



DESIGN PROFESSIONAL SERVICES AGREEMENT (MASTER) WITH BKF ENGINEERS

1. PARTIES

This Master Agreement is made by and between the City of Cupertino, a municipal corporation (“City”), and BKF Engineers (“Consultant”), a Corporation for Civil Engineering Services for Various Capital Improvement Projects (“Project”), and is effective on the last date signed below (“Effective Date”).

2. SERVICES

2.1 Scope of Services. Consultant agrees to provide the Services “as needed” and as set forth in the Scope of Services, attached and incorporated here as **Exhibit A**. The Services must comply with this Agreement and with each Service Order issued under the authority of the City Director of Public Works or his designee, in accordance with the following procedures. Consultant further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

2.2 Service Orders. Before issuing a Service Order the City Director of Public Works/Designee will request Services in writing and hold a meeting with Consultant to discuss it. Consultant will submit a written proposal that includes a specific Scope of Services, Schedule of Performance, and Compensation, which the Parties will discuss. Thereafter City Director of Public Works/Designee will execute a Service Order using the Service Order Form attached and incorporated here as **Exhibit B**. Each Service Order will specify its scope of services, deliverables, schedule of performance, compensation, and any other applicable terms. Issuance of a Purchase Order is discretionary and the Director of Public Works/Designee may streamline these procedures, e.g., conferring by telephone instead of a meeting, if it is in the City’s best interests. Consultant will not be compensated for Services performed without a duly executed Service Order.

3. TIME OF PERFORMANCE

3.1 Term. This Agreement begins on the Effective Date and ends on June 30, 2025 (“Contract Time”), unless terminated earlier as provided herein. The City’s Director of Public Works 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 each Service Order, and under no circumstances should the Services go beyond the Contract Time. 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 each Service Order.

3.3 Time is of the essence for the performance of all the Services required in this Agreement and in each Service Order. Consultant must have sufficient time, resources and qualified staff to deliver the Services on time. Consultant must respond promptly to the City's Service Orders and any change orders that may be issued

4. COMPENSATION

4.1 Maximum Compensation. City will pay Consultant for satisfactory performance of the Services a total amount that will be based upon actual costs but that will be capped so as not to exceed \$500,000.00 ("Contract Price"), based on the budget and rates set forth 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 Invoices and Payments. City will pay Consultant for Services satisfactorily provided under a Service Order, within thirty (30) days following receipt of a properly submitted invoice for Services provided during the preceding calendar month. Unless otherwise provided by a Service Order, each invoice must include for each day of Services:

- a. The name of each individual providing Services;
- b. A succinct summary of the Services performed by each such individual;
- c. The time spent by each individual providing those Services;
- d. The applicable hourly billing rate and payment due; and
- e. A detailed breakdown of all allowable expenses.

All hourly rates and allowable expenses must conform to City-approved rates set forth in **Exhibit C**.

4.3 Final Payment. At least thirty (30) days prior to end of the Agreement, Consultant must submit a requisition for final and complete payment of costs and any pending claims for City approval. Noncompliance with this requirement relieves City of further payments/obligations under the Agreement.

5. INDEPENDENT CONSULTANT

5.1 Status. Consultant is an independent Consultant and not an employee, partner, or joint venture of City. Consultant is solely responsible for the means and methods of performing the Services and for the persons hired to work under this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's performance of the Services. Consultant is not entitled to health, workers' compensation, or other benefits from City.

5.2 Consultant Qualifications. Consultant warrants on behalf of itself and its Subconsultants that they have the qualifications and skills to perform the Services in a competent and professional manner and according to the highest standards and best industry practices for similar services performed in the San Francisco Bay Area.

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

5.4 Subconsultants. Unless prior written approval from City is obtained, only Consultant's employees and Subconsultants whose names are included in this Agreement and incorporated Exhibits may provide Services under this Agreement. Consultant must require all Subconsultants 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 Subconsultants relative to the portion of their work.

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

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 Subconsultants, 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 or its Subconsultants in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium (collectively, "Work Product"), prepared by Consultant in connection with this Agreement 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 any third-party without prior written approval of City.

7.2 Copyright. To the extent permitted by Title 17 of the U.S. Code, all Work Product prepared/created by Consultant and its Subconsultants 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 Subconsultants 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 Subconsultants 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

81 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 4 (four) years from the date of City's final payment.

82 City will have free and 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. This Section 8 survives the expiration/termination of this Agreement.

83 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 in connection with the Project and Services during the Contract Time and for one (1) year thereafter will reference City contributions in making the Project possible. The words "City of Cupertino" shall 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 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 it has 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 local, state, and federal 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 Sections 12900 and 11135, and Labor Code Sections 1735, 1777 and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Consultant understands that harassment and discrimination directed 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 agrees to abide by City policies and administrative rules prohibiting gifts to City 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 John Raaymakers, 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 approval, the Consultant's Project Manager for all purposes under this Agreement will be Brian Scott, 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. 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 files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceeding 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 attorney fee provision does not apply to legal actions initiated by Consultant or Subconsultant. This Section 18 survives 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 every kind or nature between the Parties, and supersedes any other agreements and understandings, either oral or written, between the Parties. 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 in writing to the persons below, which will be considered effective on the date of personal delivery or the 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:

To City of Cupertino: Office of the City Manager 10300 Torre Ave. Cupertino, CA 95014 Attention: John Raaymakers Email: johnr@cupertino.org	To Consultant: BKF Engineers 255 Shoreline Drive, Suite 200 Redwood City, CA 94065-1428 Attention: Brian Scott Email: BScott@BKF.com
---	--

27. EXECUTION

The person executing this Agreement on behalf of Consultant represents and warrants that Consultant has full right, power, and authority to enter into and carry out all actions contemplated by this Agreement 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed.

CITY OF CUPERTINO

A Municipal Corporation

By _____

Name _____

Title _____

Date _____

BKF ENGINEERS

By Brian Scott _____

Name Brian Scott _____

Title Principal/Vice President _____

Date Sep 29, 2022 _____

APPROVED AS TO FORM:

CHRISTOPHER D. JENSEN
Cupertino City Attorney

ATTEST:

KIRSTEN SQUARCIA
City Clerk

Date _____

EXHIBIT A

SCOPE OF SERVICES

CONSULTANT shall provide certain Civil Engineering Services as required and requested by CITY.

