

**PROFESSIONAL SERVICES AGREEMENT
CITY OF COSTA MESA**

THIS AGREEMENT is made and entered into this 21st day of June, 2012 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and White Nelson Diehl Evans LLP ("Consultant").

WITNESSETH:

- A. WHEREAS, City proposes to have Consultant perform the services described herein below; and
- B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code, Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and
- C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in Consultant's Proposal, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. It is understood that in the exercise of every aspect of its role, within the scope of work, consultant will be representing the City of Costa Mesa, and all of its actions, communications, or other work, during its employment, under this contract is under the direction of the department. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Clerk or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;

- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. As compensation for the provision of services outlined in Exhibit A and in accordance with this agreement, Consultant shall be paid in accordance with the fees set forth in Exhibit "B". Consultant's total compensation shall not exceed Sixty-eight five-hundred twenty five thousand (\$68,525.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified by the Response unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to City's Project Manager for approval on a progress basis, but no more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction as of the date the invoice is created. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of one (1) year ending on June 17, 2013 with an option to extend the contract in one-year periods, for a minimum of two fiscal years, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00) combined

single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant.."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance: Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-limiting: Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The Chief Executive Officer or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

White Nelson Diehl Evans LLP
2875 Michelle Drive, Suite 300
Irvine, CA 92606
Tel: 714-978-1300
Fax: 714-978-7893
Attn: Nitin P. Patel, CPA

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: 714-754-5243
Fax: 714-754-5040
Attn: Bobby Young

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "C" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the

services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those

documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.21. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.22. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.23. Amendments. Only writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.24. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.25. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.27. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

 _____

Chief Executive Officer
City of Costa Mesa

Date: 7/25/12

ATTEST:

 _____

Interim City Clerk and ex officio Clerk of the City of Costa Mesa

Date: 7/26/12

CONSULTANT

[Redacted Signature]

Date: 7-16-2012

Signature

Nitin P. Patel, CPA Partner

Name and Title

33-0686301

Social Security or Taxpayer ID Number

APPROVED AS TO FORM:

[Redacted Signature]

Date: 07/17/12

APPROVED AS TO INSURANCE:

[Redacted Signature]

Date: 7/23/12

APPROVED AS TO CONTENT:

[Redacted Signature]

Date: 7/16/12

anager

EXHIBIT A
SCOPE OF SERVICES

CITY OF COSTA MESA

TECHNICAL AUDIT PROPOSAL

FOR THE THREE YEARS ENDING JUNE 30, 2014

**(WITH AN OPTION FOR EACH OF THE TWO YEARS
ENDING JUNE 30, 2015 AND JUNE 30, 2016)**

Submitted By:

WHITE NELSON DIEHL EVANS LLP

The logo for White Nelson Diehl Evans LLP is contained within a dark, textured rectangular box. The text is white and features a stylized, circular emblem behind the company name. The emblem consists of several overlapping, curved lines that form a circular shape, possibly representing a globe or a stylized 'W' and 'N'.

WHITE NELSON DIEHL EVANS LLP
Certified Public Accountants & Consultants



REQUEST FOR PROPOSAL

VENDOR APPLICATION FORM

TYPE OF APPLICANT: NEW CURRENT VENDOR

Legal Contractual Name of Corporation: White Nelson Diehl Evans LLP

Contact Person for Agreement:
Nitin P. Patel, CPA

Corporate Mailing Address: 2875 Michelle Drive, Suite 300

City, State and Zip Code: Irvine, CA 92606-5165

E-Mail Address: npatel@wndecpa.com

Phone: 714-978-1300 Fax: 714-978-7893

Contact Person for Proposals: Nitin P. Patel, CPA

Title: Partner E-Mail Address: npatel@wndecpa.com

Business Telephone: 714-978-1300 Business Fax: 714-978-7893

Is your business: (check one)

NON PROFIT CORPORATION FOR PROFIT CORPORATION

Is your business: (check one)

CORPORATION LIMITED LIABILITY PARTNERSHIP
 INDIVIDUAL SOLE PROPRIETORSHIP
 PARTNERSHIP UNINCORPORATED ASSOCIATION

TITLE PAGE

RFP Subject: Certified Audits on the City of Costa Mesa
For the Three Years Ending June 30, 2014
(With an Option for Each of the Two Years
Ending June 30, 2015 and June 30, 2016)

Name of Proposer: White Nelson Diehl Evans LLP
Certified Public Accountants and Consultants

Local Address: 2875 Michelle Drive, Suite 300
Irvine, CA 92606-5165

Telephone: (714) 978-1300

Fax: (714) 978-7893

Federal Identification Number: 33-0686301

California CPA License Number: PAR 6123

Website: www.wndecpa.com

Email: npatel@wndecpa.com

Contact Persons: Nitin P. Patel, CPA
Engagement Partner

Robert J. Callanan, CPA
Technical Review Partner

Date: March 27, 2012

CITY OF COSTA MESA

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CITY OF COSTA MESA

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WHITE NELSON DIEHL EVANS LLP
Certified Public Accountants & Consultants

March 27, 2012

Ms. Kim Wilson
RFP Facilitator
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Ms. Wilson:

We are pleased to present our proposal to serve as independent auditors for the City of Costa Mesa. We have prepared this information in accordance with the guidelines set forth in your request for proposal.

