



PROFESSIONAL/CONSULTING SERVICES AGREEMENT

1. **PARTIES**

This Agreement is made by and between the City of Cupertino, a municipal corporation (“City”), and NV5 (“Contractor”), a corporation
for plan review services for the Westport Cupertino project specifically for Building 1 – assisted living with retail space
and is effective on the last date signed below (“Effective Date”).

2. **SERVICES**

Contractor agrees to provide the services and perform the tasks (“Services”) set forth in detail in Scope of Services, attached here and incorporated as **Exhibit A**. Contractor further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

3. **TIME OF PERFORMANCE**

3.1 This Agreement begins on the Effective Date and ends on June 30, 2024 (“Contract Time”), unless terminated earlier as provided herein. Contractor’s Services shall begin on September 9, 2021 and shall be completed by June 30, 2024. The City’s appropriate department head or the 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. Contractor must deliver the Services in accordance with the Schedule of Performance, attached and incorporated here **Exhibit B**.

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

4. **COMPENSATION**

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Services an amount that will be based on actual costs but that will be capped so as not to exceed \$ 90,000 (“Contract Price”), based upon the scope of services in **Exhibit A** and the budget and rates included in **Exhibit C**, Compensation attached and incorporated here. The maximum compensation includes all expenses and reimbursements and will remain in place even if Contractor’s actual costs exceed the capped amount. No extra work or payment is permitted without prior written approval of City.

4.2 Invoices and Payments. Monthly invoices must state a description of the deliverable completed and the amount due for the preceding month. Within thirty (30) days of completion of Services, Contractor must submit a requisition for final and complete payment of costs and pending claims for City approval. Failure to timely submit a complete and accurate payment requisition relieves City of any further payment or other obligations under the Agreement.

5. INDEPENDENT CONTRACTOR

5.1 Status. Contractor is an independent contractor and not an employee, partner, or joint venture of City. Contractor is solely responsible for the means and methods of performing the Services and for the persons hired to work under this Agreement. Contractor is not entitled to health benefits, worker's compensation, or other benefits from the City.

5.2 Contractor's Qualifications. Contractor warrants on behalf of itself and its subcontractors 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 practices in the industry.

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

5.4 Subcontractors. Only Contractor's employees are authorized to work under this Agreement. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Agreement will apply to any approved subcontractor.

5.5 Tools, Materials, and Equipment. Contractor will supply all tools, materials and equipment required to perform the Services under this Agreement.

5.6 Payment of Benefits and Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor 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. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor'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 Contractor. 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 Contractor, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Contractor 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.

6. **PROPRIETARY/CONFIDENTIAL INFORMATION/SHARING OF INFORMATION**

In performing this Agreement, Contractor 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. Contractor shall hold in confidence all City information provided by City to Contractor and use it only to perform this Agreement. Contractor shall exercise the same standard of care to protect City information as a reasonably prudent contractor would use to protect its own proprietary data.

The City of Cupertino (email address: permitcenter@cupertino.org) shall be copied on any direct email correspondence or communication sent by the Consultant to the applicant for all responses or inquiries related to the plan review of the Westport Cupertino project.

7. **OWNERSHIP OF MATERIALS**

7.1 Property Rights. Any interest (including copyright interests) of Contractor 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 Contractor 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 arising out of this Agreement is considered “works for hire” and all copyrights to the Work Product will be the property of City. Alternatively, Contractor assigns to City all Work Product copyrights. Contractor may use copies of the Work Product for promotion only with City’s written approval.

7.3 Patents and Licenses. Contractor 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 Contractor or its sub-contractors prepared or created under this Agreement, to execute or implement any of the following:

- (a) The original Services for which Contractor was hired;
- (b) Completion of the original Services by others;
- (c) Subsequent additions to the original Services; and/or
- (d) Other City projects.

7.5 Deliverables and Format. Contractor must provide electronic and hard copies of the Work Product, on recycled paper and copied on both sides, except for one single-sided original.

8. RECORDS

Contractor must maintain complete and accurate accounting records relating to its performance in accordance with generally accepted accounting principles. The records must include detailed information of Contractor's performance, benchmarks and deliverables, which must be available to City for review and audit. The records and supporting documents must be kept separate from other records and must be maintained for four (4) years from the date of City's final payment.

9. ASSIGNMENT

Contractor 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 Contractor as a legal entity is considered an assignment of the Agreement and subject to City approval, which shall not be unreasonably withheld. Control means fifty percent (50%) or more of the voting power of the business entity.

