includes all expenses and reimbursements and will remain in place even if Consultant's actual costs exceed the capped amount. No extra work or payment is permitted in excess of the Contract Price.

**4.2 Basic Services.** City will pay Consultant \$359,805.00 ("Lump Sum Price") for the complete and satisfactory performance of the Basic Services in accordance with Exhibit C. The Lump Sum Price is inclusive of all time and expenses, including, but not limited to, sub-Consultants' costs, materials, supplies, equipment, travel, taxes, overhead, and profit. If the Basic Services are not fully completed, Consultant will be compensated a percentage of the Lump Sum Price proportionate to the percentage of Basic Services that were completed to City's reasonable satisfaction.

**4.3 Additional Services.** City has the discretion, but not the obligation, to authorize Additional Services up to an amount not to exceed \$71,961.00 Additional Services provided to City's reasonable satisfaction will be compensated on a lump sum basis or based on time and expenses, in accordance with the Hourly Rates and Reimbursable Expenses Schedules included in **Exhibit C**. If paid on an hourly basis, Consultant will be compensated for actual costs only of normal business expenses and overhead, with no markup or surcharge ("Reimbursable Expenses"). Consultant will not be entitled to reimbursement for copying, printing, faxes, telephone charges, employee overtime, or travel to City offices or to the Project site.

**4.4 Invoices and Payments.** Monthly invoices must describe the Services completed and the Amount due for the preceding month. City will pay Consultant within thirty (30) days following receipt of a properly submitted and approved invoice for Services. The invoice must separately itemize and provide subtotals for Basic Services and Additional Services, and must state the percentage of completion for each task, as specified in **Exhibit C**. City will notify Consultant in writing of any disagreements with the invoice or the stated percentage of completion of tasks. If the disagreement is unresolved, City will pay Consultant only for the undisputed portion of the Services. Disputed amounts shall be subject to the Dispute Resolution provision of this Agreement.

- a. Time and Expenses.** For Additional Services provided on an hourly basis, each invoice must also include, for each day of Services provided: (i) name and title of each person providing Services; (ii) a succinct summary of the Services performed by each person; (iii) the time spent per person, in thirty (30) minute increments; (iv) the hourly billing rate or Sub-Consultant charge and payment due; and (v) an itemized list with amounts and explanation for all permitted reimbursable expenses.

- b. **Rates and Receipts.** All hourly rates and reimbursable expenses must conform to the City- approved rates set forth in **Exhibit C**, which will be in effect for the entire Contract Time. Each invoice must attach legible, dated receipts for Reimbursable Expenses.

## 5. INDEPENDENT CONTRACTOR

**5.1 Status.** Consultant is an independent Consultant and not an employee, partner, or joint venture of the City. Consultant is solely responsible for the means and methods of performing the Services and shall exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant in performing the Services. Consultant is not entitled to health benefits, worker's compensation, retirement, or any City benefit.

**5.2 Qualifications and Standard of Care.** Consultant represents on behalf of itself and its sub-Consultants that they have the qualifications and skills to perform the Services in a competent and professional manner, as exercised by design professionals performing similar services in the San Francisco Bay Area. Services may only be performed by qualified and experienced personnel or subconsultants who are not employed by City and do not have any contractual relationship with City excepting this Agreement. All Services must be performed as specified to City's reasonable satisfaction.

**5.3 Permits and Licenses.** Consultant warrants on behalf of itself and any sub-Consultants that they are properly licensed, registered, and/or certified to perform the Services, as required by law, and that they have procured a valid City Business License, if required by the Cupertino Municipal Code.

**5.4 Sub-Consultants.** Unless prior written approval from City is obtained, only Consultant's employees and sub-Consultants whose names are included in this Agreement and incorporated Exhibits may provide Services under this Agreement. Consultant must require all sub-Consultants to furnish proof of insurance for workers' compensation, commercial liability, auto, and professional liability in reasonable conformity to the insurance required of Consultant. The terms and conditions of this Agreement shall be binding on all sub-Consultants relative to the portion of their work.

**5.5 Tools, Materials, and Equipment.** Consultant will supply and shall be responsible for all tools, materials, and equipment required to perform the Services under this Agreement.

**5.6 Payment of Benefits and Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Consultant and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Consultant's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Consultant. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Consultant, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Consultant agrees to a reduction in amounts payable under this Agreement, or to promptly remit to City any payments due by the City

as a result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made.

**5.7 Errors and Omissions.** Consultant is solely responsible for its errors and omissions and those of its sub-Consultants, and must take prompt measures to avoid, mitigate, and correct them at its sole expense.

## **6. PROPRIETARY/CONFIDENTIAL INFORMATION**

During the Contract Time, Consultant may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Consultant shall hold in confidence all City information and use it only to perform this Agreement. Consultant shall exercise the same standard of care to protect City information as a reasonably prudent Consultant would use to protect its own proprietary data.

## **7. OWNERSHIP OF MATERIALS**

**7.1 Property Rights.** Subject to City meeting its payment obligations for the Services, any interest (including copyright interests) of Consultant in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium, prepared by Consultant under this Agreement ("Work Product"), will be the exclusive property of the City upon completion of the work to be performed hereunder or upon termination of this Agreement, to the extent requested by City. In any case, no Work Product shall be shown to a third-party without prior written approval by City

**7.2 Copyright.** To the extent permitted by Title 17 of the U.S. Code, all copyrights to the Work Product prepared/created by Consultant and its sub-Consultants and all copyrights in such Work Product shall constitute City property. If it is determined under federal law that the Work Product is not "works for hire," Consultant hereby assigns to City all copyrights to the Work Product when and as created, and shall require sub-Consultants to do the same. Consultant may retain copyrights to its standard details, but hereby grants City a perpetual, non-exclusive license to use such details.

**7.3 Patents and Licenses.** Consultant must pay royalties or license fees required for authorized use of any third party intellectual property, including but not limited to patented, trademarked, or copyrighted intellectual property if incorporated into the Services or Work Product of this Agreement.

**7.4 Re-Use of Work Product.** Unless prohibited by law and without waiving any rights, City may use or modify the Work Product of Consultant and its sub-Consultants to execute or implement any of the following, but Consultant shall not be responsible or liable for City's re-use of Work Product:

- (a) For work related to the original Services for which Consultant was hired;
- (b) To complete the original Services with City personnel, agents or other Consultants;
- (c) To make subsequent additions to the original Services; and/or
- (d) For other City projects.

**7.5 Deliverables and Format.** Electronic and hard copies of the Work Product constitute part of the Deliverables required under this Agreement, which shall be provided to City on recycled paper and copied on both sides, except for one single-sided original. Large-scale architectural plans and similar

items must be in CAD and PDF formats, and unless otherwise specified, other documents must be in Microsoft Office applications and PDF formats.

## **8. RECORDS**

**8.1** Consultant must maintain complete, accurate, and detailed accounting records relating to the Services and Compensation, in accordance with generally accepted accounting principles and procedures. The records must include detailed information about Consultant's performance, benchmarks, and deliverables. The records and supporting documents must be kept separate from other files and maintained for a period of four (4) years from the date of City's final payment.

**8.2** Consultant will provide City full access to Consultant's books and records for review and audit, to make transcripts or copies, and to conduct a preliminary examination of all the work, data, documents, proceedings, and activities related to this Agreement. If a supplemental examination or audit of Consultant's records discloses non-compliance with appropriate internal financial controls, a contract breach, or a failure to act in good faith, City will be entitled to recover from Consultant the costs of the supplemental examination. If this is a lump sum fee Agreement, City will be provided access to records of reimbursable expenses and the instruments of service/deliverables for review and audit. This Section 8 survives the expiration/termination of this Agreement.