CONSULTANT shall provide services under this AGREEMENT on an "as needed" basis and only (1) upon written request from CITY'S Director of Public Works or authorized Agent as defined in Section 8, Project Coordination, and (2) as defined in a fully executed Service Order.

SECTION 1. GENERAL PROVISIONS

- A. CONSULTANT shall perform all services to the satisfaction of CITY'S Public Works Director or authorized Agent.
- B. CONSULTANT shall perform services under this AGREEMENT only by authorization of a fully executed Service Order which shall clearly provide the nature of the specific services, the time limit within which such services must be completed, and the compensation for such services. CITY shall incorporate each authorized and fully executed Service Order into the terms and conditions of this AGREEMENT.
- C. CONSULTANT shall begin work only after receipt of a fully authorized and executed Service Order and shall execute the Project work as detailed in the Service Order. Unauthorized services performed by CONSULTANT shall be at no cost to CITY.
- D. CITY shall designate a Project Manager for each fully executed Service Order under this AGREEMENT. CONSULTANT shall coordinate the Service Order performance with CITY'S designated Project Manager.
- E. CONSULTANT shall be responsible for the coordination with CITY and federal, state, and local agencies that are necessary for all services authorized under this AGREEMENT.

SECTION 2. BASIC SERVICES

As authorized by a fully executed Service Order, CONSULTANT shall provide civil Engineering services for various CITY'S Capital Improvement Program (CIP) Projects in accordance with the following:

A. General Performance Requirements

For each assigned Project:

1. CONSULTANT shall designate a Project Manager and provide to CITY the names of their team members for the Project. The team members shall be satisfactory to CITY. CONSULTANT shall not substitute any team members without the prior approval of CITY. CITY retains the right to reject team members assigned by CONSULTANT or require replacement of team members.
2. CONSULTANT shall effectively manage and administer the Project for the efficient, progressive, and proactive delivery of the Project.
3. CONSULTANT shall be responsible for managing and coordinating the work of all subconsultants and subcontractors.
4. CONSULTANT shall consult and coordinate with the CITY and communicate with members of the Project team.
5. CONSULTANT shall schedule meetings and prepare meeting agendas and minutes for all Project meetings. All minutes of meetings are due to the CITY within ten (10) calendar days after the meeting in a digital format and shall also be provided to other appropriate agencies and entities, as directed by CITY.
6. CONSULTANT shall communicate weekly with CITY'S assigned Project Manager to provide an update on the current status of the Project and provide a brief written summary report.

B. Specific Performance Requirements

For each assigned Project, CONSULTANT may provide any or all of the following tasks and subtasks, as is required for the specific Project:

Task 1.0 Project Management

- 1.01 Project Management:** CONSULTANT shall schedule regular project development meetings over the phone to discuss the status of the project, upcoming efforts, issues, and other relevant information. CONSULTANT shall schedule and attend meetings to check in on a regular basis to discuss progress and design issues constraints. In addition to regular meeting, CONSULTANT shall attend face-to-face meetings as needed for design review at key deliverables.
- 1.02 Progress Meetings:** CONSULTANT shall schedule regular project development meetings over the phone to discuss the status of the project, upcoming efforts, issues, and other relevant information. CONSULTANT shall schedule and attend meetings to check in on a regular basis to discuss progress and design issues constraints. In addition to regular meeting, CONSULTANT shall attend face-to-face meetings as needed for design review at key deliverables.
- 1.03 QA/QC:** CONSULTANT shall perform Quality Assurance/Quality Control (QA/QC) checks for each submittal in accordance with CONSULTANT'S Quality Manual prior to submitting to the CITY or any other agency.

Task 2.0 Pre-Design Studies

- 2.01 Project Analysis:** For budget programming purposes, analyze a Project proposal to identify and describe initial Project goals and objectives, develop a scenario to address Project goals and objectives, Project delivery process, and cost estimate to deliver the proposed Project.
- 2.02 Feasibility Study:** Perform a Feasibility Study for the proposed Project. Study will include a professional analysis of the ability of the agency to provide the desired improvements/outcomes within the available budget and considering other defined constraints such as right-of-way. Other factors to be considered include constructability, time to design and construct, and environmental impacts. Study will also include the outcome of the proposed improvements including traffic impacts, maintenance implications, cost to construct, cost of right-of-way acquisition, conformance with the General Plan, construction impacts, impacts to specific properties, and other information that will assist the CITY in determining whether or not to construct the Project.
- 2.03 Deliverables:** (all deliverables digital unless otherwise noted)
- 2.03.1 Project Analysis Report

2.03.2 Feasibility Report

Task 3.0 Data Collection and Field Investigation

3.01 Existing Data Assembly: CONSULTANT shall review Project data provided by the CITY including, but not limited to, topographic survey, geotechnical reports, traffic studies, CEQA documents, other environmental studies, tree surveys, arborist's reports, approved Master Plan, or other such data. CONSULTANT shall be entitled to reasonably rely upon the accuracy and sufficiency of any information provided to the CONSULTANT by the CITY or the CITY'S agents.

CONSULTANT shall identify discrepancies or shortcomings among the existing data, and identify solutions for resolution, and propose generation of additional site information necessary to provide an accurate Project base map.

CONSULTANT shall utilize existing data to the extent possible and inform the CITY immediately of problems associated with using existing data for Project base information.

3.02 Topographic Survey: CONSULTANT shall perform aerial and/or ground surveys to map existing conditions. The surveys shall capture all physical features, including, but not limited to, curb, gutter, sidewalk, ramps, driveways, median strip, edge of pavement, fences along property line, signs, trees (including diameter), shrubs, bushes, guard/wood post rails, traffic signals, traffic loops, utility poles, pavement markings, property lines, utility structures, meter boxes, and electrical facilities. In addition to spot elevations, the topographic mapping shall include 1-ft contour interval.

CONSULTANT shall perform survey using GPS RTK on State Plane and NAVD88 datum. Prior to dipping the storm/sewer manholes and catch-basins, CONSULTANT shall coordinate with CITY staff to clear debris and standing water.