10. PUBLICITY/SIGNS

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

11. INDEMNIFICATION

11.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers, and consultants ("Indemnitees"), through legal counsel acceptable to City, from and against any and all liability, damages, claims, actions, causes of action, demands, charges, losses, costs, and expenses (including attorney fees, legal costs, and expenses related to litigation and dispute resolution proceedings) of every nature, arising directly or indirectly from this Agreement or in any manner relating to any of the following:

- (a) Breach of contract, obligations, representations, or warranties;
- (b) Negligent or willful acts or omissions committed during performance of the Services;
- (c) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors;
- (d) Unauthorized use or disclosure of City's confidential and proprietary Information;
- (e) Claim of infringement or violation of a U.S. patent or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

11.2 Contractor must pay the costs City incurs in enforcing this provision. Contractor must accept a tender of defense upon receiving notice from City of a third-party claim. At City's request,

Contractor will assist City in the defense of a claim, dispute, or lawsuit arising out of this Agreement.

11.3 Contractor's duties under this section are not limited to the Contract Price, workers' compensation payments, or the insurance or bond amounts required in the Agreement. Nothing in the Agreement shall be construed to give rise to an implied right of indemnity in favor of Contractor against City or any Indemnitee.

11.4. Contractor's payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Agreement, a purchase order, or other transaction.

11.5. Contractor 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 Contractor 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.

11.6. This Section 11 shall survive termination of the Agreement.

12. INSURANCE

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit D**, and must maintain the insurance for the duration of the Agreement, or longer as required by City. City will not execute the Agreement until City approves receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision may result in City, at its sole discretion and without notice, purchasing insurance for Contractor and deducting the costs from Contractor's compensation or terminating the Agreement.

13. COMPLIANCE WITH LAWS

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

13.2 Labor Laws. Contractor shall comply with all labor laws applicable to this Agreement. If the Scope of Services includes a "public works" component, Contractor is required to comply with prevailing wage laws under Labor Code Section 1720 and other labor laws.

13.3 Discrimination Laws. Contractor 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. Contractor 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, Contractor understands that harassment and discrimination directed toward a job applicant, an

employee, a City employee, or any other person, by Contractor or its employees or sub-contractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

13.4 Conflicts of Interest. Contractor shall comply with all conflict of interest laws applicable to this Agreement and must avoid any conflict of interest. Contractor 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. Contractor may be required to file a conflict of interest form if Contractor makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of Title 2 of the California Code of Regulations. Contractor agrees to abide by the City's rules governing gifts to public officials and employees.

13.5 Remedies. Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursements or terminating this Agreement. City reserves all other rights and remedies available under the law and this Agreement, including the right to seek indemnification under Section 11 of this Agreement.

14. PROJECT COORDINATION

City Project Manager. The City assigns Albert Salvador, Asst Director of CDD/Building Official as the City's representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. City reserves the right to substitute another Project manager at any time, and without prior notice to Contractor.

Contractor Project Manager. Subject to City approval, Contractor assigns Kevin Wedman, as its single Representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. Contractor's Project manager is responsible for coordinating and scheduling the Services in accordance with the Scope of Services and the Schedule of Performance. Contractor must regularly update the City's Project Manager about the progress with the work or any delays, as required under the Scope of Services. City written approval is required prior to substituting a new Representative.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project or parts therefor at any time. Contractor 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. With City's pre-approval in writing, the time spent in closing out the Services will be compensated up to a maximum of ten percent (10%) of the total time expended to date in the performance of the Services.

16. TERMINATION

City may terminate this Agreement for cause or without cause at any time. Contractor will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Contractor closes out the Services and delivers the Work Product.

17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Contractor must comply with the claims filing requirements under the Government Code prior to filing a civil action in court. If a dispute arises, Contractor must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

18. ATTORNEY FEES

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

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 a breach shall not constitute waiver of another provision or breach.

21. ENTIRE AGREEMENT

This Agreement represents the full and complete understanding of every kind or nature between the Parties, and supersedes any other agreement(s) and understanding(s), 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 the 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 provision and clause required by law for this Agreement is deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions. The Parties will collaborate to implement this Section, as appropriate.

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. The Parties agree to work in good faith to amend this Agreement to carry out its intent.