**8.3** Consultant acknowledges that certain documents generated or received by Consultant in connection with the performance of this Agreement, including but not limited to correspondence between Consultant and any third party, are public records under the California Public Records Act, California Government Code section 6250 et seq. Consultant shall comply with all laws regarding the retention of public records and shall make such records available to the City upon request by the City, or in such manner as the City reasonably directs that such records be provided.

## **9. ASSIGNMENT**

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Consultant as a legal entity will be considered an Assignment subject to City approval, which shall not be unreasonably withheld. For purposes of this provision, control means fifty percent (50%) or more of the voting power of the business entity. This Agreement binds Consultant, its heirs, successors and assignees.

## **10. PUBLICITY / SIGNS**

Any publicity generated by Consultant for the project under this Agreement, during the term of this Agreement and for one (1) year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews, and newspaper articles. No signs may be posted, exhibited, or displayed on or about City property, except signage required by law or this Agreement, without prior written approval from the City.

## **11. INDEMNIFICATION**

**11.1** To the fullest extent allowed by law and except for losses caused by the sole or active

negligence or willful misconduct of City personnel, Consultant agrees to indemnify, defend, and hold harmless the City as follows:

**a. Indemnity for Design Professional Liability:** With respect to the performance of design professional services by a design professional as defined in California Civil Code Section 2782.8, to the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its officers, officials, agents, employees, and volunteers (collectively and/or individually “City”) from and against any and all liabilities, claims, damages, losses, costs, or expenses (including, without limitation, costs, attorneys’ fees, and expert fees of litigation and alternative dispute resolution) of every nature to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, servants, agents, or subcontractors (collectively and/or individually “Consultant”), in the performance of this Agreement or failure to comply with any obligations of the Agreement. If it is finally determined (through a non-appealable judgment or an agreement between City and Consultant) that liability is caused by the comparative negligence or willful misconduct of City, then Consultant’s indemnification and hold harmless obligation shall not exceed Consultant’s finally determined percentage of liability based upon the comparative fault of Consultant.

Irrespective of any language to the contrary in this Agreement, the Consultant has no duty to provide or to immediately pay for an up-front defense of City against unproven claims or allegations, but shall reimburse those litigation costs and expenses (including, without limitation, attorneys’ fees, and expert fees) incurred by the City to the extent caused by the negligence, recklessness, or willful misconduct of Consultant. In no event shall the cost to defend charged to Consultant exceed Consultant’s proportional percentage of fault, except as described in Section 2782.8(a) and (e) of the California Civil Code.

**b. Claims Involving Intellectual Property.** Consultant shall indemnify, defend, and hold harmless Indemnitees from and against any claim involving intellectual property, infringement, or violation of a United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights, which arises out of, pertains to, or relates to Consultant’s negligence, recklessness, or willful misconduct. Such costs and expenses will include reasonable attorney fees for legal counsel of City’s choice, expert fees, and all other costs and fees of litigation.

**c. Claims for Other Liability.** Except as provided in subsections 11.1(a) and (b), to the fullest extent permitted by law, Consultant shall hold harmless, defend (with counsel agreed to by City), and indemnify City and its officers, officials, agents, employees, and volunteers (collectively and/or individually “City”) from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys’ fees, and expert fees of litigation) of every nature arising out of, related to, or in connection with the performance of work hereunder by Consultant or any of its officers, employees, servants, agents, or subcontractors, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of the City.

Consultant’s duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend as stated herein.

**11.2** Consultant will assist City, at no additional cost, in the defense of any claim, dispute, or lawsuit arising out of this Agreement. Consultant's duties herein are not limited to or subject to the Contract Price, to Workers' Compensation claims, or to the Insurance or Bond limits and provisions. Nothing in this Agreement shall be construed to give rise to an implied right of indemnity in favor of Consultant against any Indemnitee.

**11.3** Consultant agrees to pay the reasonable costs City may incur in enforcing this provision related to Consultant's indemnification duties, including reasonable attorney fees, fees for legal counsel acceptable to City, expert fees, and all other costs and expenses related to a claim or counterclaim, a purchase order, another transaction, litigation, or dispute resolution. Without waiving any rights, City may deduct money from Consultant's payments to cover moneys due to City.

**11.4** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

**11.5** This Section 11 shall survive expiration or termination of this Agreement.

## **12. INSURANCE**

On or before the Contract Time commences, Consultant shall furnish City with proof of compliance with City Insurance Requirements, attached and incorporated here as **Exhibit D**. City will not execute the Agreement until Consultant has submitted and City has reasonably approved receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Alternatively, City may terminate this Agreement or in its sole discretion purchase insurance at Consultant's expense and deduct costs from payments to Consultant.

## **13. COMPLIANCE WITH LAWS**

**13.1 General Laws.** Consultant shall comply with all laws and regulations applicable to this Agreement. Consultant will promptly notify City of changes in the law or other conditions that may affect the Project or Consultant's ability to perform. Consultant is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act, or other federal or state law, rule or regulation.

**13.2 Labor Laws.** Consultant shall comply with all labor laws applicable to this Agreement. If the Services include a "public works" component, Consultant must comply with prevailing wage laws under Labor Code Section 1720 and other labor laws. To the extent applicable, Consultant must comply with City's Labor Compliance Program and with state labor laws pertaining to working days, overtime, payroll records and DIR Registration and Oversight. If the Contract Price is \$30,000 or more, Consultant must comply with the apprenticeship requirement in Labor Code Section 1777.5.

**13.3 Discrimination Laws.** Consultant shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Consultant shall comply with all anti-discrimination laws, including

Government Code Section 12900 and 11135, and Labor Code Section. 1735, 1777, and 3077.5. Consistent with City policy prohibiting it, Consultant understands that harassment and discrimination by Consultant or any of its sub-Consultants toward a job applicant, an employee, a City employee, or any other person is strictly prohibited. Consultant agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

**13.4 Conflicts of Interest.** Consultant shall comply with all conflict of interest laws and regulations applicable to this Agreement and must avoid any conflict of interest. Consultant warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement in violation of California Government Code Section 1090 et seq. Consultant may be required to file a conflict of interest form if Consultant makes certain governmental decisions or serves in a staff capacity, as provided in Section 18700 of Title 2 of the California Code of Regulations and other laws. Services may only be performed by persons who are not employed by City and who do not have any contractual relationship with City, with the exception of this Agreement. Consultant is familiar with and agrees to abide by the City's rules governing gifts to public officials and employees.

**13.5 Remedies.** A violation of this Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating this Agreement. City reserves all its rights and remedies under law and this Agreement, including the right to seek indemnification under Section 11. Consultant agrees to indemnify, defend, and hold City harmless from and against any loss, liability, and expenses arising from noncompliance with this Section.

#### **14. PROJECT COORDINATION**

**14.1 City Project Manager.** The City's Project Manager for all purposes under this Agreement will be Susan Michael, who shall have the authority to manage this Agreement and oversee the progress and performance of the Services. City in its sole discretion may substitute another Project Manager at any time and will advise Consultant of the new representative.

**14.2 Consultant Project Manager.** Subject to City's reasonable approval, Consultant's Project Manager for all purposes under this Agreement will be Katie Bipes, who shall be the single representative for Consultant with the authority to manage compliance with this Agreement and oversee the progress and performance of the Services. This includes responsibility for coordinating and scheduling the Services in accordance with City instructions, service orders, and the Schedule of Performance, and providing regular updates to the City's Project Manager on the Project status, progress, and any delays. City written approval is required prior to Consultant substituting a new Project Manager, which shall result in no additional costs to City or Project delays.

#### **15. ABANDONMENT OF PROJECT**

City may abandon or postpone the Project with thirty (30) calendar days written notice to Consultant. Consultant will be compensated for satisfactory Services performed through the date of abandonment and will be given reasonable time to assemble the work and close out the Services. No close out work shall be conducted without City reasonable approval of closure costs, which may not exceed ten percent (10%) of the total time expended to the date of abandonment. All charges including job closure costs will be paid in accordance with the provisions of this Agreement and within thirty (30) days of Consultant's final invoice reasonably approved by the City.