3.03 Right of Way Mapping: CONSULTANT shall plot the right-of-way (R/W) lines based on street monuments, or split of the street improvements. CONSULTANT shall include parcel information based on assessor's maps, and other record maps that may be available on the County website. CONSULTANT shall include the lot lines which intersect the R/W and provide the Assessor's Parcel Numbers (APN) and street address numbers for reference.

- 3.04 **Boundary Survey:** CONSULTANT shall perform boundary survey to aid in preparing temporary construction easements and permanent easement required to perform work. CONSULTANT shall coordinate with CITY to obtain title reports for properties.
- 3.05 **Utility Coordination:** Coordinate with all utility owners who may have facilities within the Project area or that may be impacted by the Project work. Transmit preliminary plans for identification of potential conflicts. Coordinate potholing by utility companies and owners as required.
- 3.06 **Field Survey:** Perform field survey of existing control and monumentation. Locate existing survey monuments and accessible property corners and compute the existing right-of-way based on boundary evidence, record maps and preliminary title reports. Prepare a calculated base map of the existing right-of-way for use in design.
- 3.07 **Potholing:** If the GPR survey identifies any utilities to be in close conflict, CONSULTANT shall prepare to pothole the utility to accurately locate it both horizontally and vertically. Based on GPR survey, CONSULTANT shall develop a potholing plan for locating and profiling existing underground utilities, and once approved by the CITY, shall be responsible for conducting the required potholing and site restoration. CONSULTANT shall submit potholing table summary report describing all findings in Excel format electronically.
- 3.08 **Base Sheet Preparation:** CONSULTANT shall compile survey and other data as made available into a base sheet create Project base information in AutoCAD (current version) for use in subsequent Project design tasks and submit to the CITY for review and comment. The base information shall utilize topographic survey as furnished by the CITY or by the CONSULTANT, according to the agreement.
- 3.09 **Geotechnical Investigation:** CONSULTANT shall be responsible for geotechnical investigations consisting of the following:
- Review of readily available geotechnical and geologic reports pertaining to the project site;
 - Preparation of a site-specific health and safety plan;
 - A visit to the site to coordinate utilities clearance;
 - Analytical test results of the collected soil samples for waste disposal;
 - Geotechnical laboratory test results of collected soil samples;
 - Engineering analyses based on the results of field and laboratory testing investigation;

- Analyze soil and groundwater samples to provide preliminary information regarding the environmental quality of the soil and groundwater; and
- Preparation of a geotechnical report presenting conclusions and recommendations.

3.10 Outreach: CONSULTANT shall conduct outreach with groups as identified by the CITY to establish design program.

3.11 Conceptual Alternative Development: CONSULTANT shall prepare three (3) hand drawn, color rendered conceptual solutions for the Project, each which address the primary Project issues and budget.

3.12 Staff Review: CONSULTANT shall present each concept to the CITY with analysis for evaluation. CITY shall select one concept as the preferred solution and provide the CONSULTANT with written direction to proceed with that concept.

3.13 Deliverables: (all deliverables digital unless otherwise noted)

3.13.1 Source Document Listing

3.13.2 Topographic Survey Exhibit

3.13.3 Right-of-Way Exhibit

3.13.4 Boundary Exhibit

3.13.5 Utility Investigation Exhibit

3.13.6 Pothole Exhibit and Summary Table

3.13.7 Proposal of Additional Investigative Actions

3.13.8 Details of Problematic Data

3.13.9 Summary of Utility Companies Contacted and Actions Taken

3.13.10 Base Sheet

3.13.11 Geotechnical Report

3.13.12 Scaled Base Map in AutoCAD (current version) Format

3.13.13 Project Area Surface Features Added to Base Map in AutoCAD Format

3.13.14 Geotechnical Report

Task 4.0: Preliminary (35%) Design

4.01 Meetings: CONSULTANT shall participate in two (2) design team meetings with representatives of the CITY during the Preliminary Design phase and provide written meeting minutes to the CITY within two (2) business days.

4.02 Alternatives Analysis: Provide alternatives to accomplish the Project goals and objectives. Include a comparison of the alternatives that includes, at a minimum

achievement of goal(s), construction cost, maintenance implications/costs, energy use, construction impacts, and time to construct. Include identification of agencies or jurisdictions that would need to be coordinated for each alternative.

- 4.03 Preliminary Plans (35% Submittal):** Prepare Preliminary Design Plans and submit them to the CITY for review and comment. The plans shall be prepared digitally using current AutoCAD software. The plans shall be formatted per CITY standards and submitted with other Preliminary Design Documents as noted below. The Preliminary Plans will include the major items of work needed to accomplish the Project goals.

The sheets to be provided for this Preliminary Plan submittal may include:

- Title / Index Sheet
- Demolition Plans
- Improvement Plans
- Typical Cross Sections
- Preliminary Street Alignment Plans and Profiles
- Preliminary Utility Plans
- Striping Plans
- Planting
- Details

- 4.04 Preliminary Estimate:** Prepare a Preliminary Estimate of Probable Construction Cost based on items and quantities of work shown on the Preliminary Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities and the CONSULTANT'S experience with similar local projects and engineer's judgement.

- 4.05 Deliverables:** (all deliverables digital unless otherwise noted)

4.05.1 Meeting Notes

4.05.2 Project Alternatives Analysis

4.05.3 Preliminary Plans

4.05.4 Preliminary Estimate of Probable Construction Cost

Task 5.0 Construction Document Development

- 5.01 Meeting:** CONSULTANT shall participate in two (2) design team meetings with representatives of the CITY during the Construction Document phase and provide written meeting minutes to the CITY within two (2) business days.