25. SURVIVAL

All provisions which by their nature must continue after the Agreement expires or is terminated, including the Indemnification, Ownership of Materials/Work Product, Records, Governing Law, and Attorney Fees, shall survive the Agreement and 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:

<p>To City of Cupertino</p> <p>Attention: <u>Albert Salvador</u></p> <p>Email: <u>AlbertS@cupertino.org</u></p>	<p>To Contractor: <u>NV5</u></p> <p><u>PO Box 74008680</u></p> <p><u>Chicago, IL 60674-8680</u></p> <p>Attention: <u>Kevin Wedman</u></p> <p>Email: <u>kevin.wedman@nv5.com</u></p>
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27. EXECUTION

The person executing this Agreement on behalf of Contractor represents and warrants that Contractor 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 Contractor. 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.

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

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

CITY OF CUPERTINO

A Municipal Corporation

CONTRACTOR

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

APPROVED AS TO FORM:

CHRISTOPHER D. JENSEN
Cupertino City Attorney

ATTEST:

KIRSTEN SQUARCIA
City Clerk

DATE: _____

EXHIBIT A: SUMMARY OF SERVICES

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NV5 will provide the following plan review services:

- City of Cupertino Municipal Code and applicable City of Cupertino Conditions of Certification
- California Building Standards Code (CBSC) and Title 24 Code of Regulations
 - Fire and life-safety
 - Structural
 - Accessibility
 - Electrical
 - Plumbing
 - Mechanical
 - Fire-building plans (i.e., fire sprinkler system, fire alarm system, smoke control, etc.)
 - Grading and civil plans
 - Stormwater/Standard Urban Stormwater Mitigation Plans (SUSMP)
 - Technical reports (i.e., structural calculations, geotechnical/soils engineering reports, hydrology report, Title 24 energy, etc.)
 - Green Code and Energy Code

Additional tasks:

- Attend design meetings
- Work under the direction of the Building Official or designee
- Implement a method for documenting and tracking plan review and reports as well as processing of change orders, RFIs and deferred submittals

EXHIBIT B: SCHEDULE OF PERFORMANCE

EXHIBIT B: SCHEDULE OF SERVICES

NV5 will provide plan review services within the time frames shown below:

SUBMITTAL TYPE	TURNAROUND TIME*
Initial Review	15 Business Days
Subsequent Reviews	10 Business Days
Deferred Submittals	10 Business Days

*Submittals received after 12:00 pm will be processed the following business days.

RATE AND SERVICE STRUCTURE

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NV5's rate schedule for plan review for the Westport Cupertino project is shown below. These rates include costs of all reference materials, training, and certifications/licensing.

PLAN REVIEW FEES	
DESCRIPTION	RATE
Full Plan Review Percentage of Fee*	65% of City Plan Review Fees
Partial Plan Review (Discipline Specific)*	35% of City Plan Review Fees

*Includes the initial review plus 2 rechecks. Additional checks will be billed at the hourly rates included below.

Hourly rates will be charged for review requests that meet the following criteria:

- Subsequent reviews beyond the performance of the initial review plus two rechecks
- Deferred submittal review
- Revisions to previously approved plans

Hourly rates to be charged in these circumstances are included below.

HOURLY RATES		
DESCRIPTION	HOURLY RATE	OVERTIME RATE
Principal-In-Charge	No Charge	No Charge
Project Manager	\$155.00	\$155.00
PLAN REVIEW		
Structural Engineer	\$155.00	\$193.75
Geotechnical Engineer	\$155.00	\$193.75
Professional Engineer (Civil, Electrical, Mechanical, Fire)	\$140.00	\$175.00
Senior Plans Examiner (Building and/or Fire)	\$125.00	\$156.25
Plans Examiner (Building and/or Fire)	\$105.00	\$131.25
Certified Access Specialist (CASp)	\$150.00	\$187.50
INSPECTION		
Rates available upon request		
OTHER		
Permit Technician	\$75.00	\$93.75

Expedited plan review is available upon request and will be billed at an additional 25% of the rates shown above.

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 **\$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.

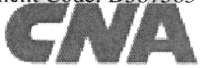
Higher Insurance Limits

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.

A waiver of subrogation applies in favor of The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers if required by written contract with respect to Workers' Compensation per the terms and conditions of the policy where permitted by state law. A 30-day notice of cancellation is included if required by written contract with respect to General Liability, Automobile Liability, and Workers' Compensation per the terms and conditions of the 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:

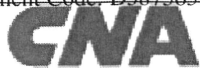
- A. coverage broader than required by the **written contract**; or
- B. a higher limit of insurance than required by the **written contract**.