**16. TERMINATION**

City may terminate this Agreement for cause or without cause at any time, following reasonable written notice to Consultant at least thirty (30) calendar days prior to the termination date. Consultant will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Consultant closes out the Services and delivers all Work Product to City. All charges approved by City including job closure costs will be paid within thirty (30) days of Consultant's final invoice.

**17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION**

This Agreement is governed by the laws of the State of California, excepting any choice of law rules which may direct the application of laws of another jurisdiction. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Consultant must comply with the claims filing requirements under the Government Code prior to filing a civil action in court against City. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). If a dispute arises, Consultant must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

**18. ATTORNEY FEES**

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs. This Section 18 survives the expiration/termination of this Agreement.

**19. THIRD PARTY BENEFICIARIES**

There are no intended third party beneficiaries of this Agreement.

**20. WAIVER**

Neither acceptance of the Services nor payment thereof shall constitute a waiver of any contract provision. City's waiver of any breach shall not be deemed to constitute waiver of another term, provision, covenant, or condition or a subsequent breach, whether of the same or a different character

**21. ENTIRE AGREEMENT**

This Agreement represents the full and complete understanding of the Parties, of every kind or nature, and supersedes any and all other agreements and understandings, either oral or written, between them. Any modification of this Agreement will be effective only if in writing and signed by each Party's authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between any term, clause, or provision of this main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

**22. INSERTED PROVISIONS**

Each contractual provision or clause that may be required by law is deemed to be included and will be inferred in this Agreement. Either party may request an amendment to cure any mistaken insertion or omission of a required provision.

**23. HEADINGS**

The headings in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit, or amplify the terms or provisions of this Agreement.

**24. SEVERABILITY/PARTIAL INVALIDITY**

If any term or provision of this Agreement, or their application to a particular situation, is found by the court to be void, invalid, illegal or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect.

**25. SURVIVAL**

All provisions which by their nature must continue after the Agreement ends, including without limitation those referenced in specific Sections herein, survive this Agreement and shall remain in full force and effect.

**26. NOTICES**

All notices, requests, and approvals must be sent to the persons below in writing to the persons below, and will be considered effective on the date of personal delivery, the delivery date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

<p><b>To City of Cupertino:</b> Office of the City Manager 10300 Torre Ave. Cupertino, CA 95014</p> <p>Attention: Susan Michael Email: SusanM@cupertino.org</p>	<p><b>To Consultant:</b> Cumming Management Group, Inc. 475 Sansome St, Suite 770 San Francisco, CA 94111</p> <p>Attention: Katie Bipes Email: <a href="mailto:katie.bipes@cumming-group.com">katie.bipes@cumming-group.com</a></p>
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**27. EXECUTION**

The person executing this Agreement on behalf of Consultant represents and warrants that Consultant has the right, power, and authority to enter into this Agreement and carry out all actions herein, and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Consultant. This Agreement may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument.

**IN WITNESS WHEREOF**, the parties have caused the Agreement to be executed on the Effective Date stated earlier in this Agreement.

**CITY OF CUPERTINO**

A Municipal Corporation

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**CUMMING MANAGEMENT GROUP, INC.**

By *John Olsson* \_\_\_\_\_

Name John Olsson

Title Senior Director

Date Oct 3, 2022

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CHRISTOPHER D. JENSEN  
Cupertino City Attorney

**ATTEST:**

\_\_\_\_\_  
KIRSTEN SQUARCIA  
City Clerk

Date \_\_\_\_\_

Exhibits A, B, C



201 Moffit Blvd.  
MT. View, CA 94043  
Phone: 408-769-6000  
cumming-group.com

September 29, 2022

Ms. Susan Michael, AIA  
Capital Improvement Program Manager  
City of Cupertino – Public Works Department  
10300 Torre Avenue  
Cupertino, CA 95014

**Subject: Proposal for Construction Management Services – City of Cupertino City Hall Annex Building R.2**

Dear Susan:

Cumming Management Group, Inc. ("Cumming") is pleased to submit our revised proposal to the City of Cupertino ("City") to provide Construction Management Services for the City Hall Annex Building Project. Within this Proposal, we have included our project understanding, fee proposal and hourly rates.

Cumming supports several local municipalities and public agencies and therefore, recognizes your need for the highest quality services at an economical cost. We are flexible, willing to work within the City's budget to provide these services and would be happy to engage in a future discussion with the City of Cupertino regarding our proposed fees.

Cumming is excited by the prospect of working with the city and we are fully committed to working with your team with this project. Please feel free to contact me directly at (408) 540-4708 or by email at [jolsson@cumming-group.com](mailto:jolsson@cumming-group.com) should you have any questions regarding this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "John Olsson", is written over a horizontal line.

John Olsson, LEED AP, CCM  
Sr. Director  
Cumming Management Group, Inc.

**PROJECT UNDERSTANDING:**

Cumming understands that the City is seeking a project/construction manager to manage the City Hall Annex Building project during Design, Preconstruction, Construction and Closeout. The project includes remodeling of the existing 5,850 S.F. building, infrastructure work, commissioning, as well as other work required to transform the building into a Permit Center and Emergency Operations Center. Scope of work is anticipated to include the following:

**Preconstruction Phase:**

- Support the City's Project Manager in the following activities:
  - Define progress reporting requirements and establish protocol for routine progress meetings, reports, and issue tracking
  - Meet on site as needed with designers and City, review scope of work, and discuss design and timelines.
  - Work with designers during design process and review preliminary drawings.
  - Attend project design team meetings
  - Distribute meeting minutes as required

**Budgeting**

- Produce a project Estimate at DD completion.
- Support value engineering conversations

**Design, permit, bidding, and utilities**

- Perform Constructability reviews (based on 80 to 100 pages of plans)
- Review and prepare bidding documents, and assist in procurement
- Assist with the reach out and notify Public Utilities of the pending project
- Work with Utilities for planning and approvals. Coordinate payment of fees
- Assist the City of Cupertino with reach out to special consultants and testing by third parties
- Assist with the preparation of RFQ (prequalification) documents for general contractors
- Assist in bid analysis and selection for General Contractor and/or subcontractors
- Conduct site visit with Contractors, answer questions and RFI's
- Qualifying Contractor pricing, add value engineering thoughts where possible
- Give recommendation to the city for awarding project
- Aid Owner in issuing a Notice to Proceed and contract approval.
- Assist with permitting process for land use and Building permits, as well as other government agency approvals. Architect and General Contractor are responsible for paying and obtaining permits
- Coordinate with Utilities for planning and approvals. Coordinate with the City for payment of fees
- Facilitate value engineering conversations, including developing a VE log

**Scheduling**

- Review project schedule during design.

**Sustainability and Commissioning**

- Evaluate sustainability goals and opportunities in schematic design

### Construction Phase

- Review scope, deliverables, and milestones for construction
- Define budget, and schedule requirements
- Attend weekly City, Architect, and Contractor meetings to track project progress and review any concerns City may have.
- Define progress reporting requirements and establish protocol for progress meetings, reports, and issue tracking
- Review contractor schedule to identify critical path and opportunities/threats
- Review budget and validate costs
- Prepare quality control and quality assurance plan
- Ensure commissioning specifications are incorporated into project
- Review Contractors safety plan
- Identify and facilitate procurement of long lead time equipment/FF&E to avoid delays
- Conduct weekly coordination meetings
- Prepare and distribute meeting minutes – track follow up on action items
- Provide quality assurance to help ensure quality and compliance with the contract
- Track progress of construction, including on-site observation
- Provide weekly project update reports to the City's project manager
- Continuously liaise with A/E & Contractor
- Review and process contractor progress and payment applications
- Review test reports and identify areas of non-conformance
- Assist Architect in preparation of responses to RFI's and Coordinate resolution of issues
- Tract and analyze potential Change order's
- Negotiate change order approvals
- Assist with Coordination of Public Utilities work
- Monitor schedule, especially for critical path, deliverables, and milestones.
- Monitor correspondence, including Architect's approvals of shop drawings, product data and samples, as well as contractor RFIS.
- Analyze and provide recommendations to City on change orders and/or claims if any.
- Review Commissioning procedures
- Monitor General Contractor's reporting to DIR.
- An Allowance of \$75,000 has been included for special testing and inspections.