- 5.02 **65% Construction Documents:** The 65% Construction Documents shall be a refinement of the Preliminary Design documents and are based on comments received for the Preliminary Review. The 65% Plans, Draft Technical Specifications, and 65% Cost Estimate shall be submitted together.
- 5.03 **65% Plans:** Prepare 65% Design Plans and submit them to the CITY for review and comment. 65% plans shall include any sheets not previously submitted (erosion control, draft details, etc.). Advance the design to the point that all major design issues and solutions are represented in the plans. The following types of plans may be prepared:
- Title Sheet, Legend and Notes
 - Typical Cross Sections
 - Demolition Plans
 - Street Improvement Plans and Profiles
 - Utility Plans and Profiles
 - Construction Details
 - Traffic Handling and Construction Area Signs
 - Signing Striping Plans
 - Erosion Control Plans
- 5.04 **Draft Technical Specifications:** Prepare Draft Technical Specifications and submit them to the CITY for review and comment. The Technical Specifications are to reference CITY or Caltrans Standard Specifications for the various items of work, including measurement and payment provisions.
- 5.05 **65% Cost Estimate:** Prepare a 65% Estimate of Probable Cost based on items and quantities of work shown on the 65% Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities and the CONSULTANT's experience with similar local projects and engineer's judgment.
- 5.06 **95% Construction Documents:** The 95% Construction Documents shall be a refinement of the 65% Design Documents and are to be based on comments received for the 65% review. The 95% Plans, Final Technical Specifications, and 95% Cost Estimate shall be submitted together.
- 5.07 **95% Plans:** Prepare 95% Design Plans and submit them to the CITY for review and comment.

- 5.08 **Final Technical Specifications:** Update the Draft Technical Specifications and submit the Final Technical Specifications to the CITY for review and comment. The technical specifications are to reference CITY or Caltrans Standard Specifications for the various items of work, including measurement and payment provisions.
- 5.09 **95% Cost Estimate:** Prepare a 95% Estimate of Probable Cost as needed based on items and quantities of work shown on the 95% Plans and other anticipated improvements. Prices will be based on the magnitude of the quantities and the CONSULTANT'S experience with similar local projects and engineer's judgment.
- 5.10 **Deliverables:** (all deliverables digital unless otherwise noted)
- 5.10.1 Meeting Notes
 - 5.10.2 65% Design Plans
 - 5.10.3 Draft Technical Specification
 - 5.10.4 65% Construction Cost Estimate
 - 5.10.5 95% Design Plans
 - 5.10.6 Final Technical Specifications
 - 5.10.7 95% Construction Cost Estimate

Task 6.0 Final (100%) Construction Documents

- 6.01 **100% Construction Documents:** The 100% Construction Documents shall address any comments received for the 95% review. The 100% Plans, Technical Specifications, and Cost Estimate shall be submitted together on digital media, either a flash drive or a shared web link.

In addition, provide two (2) complete wet signed and stamped sets of Construction Documents and Technical Specifications. The submitted documents shall be in reproducible, hard copy format.

CITY will review the 100% Construction Documents for confirmation that responses to all previously provided comments are appropriately integrated. CONSULTANT is to make any changes to the 100% plans that are requested by the CITY.

- 6.02 **100% Plans:** Prepare 100% Design Plans and submit them to the CITY for review and approval.
- 6.03 **100% Technical Specifications:** Update the Final Technical Specifications and submit the 100% Technical Specifications to the CITY.

- 6.04 **100% Cost Estimate:** Prepare a 100% Estimate of Probable Construction Cost as needed based on items and quantities of work shown on the 100% Plans.
- 6.05 **Deliverables:** (all deliverables digital unless otherwise noted)
 - 6.05.1 100% Plans (digital + one hard copy)
 - 6.05.2 100% Technical Specifications (digital in Word + one hard copy)
 - 6.05.3 100% Cost Estimate (digital + one hard copy)

Task 7.0: Bid and Award Support

- 7.01 **Bid Period Assistance:** CONSULTANT shall provide the following bid phase services, at the CITY'S request, through award of the construction contract:
 - a. Attend the general contractor's pre-bid meeting.
 - b. Respond to bidders' questions until the question cutoff period identified in the bid documents package.
 - c. Assist in the review and processing of substitution submittals during the Bid phase.
 - d. Assist in the evaluation of bids as requested by the CITY.
- 7.02 **Addenda Preparation:** As requested by the CITY, prepare addenda to Project documents including, but not limited to, new or revised Plans, new or revised Technical Specifications and/or removal of items from the Project Plans and/or Specifications.
- 7.03 **Project Document Conformance:** CONSULTANT shall update the Construction Documents package to include all addenda issued during the Bid process and submit a Conformed Set of drawings and specifications to the CITY within ten (10) days of the contract award by the City Council.
 - a. CONSULTANT shall provide one (1) complete wet signed, stamped Conformed Set of Construction Documents and Technical Specifications that includes the 100% Construction Documents Package and all bid addenda. The submitted documents shall be in reproducible, hard copy format.
 - b. CONSULTANT shall provide one (1) complete electronic format Conformed Set of Construction Documents and Technical Specifications in both native file formats (AutoCAD, MS Word) and pdf on a CITY compatible flash drive.
- 7.04 **Deliverables:** (all deliverables digital unless otherwise noted)
 - 7.04.1 Written response to Bidders' questions
 - 7.04.2 Written evaluation of substitution submittals

7.04.3 Project Addenda

7.04.4 Conformed Project Documents

Task 8.0: Construction Administration

CONSULTANT'S responsibility to provide the Construction Administration Services commences with the construction contract award and ends with submission of the final Project Punch List. CONSULTANT shall advise the CITY, in writing, of any construction items that are not in conformance with the Contract Documents. CONSULTANT shall have reasonable access to the construction of the Project wherever it is in preparation or progress as appropriate to meet its obligations under this Agreement. Duties, responsibilities, and limitations of authority of CONSULTANT under this Task shall not be restricted, modified, or extended except by advance, written agreement between CITY and CONSULTANT.

8.01 Submittal Review: CONSULTANT shall review and approve or reject the Contractor's submittals within five (5) working days of receipt. CONSULTANT may request additional review time for particularly complex or unusual submittals. CITY shall not grant additional review time for standard construction item submittals.

CONSULTANT shall maintain a detailed record of all submittals and content supplied by the Contractor.

8.02 Requests for Information: CONSULTANT shall review Contractor's Requests for Information and provide a written response to the CONSULTANT with a copy to the CITY, within five (5) working days of receipt. CONSULTANT'S response shall provide, with advance CITY approval, supplemental drawings and/or specifications necessary to clarify the RFI. CONSULTANT shall maintain a detailed record of all RFI's and responses supplied to the Contractor.