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**:

Primary and Noncontributory Insurance



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

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.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

Any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement.

[Empty box for additional information]

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

It is understood and agreed that the condition entitled **Transfer Of Rights Of Recovery Against Others To The Insurer** is amended by the addition of the following:

Solely with respect to the person or organization shown in the Schedule above, the Insurer waives any right of recovery the Insurer may have against such person or organization because of payments the Insurer makes for injury or damage arising out of the **Named Insured's** ongoing operations or **your work** done under a contract with that person or organization and included in the **products-completed operations hazard**.

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.



It is understood and agreed that:

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

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

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

All other terms and conditions of the policy remain unchanged.

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

Form No: CNA68021XX (02-2013)

Endorsement Effective Date: 05/01/2021

Policy No: 7014856125, 7014842659,7014841883

CNA

**CNA71526XX
(Ed. 10/12)**

ADDITIONAL INSURED ENDORSEMENT - CONTRACTUAL OBLIGATION

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

SCHEDULE

Name of Additional Insured Person Or Organization

AS REQUIRED BY CONTRACT

1. Paragraph A.1. Who Is An Insured of Section II - LIABILITY COVERAGE is amended to include as an additional insured the person or organization scheduled above, but only if you are required by "written contract" to make that person or organization an additional insured under this policy.

2. The insurance provided to the additional insured is limited as follows:

- a. The person or organization is an additional insured only with respect to "bodily injury" or "property damage" arising out of a covered "auto" and caused by your negligent acts or omissions or the negligent acts or omissions of someone, other than the additional insured, for whom you are legally liable.
- b. The person or organization is not an additional insured for the person or organization's own acts or omissions, nor those of anyone, other than you, for whom the person or organization is legally liable.
- c. We will not provide the additional insured any broader coverage or any higher limit of liability than the least that is:

- (1) Required by the "written contract"; or
- (2) Afforded to you under this policy.

3. Condition 2. Duties In the Event of Accident, Claim, Suit or Loss of Section IV - BUSINESS AUTO CONDITIONS

is amended to add the following conditions applicable to the additional insured:

An additional insured under this endorsement will as soon as practicable:

- a. Give us written notice of an "accident" which may result in a claim or "suit" under this insurance, and of any claim or "suit" that does result;
- b. Agree to make available any other insurance the additional insured has for a loss we cover under this policy;
- c. Send us copies of all legal papers received, and otherwise cooperate with us in the investigation, defense, or settlement of the claim or "suit"; and
- d. Tender the defense and indemnity of any claim or "suit" to any other insurer or self insurer whose policy or program applies to a loss we cover under this policy. But if the "written contract" requires this insurance to be primary and non-contributory, this provision d. does not apply to insurance on which the additional insured is a Named Insured.

We have no duty to defend or indemnify an additional insured under this endorsement until we receive from the additional insured written notice of a "suit."

4. Only for the purpose of the insurance provided by this endorsement, SECTION V - 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 under this policy, provided the contract or agreement:

1. Is currently in effect or becomes effective during the term of this policy; and
2. Was executed prior to the accident for which the additional insured seeks coverage under this policy.

All other terms and conditions of the Policy remain unchanged.

Policy No: 7014842659
Effective Date: 5/1/2021
Insured Name: NV5, Inc.

CNA71526XX (Ed. 10/12)



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 Persons Or Organizations
AS REQUIRED BY CONTRACT

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.

0000079565704575653



POLICY NUMBER: 7014842659

COMMERCIAL AUTO
CA 04 44 03 10

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS 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: NV5 Global, Inc

Endorsement Effective Date: 05/01/2021

SCHEDULE

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

ANY PERSON OR ORGANIZATION AGAINST WHOM YOU HAVE AGREED TO WAIVE SUCH RIGHT OF RECOVERY IN A WRITTEN CONTRACT OR AGREEMENT.

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.





NOTICE OF CANCELLATION TO CERTIFICATEHOLDERS

It is understood and agreed that:

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

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

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

All other terms and conditions of the policy remain unchanged.

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

Form No: CC68021A (02-2013)
Endorsement Effective Date: 05/01/21

Policy No: 7014842824; 7014842810

CNA

**POLICY NO: 7014842824
WORKERS COMPENSATION**

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

Schedule

Any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement.