### Close-Out

- Determine close-out procedures for the project at the start of construction
- At completion of construction, walk punch list to confirm City shareholders requirements at agreed and confirm completion of all items.
- Confirm Contractor Certificates of Occupancy have been provided.
- Obtain equipment and maintenance manuals from Contractor and have them train school staff on new equipment as needed.
- Review Commissioning reports at end of project
- Assist with collecting copies of all final warranties, and lien waivers.
- Review final close out package including fully reviewed as-builts from Contractor and provide to the City.

#### Exclusions - Additional Services:

##### **Design, permit, bidding, and utilities**

- Continuously working with A/E as City of Cupertino's primary point of contact

##### **Budgeting**

- Prepare budget/operating cash flow projections, including spending projections through all phases
- The Cumming Cost Manager will do complete Cost review and report – This scope is not part of this proposal.
- Refine and formalize project budget
- Perform design and estimate review sessions for SD, DD, and 50% CD

##### **Sustainability**

- Define goals for project sustainability, energy performance, etc.
- Submission for LEED
- Research and advise on sustainability cost benchmarks and identify potential grant funding or incentives
- Refine and formalize project sustainability goals
- Evaluate costs associated with identified sustainability benchmarks

##### **Scheduling**

- Put together a preliminary schedule for all the work and discuss with all City shareholders.
- Update Schedule with input from A/E and City teams

##### **Claims review and analysis**

- Reviewing, analyzing, negotiating contractor claims

#### SECTION 2 - SCOPE OF SERVICES FEES

Cumming's standard billing practice is based on time and materials, in which invoices are submitted monthly for hours expended on work performed the month prior. Utilizing this philosophy, we have found that Cumming's fee approach traditionally provides our clients with the most flexibility and cost effectiveness, as costs are only incurred based on the current needs of the owner.

##### Proposed Hourly Rate and Not-to-Exceed Fee

Cumming proposes one part time Project Manager at an hourly rate of \$170 and a part time (50% during construction) Assistant Project Manager at an hourly rate of \$145 during construction.

Our proposal is a not-to-exceed fee of **\$359,805**. Our proposed fee is based on our understanding that the our team will be supporting the City's City Hall Annex project starting on October 24, 2022. until March 30, 2024.

See attached fee schedule for distribution of hours and fees.

Below is our service fees breakdown:

\$ 7,410.00	Cost Estimates
\$ 79,000.00	Design Mangement
\$ 23,400.00	Bidding
\$ 8,190.00	Scheduling
\$ 14,508.00	Commissioning & Sustainability Reviews
\$ 28,728.00	Constructability Analysis
\$ 122,669.00	Construction Managment
\$ 75,000.00	Testing and Inspections
\$ 900.00	Reimbursables
\$ 359,805.00	

Our hourly rate and proposed fees are valid for 30 days from the date of this proposal. If selected to provide project/construction management services for the City. The rates are subject to change on a yearly basis starting on January 1, 2024.

**As-Needed Services**

Cumming is readily prepared to provide additional support staff and services on an as-needed basis, as well as a preventative measure to mitigate any unforeseen exposures that may impact project budget, schedule, and/or quality, if and as required by the City. As such, Cumming has provided hourly rates in the table below for additional as-needed support staff and services that are readily available to support the project, as necessary:

<b>DISCIPLINE</b>	<b>HOURLY RATE</b>
Senior Director	\$225.00
Senior Project Manager	\$200.00
Project Manager	\$170.00
Assistant Project Manager	\$145.00
Scheduler	\$195.00
Project Engineer	\$125.00
Constructability Review	\$190.00
Cost Estimator (blended rate)	\$190.00
Inspectors	TBD

**Reimbursable expenses**

Any reimbursable expenses incurred during Cumming’s performance of services, including, without limitation, all costs for personnel, travel within twenty-five (25) miles of the City’s geographic limits, per diem expenses, printing and/or shipping of deliverables will be billed at actual costs with 0% mark-up.

On-site facilities are generally provided by the City or part of the contractor’s general conditions. If requested, these costs would fall under the reimbursable expenses category and shall be billed at cost with 0% markup. Client shall reimburse for any out-of-pocket expenses incurred which are authorized in advance and in writing.



# CUMMING

## PLANNED PROJECT MANAGEMENT EFFORT

Project #: Proposal  
 Project Name: Cupertino - City Annex

Start: 10/15/2022  
 End: 3/31/2024

Team Member	Phase >>> TOTAL	Pre-Con	Pre-Con	Pre-Con	Pre-Con	Pre-Con	Pre-Con	Pre-Con	Pre-Con	Pre-Con
		Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23
Available Hours	4,037	168	168	168	168	168	168	168	168	168
<b>Project Staffing Hours</b>										
	-	-	-	-	-	-	-	-	-	-
Katie Bipes - Project Manager	554	84	34	34	34	34	34	34	34	34
Scheduling	42	-	-	-	8	-	-	-	17	-
Assistant Construction Manager	823	-	-	-	-	-	-	-	-	-
Cost Managers	39	-	-	39	-	-	-	-	-	-
Sustainability Analysis	76	-	-	17	-	-	-	17	-	-
Constructability Analysis	151	-	-	-	-	-	25	84	-	-
Testing and Inspection Allowance	487	-	-	-	-	-	-	-	-	-
John Olsson - Sr. Director	39	8	8	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-
<b>Total Hours</b>	<b>2,211</b>	<b>92</b>	<b>42</b>	<b>89</b>	<b>42</b>	<b>34</b>	<b>59</b>	<b>134</b>	<b>50</b>	<b>34</b>

<b>Total Staff Fee</b>										
	-									
Katie Bipes - Project Manager	94,762	14,280	5,712	5,712	5,712	5,712	5,712	5,712	5,712	5,712
Scheduling	8,190	-	-	-	1,638	-	-	-	3,276	-
Assistant Construction Manager	121,556	-	-	-	-	-	-	-	-	-
Cost Managers	7,410	-	-	7,410	-	-	-	-	-	-
Sustainability Analysis	14,508	-	-	3,192	-	-	-	3,192	-	-
Constructability Analysis	28,728	-	-	-	-	-	4,788	15,960	-	-
Testing and Inspection Allowance	75,000	-	-	-	-	-	-	-	-	-
John Olsson - Sr. Director	8,751	1,890	1,890	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-
<b>Total Fee</b>	<b>\$ 358,905</b>	<b>\$ 16,170</b>	<b>\$ 7,602</b>	<b>\$ 16,314</b>	<b>\$ 7,350</b>	<b>\$ 5,712</b>	<b>\$ 10,500</b>	<b>\$ 24,864</b>	<b>\$ 8,988</b>	<b>\$ 5,712</b>

<b>Reimbursable</b>										
<<Expenses or Consultants>>										
Reimbursables	900	50	50	50	50	50	50	50	50	50
	-									
	-									
<b>Total Reimbursable Expenses</b>	<b>\$ 900</b>	<b>\$ 50</b>	<b>\$ 50</b>	<b>\$ 50</b>	<b>\$ 50</b>	<b>\$ 50</b>	<b>\$ 50</b>	<b>\$ 50</b>	<b>\$ 50</b>	<b>\$ 50</b>
Monthly Projected Fee	\$ 359,805	\$ 16,220	\$ 7,652	\$ 16,364	\$ 7,400	\$ 5,762	\$ 10,550	\$ 24,914	\$ 9,038	\$ 5,762
<b>TOTAL GMP</b>	<b>\$ 359,805</b>									

**EXHIBIT D**  
**Insurance Requirements**  
**Design Professionals & Consultants Contracts**

Consultant shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to City.