8.03 Change Orders: CONSULTANT shall review and advise the CITY on requests by the CITY or Contractor for changes in the construction of the Project. CONSULTANT shall review CITY prepared Contract Change Orders and, where necessary, prepares Drawings and Specifications to describe Work to be added, deleted or modified. CONSULTANT shall maintain all records relative to changes in the construction.

8.04 Construction Meetings: CONSULTANT shall attend bi-weekly construction meetings, provide site observation, and provide a summary report of the visit. The goal of these site visits is to become familiar with the progress and quality of construction, observe defects and deficiencies.

- 8.05 **Claims and Disputes:** CONSULTANT shall advise the CITY on claims, disputes or other matters in question between the CITY and Contractor. CITY shall be the final arbiter in all such matters.
- 8.06 **Record Drawings:** CONSULTANT shall revise the contract plans to include all change orders, RFI responses and field changes to reflect actual conditions. Utilizing the contractor's red-line mark-up plan set the CONSULTANT shall transfer these changes to the record drawings.
- 8.07 **Deliverables:** (all deliverables shall be digital unless otherwise noted)
- 8.07.1 Responses to submittals, submittal log
 - 8.07.2 Responses to Requests for Information
 - 8.07.3 Review comments for CITY prepared Change Orders and drawings and specifications needed to accompany change order
 - 8.07.4 Site visit summary reports
 - 8.07.5 Claim/dispute reports
 - 8.07.6 Meeting Minutes
 - 8.07.7 Record Drawings

Task 9.0 Additional Services

CONSULTANT services not specifically identified in the Scope of Services shall be considered Additional Services. At the CITY'S request, CONSULTANT shall provide a fee proposal for specific additional services consistent with the professional rate schedule in Exhibit C.

Other Tasks/Services that may be assigned per Project needs:

- Plan line study
- Corridor study
- Community Outreach Support/Design Visualization
- Utility Coordination
- Permit Acquisition
- Traffic Signal Design
- Street Lighting Design
- Structural Design
- Green Street Infrastructure Design
- Complete Street Roadway Design
- Environmental Engineering
- Storm Water Conveyance and Treatment Design
- Fiber Optic/Communication Design
- Aerial Photometric Survey
- Legal Descriptions and Plat Maps
- Planting and Irrigation Design
- Roadway Aesthetic Treatments

Exhibit B

CITY OF CUPERTINO
MASTER AGREEMENT CONSULTANT SERVICES
SERVICE ORDER NO. Choose

Master Agreement Contract #: _____ MA Date: _____

Maximum Compensation: _____ MA End Date: _____

Consultant: Firm Name: _____
Address: _____
Contact: _____ Ph: _____

Project Name: _____

Description: (simple project description if appropriate)

Attachment A: Includes Description of Project, Scope of Service, Schedule of Performance and Compensation

City Project Management

Managing Department: Public Works Project Manager: _____

Fiscal/Budget :

Master Agreement Maximum Compensation: _____

Total Previously Encumbered to Date: _____

Encumbrance this Service Order: _____

Master Agreement Unencumbered Balance: _____

SO Acc't #: _____ PO #: _____

Project #: _____ Date: _____

Approvals Signatures:

Consultant/
Contractor _____ Date: _____

Manager/
Supervisor: _____ Date: _____

Appropriation Certification: I hereby certify that an unexpended appropriation is available in the above fund for the above contract as estimated and that fund are available as of this date of signature

City Finance: _____ Date: _____

Management Analyst

EXHIBIT C

COMPENSATION

CITY shall compensate the CONSULTANT according to the hourly rate(s) stated in this Exhibit which shall remain in effect for this AGREEMENT schedule of performance unless changed by written amendment to this AGREEMENT.

Each authorized Service Order under this AGREEMENT shall identify the method of compensation consistent with the scope of services provided by the CONSULTANT. In any case, the CONSULTANT'S total payment for each authorized Service Order shall not exceed the maximum compensation identified in that Service Order, unless authorized by a written amendment executed by the City and the CONSULTANT, and the total compensation for all authorized Service Orders shall not exceed the maximum compensation stated in Article 4, CONSULTANT Compensation, of this AGREEMENT.

Work exceeding the total authorized amount for a Service Order or the total compensation for this AGREEMENT shall be at no cost to the City.

CONSULTANT Hourly Rate(s)

CONSULTANT shall be compensated according to the hourly rate(s) for all work performed under authorized Service Orders shown on the attached Rate Schedule.

Reimbursable Expenses

Reimbursable expenses include the cost of items, other than direct labor, specifically required to perform the scope of services, excluding normal business operating expenses and overhead, which are included in the direct hourly rates set forth above. CITY will compensate CONSULTANT for such reimbursable expenses only with prior written authorization by the individual designated as the City Representative in Section 14, Project Coordination, of this AGREEMENT. CITY will reimburse the CONSULTANT for allowable reimbursable expenses for the documented actual cost only, and a surcharge or markup for CONSULTANT administration not to exceed 10%. Reimbursable expenses must be separately identified on the CONSULTANT invoice and documentation of each reimbursable expense must be submitted to the City upon request and maintained as required under Section 8, Records, of this AGREEMENT. Allowed reimbursable expenses include, but are not limited to:

- Individual or multiple document reproductions that exceed 50 pages;
- Drawing or bid set reproductions;
- Special software required by City specifically for a project, excluding standard software programs such as Microsoft Office suite applications (i.e. Word, Excel, PowerPoint, Project, etc.); Adobe Acrobat; or standard photo editing programs.

- Travel expenses to the extent allowed by City policy, and subject to any limitation on allowable travel expenses under a Service Order, with mileage reimbursed per the current IRS standard mileage rate at the time of travel;
- Subconsultants required by project scope of services;
- Safety equipment required by City policy or the project scope of services;
- Mass mailing notifications;
- Special expenses for public meetings, such as refreshments, interpreters, security, valet parking, facility rental, tents or booths, easels, markers, paper, presentation equipment.