The premium charge for the endorsement is reflected in the Schedule of Operations. All other terms and conditions of the policy remain unchanged. This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date is shown below, and expires concurrently with said policy unless another expiration date is shown below.

Form No: WC00 03 13 (04-1984)

Endorsement Effective Date: 5/1/2021

Policy: 7014842824

CNA

WORKERS COMPENSATION

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

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, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

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

The premium for this endorsement is shown in the Schedule.

Schedule

1. Specific Waiver
 Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations: Waiver of Subrogation Operations

Premium:

The premium charge for this endorsement shall be premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

1. Advance Premium: Waiver of Subrogation Advance Premium

All other terms and conditions of the policy remain unchanged.

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

Form No:WC.:42 03 04 B (06-2014)
Endorsement Effective Date:05/01/2021
Policy No. 7014842824

CNA

UTAH WAIVER OF SUBROGATION ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Utah is shown in Item 3.A. of the Information Page.

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.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule. Our waiver of rights does not release your employees' rights against third parties and does not release our authority as trustee of claims against third parties.

Schedule

Any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement

All other terms and conditions of the policy remain unchanged.

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

Form No: WC 43 03 05 (07-2000)

Endorsement Effective Date: 05/01/2021

Policy No. 7014842824



BLANKET WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS

This endorsement changes the policy to which it is attached.

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

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

PREMIUM CHARGE - Refer to the Schedule of Operations

The charge will be an amount to which you and we agree that is a percentage of the total standard premium for California exposure. The amount is **Blanket Waiver of Subrogation Percentage Charge%**.

All other terms and conditions of the policy remain unchanged.

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

Form No: G-19160-B (11-1997)
Endorsement Effective Date: 05/01/2021

Policy No. 7014842810

Notice of Cancellation to Certificate Holder(s) Endorsement

In consideration of the premium paid for this Policy, it is understood and agreed that Section VII, Conditions, H. Notice of Cancellation, is amended by adding the following provision:

In the event this Policy is to be cancelled by you or by us, we agree to give thirty (30) days prior notice to the certificate holder(s) with mailing addresses on file with the agent of record.

This provision does not apply if cancellation is due to nonpayment of premiums to us or to a finance company authorized to cancel this Policy.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to the **Policy Period** stated in Declarations, Item 2.

Failure to provide such notice to the certificate holder(s) will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon us or our agents or representatives.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured NV5 Global, Inc.	Policy Number AEC-9044114-05
Effective Date of This Endorsement 05/01/2021	Authorized Representative

Berkley Insurance Company

Change Endorsement

Other Insurance

In consideration of the premium paid for this Policy, it is understood and agreed that Section VII. Conditions, I. Other Insurance is deleted and replaced with the following:

I. Other Insurance

If there is other collectible insurance, including but not limited to other professional liability insurance or project specific insurance, that applies to a **Claim** covered by this Policy, the other insurance shall be primary and this Policy shall be excess over the other insurance, unless the other insurance is written specifically excess of this Policy. This Policy will then apply to the amount of the **Claim** that exceeds the available limits of liability and any deductibles or retention amounts of the other insurance, as well as the Deductible under this Policy. If such other insurance has a duty to defend a **Claim** or assumes the defense of a **Claim**, this Policy shall not be obligated to defend that **Claim**.

Solely as respects Insuring Agreement B — Contractor's Pollution Liability, when required in a signed, written agreement executed prior to the report date of a **Claim**, this policy shall be primary to other collectible insurance that applies to those **Claims** resulting from the performance of your **Contractor Services**. Any other collectible insurance that applies to a **Claim** covered by Insuring Agreement B shall be excess and non-contributory.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured NV5 Global, Inc.	Policy Number AEC-9044114-05
Effective Date of This Endorsement 05/01/2021	Authorized Representative

BERKLEY INSURANCE COMPANY

2. The each Claim limit shown in Item 3A of the Declarations is the most we will pay for the sum of all Damages and Claim Expenses arising out of any single Claim. Two or more Claims considered a single Claim shall collectively be subject to the each Claim limit of liability shown in Item 3A of the Declarations.
3. The each Claim limit is the most we will pay for the sum of all Damages and Claim Expenses arising out of any single Claim regardless of how many Insuring Agreements may apply to such Claim.
4. The Policy Year Aggregate limit shown in Item 3B of the Declarations is the most we will pay for the sum of all Damages and Claim Expenses for all Claims made and reported during each Policy Year.
5. The payment of Damages and Claim Expenses will reduce the each Claim limit.