**INSURANCE POLICIES AND MINIMUMS REQUIRED**

1. **Commercial General Liability** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
  - a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
  - b. Additional Insured coverage under Consultant's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 10 (04/13).
  - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. **Automobile Liability**: ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation**: As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.  
 *Not required. Consultant has provided written verification of no employees.*
4. **Professional Liability** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate. If written on a claims made form:
  - a. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
  - b. Insurance must be maintained for at least five (5) years after completion of the Services.
  - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

**OTHER INSURANCE PROVISIONS**

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

***Additional Insured Status***

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers (“Additional Insureds”) are to be covered as additional insureds on Consultant’s CGL and automobile liability policies. General Liability coverage can be provided in the form of an endorsement to Consultant’s insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

***Primary Coverage***

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant’s insurance and shall not contribute to it.

***Notice of Cancellation***

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

***Waiver of Subrogation***

Consultant waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subconsultants. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

***Deductibles and Self-Insured Retentions***

Any deductible or self-insured retention must be declared to and approved by the City. At City’s option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Consultant must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

***Acceptability of Insurers***

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

***Verification of Coverage***

Consultant must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

***Subconsultants***

Consultant shall require and verify that all subconsultants maintain insurance that meet the requirements of this Contract, including naming the City as an additional insured on subconsultant’s insurance policies.

***Higher Insurance Limits***

If Consultant maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Consultant.

***Adequacy of Coverage***

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
1/21/2022

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

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

PRODUCER <b>Marsh &amp; McLennan Agency LLC</b> <b>Marsh &amp; McLennan Ins. Agency LLC</b> 1 Polaris Way #300 Aliso Viejo, CA 92656		CONTACT NAME: <b>Stephanie M Holly</b> PHONE (A/C, No, Ext): <b>949-540-6947</b> FAX (A/C, No): E-MAIL ADDRESS: <b>OCcerts@marshmma.com</b>	
		INSURER(S) AFFORDING COVERAGE INSURER A : <b>The Continental Insurance Company</b>	NAIC # <b>35289</b>
INSURED <b>Cumming Management Group, Inc.</b> 25220 Hancock Avenue Suite 440 Murrieta, CA 92562		INSURER B : <b>American Casualty Company or Reading PA</b> INSURER C : <b>Berkshire Hathaway Specialty Ins Co</b> INSURER D : <b>Continental Casualty Company</b> INSURER E : INSURER F :	<b>20427</b> <b>22276</b> <b>20443</b>

**COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	6056835935	12/31/2021	12/31/2022	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
							MED EXP (Any one person)	\$15,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
								\$
D	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	6056835949	12/31/2021	12/31/2022	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$5,000	X	X	6020879487	12/31/2021	12/31/2022	EACH OCCURRENCE	\$5,000,000
							AGGREGATE	\$5,000,000
								\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?    Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			6056835952	12/31/2021	12/31/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
B				6056835966	12/31/2021	12/31/2022	E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$1,000,000
							E.L. DISEASE - POLICY LIMIT	\$1,000,000
C	<b>Professional E&amp;O</b> <b>Retro 11/07/2006</b>			47EPP31356502	12/31/2021	12/31/2022	\$5,000,000 per Claim \$5,000,000 Policy Agg \$250,000 Retention	


DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
**City of Cupertino, its City Council, boards and commissions, officers, employees and volunteers are named as Additional Insured on General Liability, per the attached endorsement CNA75079XX (1-15); Automobile Liability per the attached endorsement CNA71527XX (10-12); and Umbrella Liability per the attached endorsement CNA75504XX (03-2015). General Liability Insurance is Primary and Non-Contributory, per the attached endorsement CNA75079XX (1-15). Waiver of Subrogation applies on General Liability, per the (See Attached Descriptions)**

CERTIFICATE HOLDER  <b>City of Cupertino</b> 10300 Torre Ave. Cupertino, CA 95014-0000	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  <i>Brett Lewis</i>
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## DESCRIPTIONS (Continued from Page 1)

attached endorsement CNA74879XX (1-15); Auto Liability, per the attached endorsement CA 04 44 10 13;  
Umbrella

Liability per the attached endorsement CNA75504XX (03-2015); and Workers Compensation, per the attached  
endorsement G-19160-B. 30 days Notice of Cancellation for non-payment of premium applies per the attached  
endorsement CNA75014XX (01-2015).

	<b>Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement</b>
---	--

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. The **WHO IS AN INSURED** section is amended to add as an **Insured** any person or organization whom the **Named Insured** is required by **written contract** to add as an additional insured on this **coverage part**, including any such person or organization, if any, specifically set forth on the Schedule attachment to this endorsement. However, such person or organization is an **Insured** only with respect to such person or organization's liability for:
  - A. unless paragraph B. below applies,
    1. **bodily injury, property damage, or personal and advertising injury** caused in whole or in part by the acts or omissions by or on behalf of the **Named Insured** and in the performance of such **Named Insured's** ongoing operations as specified in such **written contract**; or
    2. **bodily injury or property damage** caused in whole or in part by **your work** and included in the **products-completed operations hazard**, and only if
      - a. the **written contract** requires the **Named Insured** to provide the additional insured such coverage; and
      - b. this **coverage part** provides such coverage.
  - B. **bodily injury, property damage, or personal and advertising injury** arising out of **your work** described in such **written contract**, but only if:
    1. this **coverage part** provides coverage for **bodily injury or property damage** included within the **products completed operations hazard**; and
    2. the **written contract** specifically requires the **Named Insured** to provide additional insured coverage under the 11-85 or 10-01 edition of CG2010 or the 10-01 edition of CG2037.
- II. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
  - A. coverage broader than required by the **written contract**; or
  - B. a higher limit of insurance than required by the **written contract**.
- III. The insurance granted by this endorsement to the additional insured does not apply to **bodily injury, property damage, or personal and advertising injury** arising out of:
  - A. the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
    1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
    2. supervisory, inspection, architectural or engineering activities; or
  - B. any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.



**Blanket Additional Insured - Owners, Lessees or  
Contractors - with Products-Completed  
Operations Coverage Endorsement**

IV. Notwithstanding anything to the contrary in the section entitled **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance**, this insurance is excess of all other insurance available to the additional insured whether on a primary, excess, contingent or any other basis. However, if this insurance is required by **written contract** to be primary and non-contributory, this insurance will be primary and non-contributory relative solely to insurance on which the additional insured is a named insured.

V. Solely with respect to the insurance granted by this endorsement, the section entitled **COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;
2. except as provided in Paragraph IV. of this endorsement, agree to make available any other insurance the additional insured has for any loss covered under this **coverage part**;
3. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
4. tender the defense and indemnity of any **claim** to any other insurer or self insurer whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph (4) does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled **DEFINITIONS** is amended to add the following definition:

**Written contract** means a written contract or written agreement that requires the **Named Insured** to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

- A. is currently in effect or becomes effective during the term of this policy; and
- B. was executed prior to:
  1. the **bodily injury** or **property damage**; or
  2. the offense that caused the **personal and advertising injury**for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.