Method of Payment

CONSULTANT shall submit an invoice to CITY monthly that clearly identifies the work performed in the previous month and authorized reimbursable expenses. All invoices from CONSULTANT shall be addressed to CITY at:

City of Cupertino
Department of Public Works
10300 Torre Avenue
Cupertino CA 95014
Email: PWinvoices@cupertino.org

The invoice shall identify the applicable period of work, a description of the work performed consistent with the Service Order scope of services, the number of hours, hourly rate, reimbursable expenses, Service Order maximum compensation, Service Order compensation to date including invoice number, total invoice amount for current invoice, Service Order maximum compensation balance remaining.

All CONSULTANT payments shall be addressed to:

BKF Engineers
255 Shoreline Drive, Suite 200
Redwood City, California 94065
Attention: Brian Scott
Email: BScott@BKF.com



**BKF ENGINEERS
PROFESSIONAL SERVICES RATE SCHEDULE**

EFFECTIVE MARCH 28, 2022

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
PROJECT MANAGEMENT	
Principal/Vice President	\$272.00
Senior Associate/Vice President	\$244.00
Associate	\$237.00
Senior Project Manager Senior Technical Manager	\$237.00
Project Manager Technical Manager	\$231.00
Engineering Manager Surveying Manager Planning Manager	\$213.00
TECHNICAL STAFF	
Senior Project Engineer Senior Project Surveyor Senior Project Planner	\$198.00
Project Engineer Project Surveyor Project Planner	\$174.00
Design Engineer Staff Surveyor Staff Planner	\$151.00
BIM Specialist I, II, III	\$151.00 - \$174.00 - \$198.00
Technician I, II, III, IV	\$144.00 - \$153.00 - \$168.00 - \$181.00
Drafter I, II, III, IV	\$113.00 - \$124.00 - \$134.00 - \$149.00
Engineering Assistant Surveying Assistant Planning Assistant	\$94.00
FIELD SURVEYING	
Survey Party Chief	\$198.00
Instrument Person	\$170.00
Survey Chainperson	\$127.00
Utility Locator I, II, III, IV	\$103.00 - \$146.00 - \$175.00 - \$199.00
Apprentice I, II, III, IV	\$78.00 - \$105.00 - \$116.00 - \$123.00
CONSTRUCTION ADMINISTRATION	
Senior Consultant	\$259.00
Senior Construction Administrator	\$225.00
Resident Engineer	\$167.00
Field Engineer I, II, III	\$151.00 - \$174.00 - \$198.00
PROJECT ADMINISTRATION	
Project Coordinator	\$126.00
Senior Project Assistant	\$109.00
Project Assistant	\$96.00
Clerical Administrative Assistant	\$81.00

Expert witness rates are available upon request.

Subject to the terms of a services agreement:

- Charges for outside services, equipment, materials, and facilities not furnished directly by BKF Engineers will be billed as reimbursable expenses at cost plus 10%. Such charges may include, but shall not be limited to: printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; agency fees; insurance; transportation on public carriers; meals and lodging; and consumable materials.
- Allowable mileage will be charged at the prevailing IRS rate per mile.
- Monthly invoices are due within 30 days from invoice date. Interest will be charged at 1.5% per month on past due accounts.
- The rates shown are subject to periodic increases, including January 1st of each year.

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.



Architects, Engineers and Surveyors 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.

TABLE OF CONTENTS

Table with 27 rows listing various insurance coverage items such as Additional Insureds, Boats, Bodily Injury, and Property Damage.

00020007270343155729233



**Architects, Engineers and Surveyors General Liability
Extension Endorsement****1. ADDITIONAL INSUREDS**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs **A.** through **I.** 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 **I.** 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. Engineers, Architects or Surveyors Engaged By You

An architect, engineer or surveyor engaged by the **Named Insured**, 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** acts or omissions, or the acts or omissions of those acting on the **Named Insured's** behalf:

a. in connection with the **Named Insured's** premises; or

b. in the performance of the **Named Insured's** ongoing operations.

But the coverage hereby granted to such additional insureds does not apply to **bodily injury**, **property damage** or **personal and advertising injury** arising out of the rendering of or failure to render any professional services by, on behalf of, or for the **Named Insured**, including but not limited to:

**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

1. the preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. supervisory, inspection, architectural or engineering activities.

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, 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.

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 or 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, hoistaway 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



**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

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,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**.

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

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. 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. ADDITIONAL INSURED – EXTENDED COVERAGE

When an additional insured is added by this or any other endorsement attached to this **Coverage Part, WHO IS AN INSURED** is amended to make the following natural persons **Insureds**.

If the additional insured is:

- a. An individual, then his or her **spouse** is an **Insured**;
- b. A partnership or joint venture, then its partners, members and their **spouses** are **Insureds**;
- c. A limited liability company, then its members and managers are **Insureds**; or
- d. An organization other than a partnership, joint venture or limited liability company, then its executive officers, directors and shareholders are **Insureds**;

**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

but only with respect to locations and operations covered by the additional insured endorsement's provisions, and only with respect to their respective roles within their organizations.

Please see the **ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES** provision of this endorsement for additional coverage and restrictions applicable to **spouses** of natural person **Insureds**.

4. BOATS

Under **COVERAGES, Coverage A – Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to add the following additional exception to the exclusion entitled **Aircraft, Auto or Watercraft**:

This exclusion does not apply to:

Any watercraft owned by the **Named Insured** that is less than 30 feet long while being used in the course of the **Named Insured's** inspection or surveying work.

5. 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.

6. 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 provisions:

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**.

7. 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**,

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



**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

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.

8. CONTRACTUAL LIABILITY – RAILROADS

With respect to operations performed within 50 feet of railroad property, the definition of **insured contract** is replaced by the following:

Insured Contract means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** you with permission of the owner is not an **insured contract**;
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to the **Named Insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes the tort liability of another party to pay for **bodily injury or property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2) Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

9. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, executors, heirs, legal representatives, administrators, trustees, beneficiaries and **spouses** of any natural person **Insured** or living trust shall also be insured under this policy; provided, however, coverage is afforded to such estates, executors, heirs, legal representatives, administrators, trustees, beneficiaries 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.

10. 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.