F. Deductible

You must pay the Deductible for Claim Expenses and Damages covered by this Policy before we are obligated to make any payment under the each Claim limit. The Deductible must be paid from your own account, and payments by other parties or insurers on your behalf shall not satisfy the Deductible. We have the right to determine the reasonableness of Claim Expenses that qualify to satisfy the Deductible. The Deductible for each Claim is set forth in Item 4A of the Declarations. The Policy Year Aggregate Deductible shown in Item 4B of the Declarations is the most the Named Insured must pay as a Deductible for the sum of all Claims made and reported during each Policy Year.

G. Deductible Credits

1. Mediation Credit: Your Deductible obligation may be reduced by 50%, subject to a maximum reduction of \$15,000 if you agree with our decision to use Mediation and the Claim is fully and finally resolved by such Mediation.
2. Risk Management Credit: Your Deductible obligation may be reduced by 50%, subject to a maximum reduction of \$25,000 if prior to the report date of a Claim, there is a signed, written and enforceable agreement for the Professional Services involved in the Claim, and it includes a clause limiting your liability to \$250,000 or less.
3. First Claim Deductible Credit: If the first Claim you ever report to us is made against you:
 - a. Greater than 24 months after the Knowledge Date shown on the Policy Declarations, then your Deductible obligation for that Claim may be reduced by 25%, subject to a maximum reduction of \$40,000; or
 - b. Greater than 36 months after the Knowledge Date shown on the Policy Declarations, then your Deductible obligation for that Claim may be reduced by 50%, subject to a maximum reduction of \$40,000.

If more than one Deductible Credit applies, your Deductible obligation will be reduced by 50%, subject to a maximum reduction of \$50,000.

H. Notice of Cancellation and Nonrenewal

This Policy may be canceled by the Named Insured identified in the Declarations, by surrender of the Policy to us or our authorized representative or by giving us written notice stating when, thereafter, such cancellation shall be effective. We will not cancel this Policy except for nonpayment of premium, fraud or material misrepresentation in procuring this insurance or in relation to any Claim, or changes in law affecting this Policy. If we cancel this Policy, we will mail or deliver to the first Named Insured, on behalf of all Insureds, written notice of cancellation. We will provide you at least ten (10) days-notice before the effective date of cancellation if we cancel for nonpayment of premium. If we cancel for any other reason, we will provide at least sixty (60) days-notice before the effective date of cancellation.

If this Policy is canceled, we will send the first Named Insured any premium refund due. The refund will be pro rata. The cancellation will be effective even if we have not made or offered a refund.

We will give you written notice sixty (60) days prior to the expiration of this Policy if we do not intend to renew this insurance subject to any state requirements. The notice will include our reason for nonrenewal. Proof of mailing will be sufficient proof of notice.

I. Other Insurance

If there is other collectible insurance, including but not limited to other professional liability insurance or project specific insurance, that applies to a Claim covered by this Policy, the other insurance shall be primary and this Policy shall be excess over the other insurance, unless the other insurance is written specifically excess of this Policy. This Policy will then apply to the amount of the Claim that exceeds the available limits of liability and any deductibles or retention amounts of the other insurance, as well as the Deductible under this Policy. If such other insurance has a duty to defend a Claim or assumes the defense of a Claim, this Policy shall not be obligated to defend that Claim.

J. Subrogation

In the event of any payment under this Policy, we shall be subrogated to all of your rights of recovery against any person or organization. You must do everything reasonably necessary to secure such rights and must do nothing after a Claim is made to jeopardize them. We hereby waive our subrogation rights against a client of yours to the extent that you had, prior to a Claim or Circumstance, entered into a written agreement to waive such rights. Any recovery shall first be paid to us up to the extent of any Damages or Claim Expenses paid by us and the balance shall be paid to you.

K. First Named Insured as Sole Agent

The first Named Insured in Item 1 of the Declarations will be the sole agent and will act on behalf of all Insureds for the payment or return of premium, receipt and acceptance of any endorsements, notices or provisions of this Policy, giving or receiving notice of cancellation or nonrenewal, the payment of any Deductibles, and to exercise the rights provided in Section Q Extended Reporting Period Option.

L. Alteration and Assignment