## General Liability Extension Endorsement

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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## General Liability Extension Endorsement

### 1. ADDITIONAL INSURED

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs **A.** through **K.** below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) ~~is~~ currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) ~~was~~ executed prior to:

(a) ~~the~~ **bodily injury** or **property damage**; or

(b) ~~the~~ offense that caused the **personal and advertising injury**,

~~for~~ which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) ~~coverage~~ broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph **A.** through **K.** below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

#### A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. ~~such~~ person or organization's financial control of a **Named Insured**; or

2. ~~premises~~ such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

~~provided~~ that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

#### B. Co-owner of Insured Premises

~~A co-owner of a premises~~ co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

#### C. Grantor of Franchise

Any person or organization that has granted a franchise to a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** as grantor of a franchise to the **Named Insured**.

#### D. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

#### E. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury** or **property**



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**damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

### F. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the occurrence giving rise to such **bodily injury, property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

### G. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

### H. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization, but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. ~~the~~ following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
  - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, ~~hoistway~~ openings, sidewalk vaults, street banners, or decorations and similar exposures; or
  - b. the construction, erection, or removal of elevators; or
  - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. ~~the~~ permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

### I. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:
  - a. the **Named Insured's** acts or omissions; or
  - b. the acts or omissions of those acting on the **Named Insured's** behalf,



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in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.

2. The coverage granted by this paragraph does not apply to **bodily injury or property damage included within the products-completed operations hazard.**

### J. Vendor

Any person or organization but only with respect to such person or organization's liability for **bodily injury or property damage** arising out of **your products** which are distributed or sold in the regular course of such person or organization's business, provided that:

1. The coverage granted by this paragraph does not apply to:
  - a. **bodily injury or property damage** for which such person or organization is obligated to pay **damages** by reason of the assumption of liability in a contract or agreement unless such liability exists in the absence of the contract or agreement;
  - b. any express warranty unauthorized by the **Named Insured**;
  - c. any physical or chemical change in any product made intentionally by such person or organization;
  - 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 any inspections, adjustments, tests or servicing that such person or organization 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 such person or organization's premises in connection with the sale of a product;
  - g. products which, after distribution or sale by the **Named Insured**, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for such person or organization; or
  - h. **bodily injury or property damage** arising out of the sole negligence of such person or organization 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:
    - (1) the exceptions contained in Subparagraphs d. or f. above; or
    - (2) such inspections, adjustments, tests or servicing as such person or organization has agreed with the **Named Insured** 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 Paragraph J. does not apply to any insured person or organization, from whom the **Named Insured** has acquired such products, nor to any ingredient, part or container, entering into, accompanying or containing such products.
3. This Paragraph J. also does not apply:
  - a. to any vendor specifically scheduled as an additional insured by endorsement to this **Coverage Part**;
  - b. to any of **your products** for which coverage is excluded by endorsement to this **Coverage Part**; nor
  - c. if **bodily injury or property damage** included within the **products-completed operations hazard** is excluded by endorsement to this **Coverage Part**.

### K. Other Person Or Organization

Any person or organization who is not an additional insured under Paragraphs A. through J. above. Such additional insured is an **Insured** solely for **bodily injury, property damage or personal and advertising injury** for which such additional insured is liable because of the **Named Insured's** acts or omissions.



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The coverage granted by this paragraph does not apply to any person or organization:

1. for **bodily injury, property damage, or personal and advertising injury** arising out of the rendering or failure to render any professional service;
2. for **bodily injury or property damage** included within the **products-completed operations hazard**; nor
3. who is specifically scheduled as an additional insured on another endorsement to this Coverage Part.

### 2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

- A. The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2, the additional insured's own insurance means insurance on which the additional insured is a named insured.

- B. With respect to persons or organizations that qualify as additional insureds pursuant to paragraph 1.K. of this endorsement, the following sentence is added to the paragraph above:

Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

### 3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS** the definition of **bodily injury** is deleted and replaced by the following:

**Bodily injury** means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

### 4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following:

#### A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence, offense or claim** only when the **occurrence, offense or claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or to an **employee** designated by any of the above to give such notice.

#### B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this Coverage Part will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence, offense or claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury or property damage** is not covered under this Coverage Part. However, the **Named Insured** shall give written notice of such **occurrence, offense or claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence, offense or claim**.

### 5. BROAD NAMED INSURED

**WHO IS AN INSURED** is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
  - a. on the effective date of this Coverage Part; or
  - b. by reason of a **Named Insured** creating or acquiring the organization during the policy period,



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qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

- (a) ~~any~~ partnership, limited liability company or joint venture; or
- (b) ~~any~~ organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, management control means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or
  - B. having the right, pursuant to a written trust agreement, to protect, ~~control~~ the use of, encumber or transfer or sell property held by a trust.
4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. ~~above~~, this insurance does not apply to:
- a. **bodily injury or property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
  - b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.
5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.
6. **ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES**

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for claims arising solely out of their capacity or status as such and, in the case of a **spouse**, where such claim seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

7. **EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE**

Under **COVERAGES, Coverage A – Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

**Expected or Intended Injury**

**Bodily injury or property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury or property damage** resulting from the use of reasonable force to protect persons or property.

8. **IN REM ACTIONS**

A quasi *in rem* action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were *in personam* against the **Named Insured**.



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### 9. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

A. Under COVERAGES, Coverage A – **Bodily Injury And Property Damage Liability**, the Insuring Agreement is amended to replace Paragraphs 1.b.(1) and 1.b.(2) with the following:

b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

(1) ~~such~~ **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.

(2) ~~the~~ **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and

B. Under COVERAGES, Coverage A – **Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:

i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

ii. ~~delete~~ the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

#### **Contractual Liability**

~~the~~ **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

iii. ~~add~~ the following additional exclusions.

This insurance does not apply to:

#### **Discrimination**

any actual or alleged discrimination, humiliation or harassment, including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

#### **Dishonesty or Crime**

~~Any actual or alleged dishonest, criminal or malicious act, error or omission.~~

#### **Medicare/Medicaid Fraud**

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

#### **Services Excluded by Endorsement**

~~Any health care incident for which coverage is excluded by endorsement.~~

C. **DEFINITIONS** is amended to:

i. add the following definitions:

**Health care incident** means an act, error or omission by the **Named Insured's employees or volunteer workers** in the rendering of:

a. **professional health care services** on behalf of the **Named Insured** or



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- b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

**Professional health care services** means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a. Physician;
- b. Nurse;
- c. Nurse practitioner;
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist;
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- j. Other allied health professional; or

**Professional health care services** does not include any services rendered in connection with human clinical trials or product testing.

- ii. ~~delete~~ the definition of **occurrence** and replace it with the following:

**Occurrence** means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

- iii. ~~amend~~ the definition of **Insured** to:

- a. add the following:

- ~~the~~ **Named Insured's employees** are **Insureds** with respect to:

(1) **bodily injury** to a **co-employee** while in the course of the **co-employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

~~when~~ such **bodily injury** arises out of a **health care incident**.

- ~~the~~ **Named Insured's volunteer workers** are **Insureds** with respect to:

(1) **bodily injury** to a **co-volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

~~when~~ such **bodily injury** arises out of a **health care incident**.

- b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of WHO IS AN INSURED.

- c. add the following:

**Insured** does not include any physician while acting in his or her capacity as such.



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- D. The **Other Insurance** condition is amended to delete Paragraph **b.(1)** in its entirety and replace it with the following:

**Other Insurance**

**b. Excess Insurance**

- (1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

### 10. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

**WHO IS AN INSURED** is amended to delete its last paragraph and replace it with the following:

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, except that if the **Named Insured** was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the policy period, such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense first occurred after such termination date;
- b. the **bodily injury** or **property damage** first occurred after such termination date; and
- c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company.

### 11. LEGAL LIABILITY – DAMAGE TO PREMISES

- A. Under COVERAGES, Coverage A – **Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the first paragraph immediately following subparagraph (6) of the **Damage to Property** exclusion and replace it with the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to **Damage To Premises Rented To You** as described in **LIMITS OF INSURANCE**.