11. GENERAL AGGREGATE LIMITS OF INSURANCE - PER LOCATION

A. A separate Location General Aggregate Limit, equal to the amount of the General Aggregate Limit, is the most the Insurer will pay for the sum of:

1. All **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
2. 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 of any other location.

B. All:

1. **Damages** under **Coverage B**, regardless of the number of locations involved;



**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

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 single location,

will reduce the General Aggregate Limit shown in the Declarations.

- C. For the purpose of this **GENERAL AGGREGATE LIMITS OF INSURANCE - PER LOCATION** Provision, "location" means:
1. a premises the **Named Insured** owns or rents; or
 2. a premises not owned or rented by any **Named Insured** at which the **Named Insured** is performing operations pursuant to a contract or written agreement. If operations at such a location have been discontinued and then restarted, or if the authorized parties deviate from plans, blueprints, designs, specifications or timetables, the location will still be deemed to be the same location.

For the purpose of determining the applicable aggregate limit of insurance, premises 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 shall be considered a single location.

- D. 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, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular location.
- E. 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**, regardless of the number of locations involved, will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations.
- F. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this **GENERAL AGGREGATE LIMITS OF INSURANCE - PER LOCATION** Provision shall continue to apply as stipulated.

12. 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**.

13. 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



**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

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. to add the following additional exclusions:

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, including but not be 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
- 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;

00020007270343155729237



**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

- 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**.

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

Other Insurance

**Architects, Engineers and Surveyors General Liability
Extension Endorsement****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.

14. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES**A. Past Joint Ventures, Partnerships, Limited Liability Companies**

The following is added to **WHO IS AN INSURED**:

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.

If the joint venture, partnership or limited liability company is or was insured under a **consolidated (wrap-up) insurance program**, then such insurance will always be considered valid and collectible for the purpose of paragraph c. above. But this provision will not serve to exclude **bodily injury, property damage or personal and advertising injury** that would otherwise be covered under the **Architects, Engineers And Surveyors General Liability Extension Endorsement** provision entitled **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS**. Please see that provision for the definition of **consolidated (wrap-up) insurance program**.

B. Participation In Current Professional Joint Ventures

The following is added to **WHO IS AN INSURED**:

The **Named Insured** is also an **Insured** for participation in a current joint venture that is not named on the Declarations, but only if such joint venture meets all of the following criteria:

- a. Each and every one of the **Named Insured's** co-venturers are architectural, engineering or surveying firms only; and
- b. There is no other valid and collectible insurance purchased specifically to insure the joint venture.

However, the **Named Insured** is an **Insured** only for the conduct of such **Named Insured's** business within such a joint venture. The **Named Insured** is not insured for liability arising out of the acts or omissions of other co-venturers, nor of their partners, members or employees.

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

Except as provided under this **Architects, Engineers And Surveyors General Liability Extension Endorsement** or by the attachment of another endorsement (if any), 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.

00020007270343155729236



**Architects, Engineers and Surveyors General Liability
Extension Endorsement****15. LEGAL LIABILITY – DAMAGE TO PREMISES / ALIENATED PREMISES / PROPERTY IN THE NAMED INSURED'S CARE, CUSTODY OR CONTROL**

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

This insurance does not apply to:

j. Damage to Property

Property damage to:

- (1) Property the **Named Insured** owns, rents, or occupies, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- (3) Property loaned to the **Named Insured**;
- (4) Personal property in the care, custody or control of the **Insured**;
- (5) That particular part of real property on which the **Named Insured** or any contractors or subcontractors working directly or indirectly on the **Named Insured's** behalf are performing operations, if the **property damage** arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

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**.

Paragraph (2) of this exclusion does not apply if the premises are **your work**.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to **property damage** included in the **products-completed operations hazard**.

Paragraphs (3) and (4) of this exclusion do not apply to **property damage** to:

- i. tools, or equipment the **Named Insured** borrows from others, nor
- ii. other personal property of others in the **Named Insured's** care, custody or control while being used in the **Named Insured's** operations away from any **Named Insured's** premises.

However, the coverage granted by this exception to Paragraphs (3) and (4) does not apply to:

- a. property at a job site awaiting or during such property's installation, fabrication, or erection;
- b. property that is **mobile equipment** leased by an **Insured**;

**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

- c. property that is an **auto**, aircraft or watercraft;
- d. property in transit; or
- e. any portion of **property damage** for which the **Insured** has available other valid and collectible insurance, or would have such insurance but for exhaustion of its limits, or but for application of one of its exclusions.

A separate limit of insurance and deductible apply to such property of others. See **LIMITS OF INSURANCE** as amended below.

- 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 **LIMITS OF INSURANCE**.

- C.** The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to **5.** above, \$25,000 is the most the Insurer will pay under **Coverage A** for **damages** arising out of any one **occurrence** because of the sum of all **property damage** to borrowed tools or equipment, and to other personal property of others in the **Named Insured's** care, custody or control, while being used in the **Named Insured's** operations away from any **Named Insured's** premises. The Insurer's obligation to pay such **property damage** does not apply until the amount of such **property damage** exceeds \$1,000. The Insurer has the right but not the duty to pay any portion of this \$1,000 in order to effect settlement. If the Insurer exercises that right, the **Named Insured** will promptly reimburse the Insurer for any such amount.

- D.** Paragraph **6.**, Damage To Premises Rented To You Limit, of **LIMITS OF INSURANCE** is deleted and replaced by 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 any one premises while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, including contents of such premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. The Damage To Premises Rented To You Limit is the greater of:

- a. \$500,000; or
- b. The Damage To Premises Rented To You Limit shown in the Declarations.

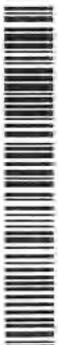
- E.** Paragraph **4.b.(1)(a)(ii)** of the **Other Insurance** Condition is deleted and replaced by the following:

(ii) That is property insurance for premises rented to the **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;

16. LIQUOR LIABILITY

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Liquor Liability**.

This **LIQUOR LIABILITY** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.



**Architects, Engineers and Surveyors General Liability
Extension Endorsement****17. 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** 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: \$N,NNN,NNN,NNN; or
- (2) the amount shown in the Declarations for Medical Expense Limit.