- B. Under COVERAGES, Coverage A – **Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions c. through n. do not apply to damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in the **LIMITS OF INSURANCE** Section.

- C. **LIMITS OF INSURANCE** is amended to delete Paragraph 6. (the **Damage To Premises Rented To You** Limit) and replace it with the following:

6. Subject to Paragraph 5. above, (the **Each Occurrence Limit**), the **Damage To Premises Rented To You** Limit is the most the Insurer will pay under **COVERAGE A** for **damages** because of **property damage** to:

- a. any one premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with the permission of the owner; and
- b. contents of such premises if the premises is rented to the **Named Insured** for a period of 7 or fewer consecutive days.





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The ~~Damage To Premises Rented To You~~ Limit is \$200,000, unless a different Damage to Premises Rented to You Limit is shown in the Declarations.

D. The **Other Insurance** Condition is amended to delete Paragraph ~~b.(1)(a)(ii)~~, and replace it with the following:

(ii) That is property insurance for premises rented to a **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner, or for personal property of others in the **Named Insured's** care, custody or control;

E. This Provision 10. ~~does~~ not apply if liability for damage to premises rented to a **Named Insured** is excluded by another endorsement attached to this **Coverage Part**.

### 12. MEDICAL PAYMENTS

A. **LIMITS OF INSURANCE** is amended to delete Paragraph 7. (~~the~~ Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph 5. above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C - Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

(1) \$15,000 unless a different amount is shown here; ~~000000000000000000~~; or

(2) ~~the~~ amount shown in the Declarations for Medical Expense Limit.

B. Under **COVERAGES**, **Coverage C - Medical Payments**, the **Insuring Agreement** is amended to replace Paragraph 1.a.(3)(b) with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and  
This Paragraph B. does not apply to medical expenses incurred in the state of Missouri.

### 13. NON-OWNED AIRCRAFT

Under **COVERAGES**, **Coverage A - Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. ~~the~~ aircraft is rented with a trained, paid crew to the **Named Insured**; and
3. ~~the~~ aircraft is not being used to carry persons or property for a charge.

### 14. NON-OWNED WATERCRAFT

Under **COVERAGES**, **Coverage A - Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

(2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

(a) ~~less~~ than 75 feet long; and

(b) ~~not~~ being used to carry persons or property for a charge.



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### 15. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

- A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:
- Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- B. Under **COVERAGES**, **Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. ~~delete~~ the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

**Knowing Violation of Rights of Another**

**Personal and advertising injury** caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

(a) ~~the~~ **Named Insured**; or

(b) ~~any~~ **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. ~~add~~ the following exclusions:

This insurance does not apply to:

**Employment Related Discrimination**

~~discrimination~~ or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

**Premises Related Discrimination**

~~discrimination~~ or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

- Provision 1. **ADDITIONAL INSUREDS** of this endorsement; or
- ~~attachment~~ of an additional insured endorsement to this **Coverage Part**.

### 16. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY

- A. Under **COVERAGES**, **Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

**Contractual Liability**

~~Personal and advertising injury for which the Insured has assumed liability in a contract or agreement.~~

This exclusion does not apply to liability for **damages**:

- (1) ~~that~~ the **Insured** would have in the absence of the contract or agreement; or



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- (2) ~~assumed~~ in a contract or agreement that is an **insured contract** provided the offense that caused such **personal or advertising injury** first occurred subsequent to the execution of such **insured contract**. Solely for the purpose of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an **Insured** are deemed to be **damages** because of **personal and advertising injury** provided:
- (a) liability to such party for, or for the cost of, that party's defense has also been assumed in such **insured contract**; and
  - (b) ~~such~~ attorney fees and litigation expenses are for defense of such party against a civil or alternative dispute resolution proceeding in which covered **damages** are alleged.
- B. Solely for the purpose of the coverage provided by this paragraph, **DEFINITIONS** is amended to delete the definition of **insured contract** in its entirety, and replace it with the following:
- Insured contract** means that part of a written contract or written agreement pertaining to the **Named Insured's** business under which the **Named Insured** assumes the tort liability of another party to pay for **personal or advertising injury** arising out of the offense of false arrest, detention or imprisonment. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- C. Solely for the purpose of the coverage provided by this paragraph, the following changes are made to the Section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:
- 1. Paragraph 2.d. is replaced by the following:
    - d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;
  - 2. The first unnumbered paragraph beneath Paragraph 2.f.(2)(b) is deleted and replaced by the following:

So long as the above conditions are met, ~~attorneys~~ fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Notwithstanding the provisions of Paragraph 2 of the Contractual Liability exclusion (as amended by this Endorsement), such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.
- D. This **PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY** Provision does not apply if Coverage B – **Personal and Advertising Injury Liability** is excluded by another endorsement attached to this Coverage Part.
- 17. PROPERTY DAMAGE – ELEVATORS**
- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product Exclusion** and subparagraphs (3), (4) and (6) of the **Damage to Property Exclusion** do not apply to **property damage** that results from the use of elevators.
  - B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.
- 18. SUPPLEMENTARY PAYMENTS**
- The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:
- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and



## General Liability Extension Endorsement

B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

### 19. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

### 20. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the ~~Transfer Of Rights Of Recovery Against Others To Us~~ Condition is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. ~~the~~ **Named Insured's** ongoing operations; or
2. ~~your~~ **work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. ~~is~~ in effect or becomes effective during the term of this **Coverage Part**; and
2. ~~was~~ executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the **claim**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.



POLICYHOLDER NOTICE - COUNTRYWIDE

It is understood and agreed that:

If the **Named Insured** has agreed under written contract to provide notice of cancellation to a party to whom the Agent of Record has issued a Certificate of Insurance, and if the Insurer cancels a policy term described on that Certificate of Insurance for any reason other than nonpayment of premium, then notice of cancellation will be provided to such Certificate holders at least 30 days in advance of the date cancellation is effective.

If notice is mailed, then proof of mailing to the last known mailing address of the Certificate holder on file with the Agent of Record will be sufficient to prove notice.

Any failure by the Insurer to notify such persons or organizations will not extend or invalidate such cancellation, or impose any liability or obligation upon the Insurer or the Agent of Record.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.

**General Aggregate Limit - Per Project Endorsement**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

It is understood and agreed as follows:

- I. For each single construction or service project away from premises the **Named Insured** owns or rents, a separate Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:
  - A. all **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
  - B. all medical expenses under **Coverage C**;  
that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Project General Aggregate Limit applicable to any other project.
- II. All:
  - A. **damages** under **Coverage B**, regardless of the number of locations or projects involved;
  - B. **damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single project, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
  - C. medical expenses under **Coverage C**, caused by accidents which cannot be attributed solely to ongoing operations at a single project,  
will reduce the General Aggregate Limit shown in the Declarations.
- III. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular project.
- IV. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.
- V. If a single construction or service project away from premises owned by or rented to the **Named Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, such project will still be deemed to be the same project.
- VI. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.



## General Aggregate Limit - Per Location Endorsement

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. For each single **location**, a separate **Location** General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:
  - A. all **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
  - B. all medical expenses under **Coverage C**;
 

that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that **location**. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the **Location** General Aggregate Limit applicable to any other **location**.
- II. All:
  1. **damages** under **Coverage B**, regardless of the number of **locations** or projects involved;
  2. **damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single **location**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
  3. medical expenses under **Coverage C** caused by accidents which cannot be attributed solely to ongoing operations at a particular **location**,

will reduce the General Aggregate Limit shown in the Declarations.
- III. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the **Location** General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a single **location**.
- IV. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of **locations** involved.
- V. For the purposes of this endorsement, the following Definition is added:
 

**Location** means premises owned by or rented to the **Named Insured** involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad. **Location** does not mean any operation or project away from premises owned by or rented to the **Named Insured**.
- VI. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

INSURED: Cumming Management Group, Inc.