B. Under COVERAGES, the Insuring Agreement of Coverage C – Medical Payments 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

18. 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.

19. 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.

20. 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:



Architects, Engineers and Surveyors General Liability Extension Endorsement

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 INSURED of this endorsement; or
attachment of an additional insured endorsement to this Coverage Part.

21. 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.
B. Solely for the purpose of the coverage provided by this PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY provision, 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, attorney's fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred

00020007270343155729240



**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

by the indemnitee at the Insurer's request will be paid as **defense costs**. Such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

- C. 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**.

This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

22. 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.

23. RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

WHO IS INSURED is amended to include as **Insureds** natural persons who are retired partners, members, directors or employees, but only for **bodily injury, property damage** or **personal and advertising injury** that results from services performed for the **Named Insured** under the **Named Insured's** direct supervision. All limitations that apply to **employees** and **volunteer workers** also apply to anyone qualifying as an **Insured** under this Provision.

24. 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
- 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.

25. 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.

26. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** 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:



Architects, Engineers and Surveyors General Liability Extension Endorsement

- 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.

27. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

- 1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor
- 2. **Bodily injury or property damage** included within the **products-completed operations hazard** that arises out of those portions of the project that are not **residential structures**.

B. Condition 4. **Other Insurance** is amended to add the following subparagraph 4.b.(1)(c):

This insurance is excess over:

- (c) Any of the other insurance whether primary, excess, contingent or any other basis that is insurance available to the **Named Insured** as a result of the **Named Insured** being a participant in a **consolidated (wrap-up) insurance program**, but only as respects the **Named Insured's** involvement in that **consolidated (wrap-up) insurance program**.

C. **DEFINITIONS** is amended to add the following definitions:

Consolidated (wrap-up) insurance program means a construction, erection or demolition project for which the prime contractor/project manager or owner of the construction project has secured general liability insurance covering some or all of the contractors or subcontractors involved in the project, such as an Owner Controlled Insurance Program (O.C.I.P.) or Contractor Controlled Insurance Program (C.C.I.P.).

Residential structure means any structure where 30% or more of the square foot area is used or is intended to be used for human residency, including but not limited to:

- 1. single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments; and
- 2. the common areas and structures appurtenant to the structures in paragraph 1. (including pools, hot tubs, detached garages, guest houses or any similar structures).

However, when there is no individual ownership of units, **residential structure** does not include military housing, college/university housing or dormitories, long term care facilities, hotels or motels. **Residential structure** also does not include hospitals or prisons.

00020007270343155728241





CNA PARAMOUNT

**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

This **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

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.

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:
- A. in the performance of your ongoing operations subject to such **written contract**; or
 - B. in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury or property damage** included in the **products-completed operations hazard**, and only if:
 - 1. the **written contract** requires you to provide the additional insured such coverage; and
 - 2. this **coverage part** provides such coverage.

II. But if the **written contract** requires:

- A. additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or
- B. additional insured coverage with "arising out of" language; or
- C. additional insured coverage to the greatest extent permissible by law;

then paragraph I. above is deleted in its entirety and replaced by the following:

WHO IS AN INSURED is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of **your work** that is subject to such **written contract**.

III. 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**.

IV. 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**.

V. Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **coverage part**:

CNA75079XX (10-16)

Policy No: 7034315572

Page 1 of 2

Valley Forge Insurance Company

Insured Name: BKF Engineers

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

20020005460755215544738



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

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or
2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VI. 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. 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
3. make available any other insurance, and 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 3. 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.

VII. 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 you 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.



ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY

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

SCHEDULE

Name of Additional Insured Person Or Organization

ANY PERSON OR ORGANIZATION THAT YOU ARE REQUIRED BY WRITTEN CONTRACT OR WRITTEN AGREEMENT TO NAME AS AN ADDITIONAL INSURED.

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 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.

Form No: CNA71527XX (10-2012)

Endorsement Effective Date: 09/01/2022

Endorsement No: 12; Page: 1 of 1

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

Endorsement Expiration Date: 09/01/2023

Policy No: 7034315569

Policy Effective Date: 09/01/2022

Policy Page: 70 of 226



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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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: BKF Engineers

Endorsement Effective Date: 09/01/2022

SCHEDULE

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

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.

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.

Form No: CA 04 44 10 13

Policy No: 7034315569
Policy Effective Date:
09/01/2022



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

Policy Number: 72WEOK8H0Z

Endorsement Number:

Effective Date: 09/01/2022

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address:

BKF Engineers
255 Shoreline Drive, Suite 200
Redwood City, CA 94065-1428

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

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

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization

Job Description

Any person or organization from whom you are required by written contract or agreement to obtain this waiver of rights from us

Countersigned by

Authorized Representative

BKF Engineers for Civil Engineering Services for Various Capital Improvement Projects

Final Audit Report

2022-09-29

Created:	2022-09-29
By:	City of Cupertino (webmaster@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAANdu5SIHbFzncjRGfYMoNzZjyYIKkoRR2

"BKF Engineers for Civil Engineering Services for Various Capital Improvement Projects" History

-  Document created by City of Cupertino (webmaster@cupertino.org)
2022-09-29 - 6:12:58 PM GMT- IP address: 35.229.54.2
-  Document emailed to Julia Kinst (juliak@cupertino.org) for approval
2022-09-29 - 6:14:25 PM GMT
-  Document approved by Julia Kinst (juliak@cupertino.org)
Approval Date: 2022-09-29 - 6:15:30 PM GMT - Time Source: server- IP address: 216.198.111.214
-  Document emailed to bscott@bkf.com for signature
2022-09-29 - 6:15:32 PM GMT
-  Email viewed by bscott@bkf.com
2022-09-29 - 6:21:51 PM GMT- IP address: 50.209.179.1
-  Signer bscott@bkf.com entered name at signing as Brian Scott
2022-09-29 - 9:46:14 PM GMT- IP address: 50.209.179.1
-  Document e-signed by Brian Scott (bscott@bkf.com)
Signature Date: 2022-09-29 - 9:46:16 PM GMT - Time Source: server- IP address: 50.209.179.1
-  Agreement completed.
2022-09-29 - 9:46:16 PM GMT