POLICY #: 6056835949

POLICY  
PERIOD:

12/31/2021

TO: 12/31/2022



**ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY**

It is understood and agreed that this endorsement amends the **BUSINESS AUTO COVERAGE FORM** as follows:

**SCHEDULE**

ANY PERSON OR ORGANIZATION FOR WHOM OR WHICH YOU ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT TO OBTAIN THIS WAIVER FROM US. YOU MUST AGREE TO THAT REQUIREMENT PRIOR TO LOSS

1. In conformance with paragraph **A.1.c. of Who Is An Insured** of Section **II – LIABILITY COVERAGE**, the person or organization scheduled above is an insured under this policy.
2. The insurance afforded to the additional insured under this policy will apply on a primary and non-contributory basis if you have committed it to be so in a written contract or written agreement executed prior to the date of the "accident" for which the additional insured seeks coverage under this policy.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.



INSURED: Cumming Management Group, Inc.

POLICY #: 6056835949

POLICY PERIOD: 12/31/2021

TO 12/31/2022

COMMERCIAL AUTO  
CA 04 44 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

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

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

**Named Insured:** Cumming Management Group, Inc.

**Endorsement Effective Date:** 12/31/2021

### SCHEDULE

**Name(s) Of Person(s) Or Organization(s):**

Where required by written contract or agreement executed prior to loss (except where not permitted by law)

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

INSURED: Cumming Management Group, Inc.

POLICY PERIOD: 12/31/2021

TO 12/31/2022



**Workers Compensation And Employers Liability Insurance**  
Policy Endorsement

**BLANKET WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS**

This endorsement changes the policy to which it is attached.

It is agreed that **Part One - Workers' Compensation Insurance G. Recovery From Others** and **Part Two - Employers' Liability Insurance H. Recovery From Others** are amended by adding the following:

We will not enforce our right to recover against persons or organizations. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

**PREMIUM CHARGE** - Refer to the Schedule of Operations

The charge will be an amount to which you and we agree that is a percentage of the total standard premium for California exposure. The amount is 0%.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.

Form No: G-19160-B (11-1997)

Endorsement Effective Date:

Endorsement No: 3; Page: 1 of 1

Underwriting Company: The Continental Insurance Company, 151 N Franklin St, Chicago, IL 60606

Endorsement Expiration Date:

Policy No: WC 6 56835966

Policy Effective Date: 12/31/2021

Policy Page: 31 of 46

INSURED: Cumming Management Group, Inc.

POLICY PERIOD: 12/31/2021

TO 12/31/2022



**Workers Compensation And Employers Liability Insurance  
Policy Endorsement**

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

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

**Schedule**

Any Person or Organization on whose behalf you are required to obtain this waiver of our right to recover from under a written contract or agreement.

The premium charge for the endorsement is reflected in the Schedule of Operations.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.

Form No: WC 00 03 13 (04-1984)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 1 of 1

Underwriting Company: American Casualty Company of Reading, Pennsylvania, 151 N Franklin St,  
Chicago, IL 60606

Policy No: WC 6 56835952

Policy Effective Date: 12/31/2021

Policy Page: 116 of 191



**CNA Paramount Excess and Umbrella Liability Policy**

or organization which may be liable to the **Insured** because of injury or damage to which this insurance may also apply; and

- vi. will not voluntarily make a payment, except at its own cost, assume any obligation, or incur any expense, other than for first aid, without the Insurer's prior consent.

**3. Cooperation**

With respect to both **Coverage A - Excess Follow Form Liability** and **Coverage B - Umbrella Liability**, the **Named Insured** will cooperate with the Insurer in addressing all **claims** required to be reported to the Insurer in accordance with this paragraph **O. Notice of Claims/Crisis Management Event/Covered Accident**, and refuse, except solely at its own cost, to voluntarily, without the Insurer's approval, make any payment, admit liability, assume any obligation or incur any expense related thereto.

**P. Notices**

Any notices required to be given by an **Insured** shall be submitted in writing to the Insurer at the address set forth in the Declarations of this Policy.

**Q. Other Insurance**

If the **Insured** is entitled to be indemnified or otherwise insured in whole or in part for any **damages** or **defense costs** by any valid and collectible **other insurance** for which the **Insured** otherwise would have been indemnified or otherwise insured in whole or in part by this Policy, the limits of insurance specified in the Declarations of this Policy shall apply in excess of, and shall not contribute to a **claim, incident** or such event covered by such **other insurance**.

With respect to **Coverage A - Excess Follow Form Liability** only, if:

- a. the **Named Insured** has agreed in writing in a contract or agreement with a person or entity that this insurance would be primary and would not seek contribution from any other insurance available;
- b. **Underlying Insurance** includes that person or entity as an additional insured; and
- c. **Underlying Insurance** provides coverage on a primary and noncontributory basis as respects that person or entity;

then this insurance is primary to and will not seek contribution from any insurance policy where that person or entity is a named insured.

**R. Premium**

All premium charges under this Policy will be computed according to the Insurer's rules and rating plans that apply at the inception of the current **policy period**. Premium charges may be paid to the Insurer or its authorized representative.

**S. In Rem Actions**

A quasi *in rem* action against any vessel owned or operated by or for a **Named Insured**, or chartered by or for a **Named Insured**, will be treated in the same manner as though the action were *in personam* against the **Named Insured**.

**T. 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:

- 1. as if each **Named Insured** were the only **Named Insured**; and
- 2. separately to each **Insured** against whom a **claim** is made.

**U. Transfer<sup>v</sup> of Interest**

Form No: CNA75504XX (03-2015)
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**CNA Paramount Excess and Umbrella Liability  
Policy**

Assignment of interest under this policy shall not bind the Insurer unless its consent is endorsed hereon.

**V. Unintentional Omission**

Based on Insurer's reliance on the **Named Insured's** representations as to existing hazards, if the **Named Insured** should unintentionally fail to disclose all such hazards at the effective date of this Policy, the Insurer will not deny coverage under this Policy because of such failure.

**W. Waiver of Rights of Recovery**

The Insurer waives any right of recovery it may have against any person or organization because of payments the Insurer makes under this Policy if the **Named Insured** has agreed in writing to waive such rights of recovery in a contract or agreement, and only if the contract or agreement:

1. is in effect or becomes effective during the **policy period**; and
2. was executed prior to loss.

**VII. DEFINITIONS**

For purposes of this Policy, words in bold face type, whether expressed in the singular or the plural, have the meaning set forth below.

**Advertisement** means a notice that is broadcast or published to the general public or specific market segments about the **Named Insured's** goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- A. notices that are published include material placed on the Internet or on similar electronic means of communication; and
- B. regarding web-sites, only that part of a web-site that is about the **Named Insured's** goods, products or services for the purposes of attracting customers or supporters is considered an **advertisement**.

**Aircraft** means any machine or device that is capable of atmospheric flight.

**Arbitration proceeding** means a formal alternative dispute resolution proceeding or administrative hearing to which an **Insured** is required to submit by statute or court rule or to which an **Insured** has submitted with the Insurer's consent.

**Asbestos** means the mineral in any form whether or not the asbestos was at any time airborne as a fiber, particle or dust, contained in or formed a part of a product, structure or other real or personal property, carried on clothing, inhaled or ingested, or transmitted by any other means.

**Authorized Insured** means any **executive officer**, member of the **Named Insured's** risk management or in-house general counsel's office, or any **employee** authorized by the **Named Insured** to give or receive notice of a **claim**.

**Auto** means:

- A. a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- B. 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**.

**Bodily injury** means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the bodily injury, sickness or disease.

**Claim** means a:

- A. **suit**; or








# Cumming Management Group for Design & Construction Management for City Hall Annex Project

Final Audit Report

2022-10-03

Created:	2022-10-03
By:	City of Cupertino (webmaster@cupertino.org)
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