Why We Are The Best Qualified Firm

We consider ourselves to be the best qualified firm to perform auditing and accounting services for the City of Costa Mesa. Please consider these qualifications:

- Diehl, Evans and Company, LLP has been in existence for more than 80 years and providing auditing services to governmental agencies since 1950. In September of 2011, we merged with White, Nelson & Company, LLP emerging as White Nelson Diehl Evans LLP. A significant part of our practice is devoted to providing professional services to your specialized industry and on an annual basis our firm issues over 100 reports on audits of governmental agencies including, Cities, Redevelopment Agencies, Special Districts and Single Audits of Federal Grants. Our larger firm will enhance the services we can provide to the governmental sector.
- Our firm has devoted a substantial amount of time and resources in order to provide governmental agencies with quality audits. Our knowledge of the industry is best demonstrated by the fact that our clients who apply for the "Outstanding Award in Financial Reporting" issued by the California Society of Municipal Finance Officers (CSMFO) and the "Certificate of Achievement in Financial Reporting" issued by the Government Finance Officers Association (GFOA) consistently receive these awards. A list of these clients is presented on page 18 of this proposal.
- We are in a professional alliance with BDO Seidman, a National Accounting Firm, and a network of accounting firms allowing us the ability to provide quality accounting services. The BDO Alliance provides us access to BDO's personnel and technical resources which allows White Nelson Diehl Evans LLP to deliver the range of services and capabilities of a large national firm.
- We are a full service CPA firm. Our Consulting Services Department can provide the City with a variety of services, including investment policy compliance reviews, litigation support, dispute resolution services, and consulting on a wide array of governmental issues.

Why We Are The Best Qualified Firm (Continued)

- We understand that we provide a service to the City. Our audit approach is tailored to meet all technical requirements while maintaining professional skepticism without forgetting that we provide a service. We are able to achieve this by partner involvement in all phases of the audit and assigning experienced governmental audit staff to the engagement. The partner will be involved in all phases of the audit including the planning, risk assessment procedures and final review of all workpapers and financial reports. We have assigned experienced auditors to this audit engagement, including Daphnie Munoz, CPA, a partner with the firm serving as the audit manager, with 13 years of experience and the audit supervisor, Jennifer King, CPA with 10 years of experience to this engagement. Partner involvement will result in decisions being made on a timely basis and experienced staff, familiar with municipal procedures and records, will minimize disruption to your staff.

The scope of our services for the three years ending June 30, 2014 would be as follows:

- A financial audit of the basic financial statements of the City of Costa Mesa in accordance with Governmental Auditing Standards to be included in the Comprehensive Annual Financial Report (CAFR).
- A financial audit of the Costa Mesa Community Foundation.
- A financial audit of the Costa Mesa Public Financing Authority.
- A financial audit of the Costa Mesa Housing Authority.
- A Single Audit of Federal Grants to be performed to meet the requirements of the U.S. Office of Management and Budget (OMB) Circular A-133.
- An agreed-upon procedures review of the calculation of the City's GANN Appropriations Limit (GANN), as required by Section 1.5 of Article XIII B of the California Constitution.
- A financial audit of the AB 2766.
- A management letter under Statements of Auditing Standards No. 115, containing any comments or recommendations resulting from our review of the systems of internal controls in connection with the financial audits.
- A report under Statements of Auditing Standards No. 114, communicating information related to the audit to those in charge of governance at the conclusion of the audits.
- A financial and compliance audit of the Costa Mesa Redevelopment Agency for the 2012 year only.
- A financial audit of the General and Capital Projects Funds of the Airborne Law Enforcement Services for the 2012 year.

We make a commitment to deliver all necessary reports based on the timetable presented herein on page 3. Also, a more detailed discussion of our understanding of the work to be performed is set forth on pages 3 through 9.

Our goal is to provide the City with the highest quality of service, including a CAFR which meets all required reporting standards and a comprehensive management letter which is practical and helpful to management in improving operations. We are confident that our service and experience will be of benefit to the City and will provide added value over and above the performance of the audit itself. Throughout the year, you should feel comfortable in calling us for advice regarding accounting and auditing matters, as we are never too busy to meet the needs of our clients. We encourage you to verify our level of service by contacting the references provided in this proposal.

We thank the City for the opportunity to present our proposal. Please feel free to contact me, or Mr. Robert J. Callanan, CPA, at (714) 978-1300 if you have any questions. This proposal constitutes a firm and irrevocable offer for 180 days from the date of this letter. Mr. Callanan and I are authorized to represent our firm, and bind the firm to a contract.

Very truly yours,

WHITE NELSON BROWN & MANVILLE

By: 

Nitin P. Patel, CPA
Engagement Partner

SCOPE OF WORK, TIMING AND AUDIT APPROACH

ENTITIES TO BE INCLUDED IN AUDIT

City of Costa Mesa
 Costa Mesa Community Foundation
 Costa Mesa Public Financing Authority
 Costa Mesa Housing Authority
 Costa Mesa Redevelopment Agency
 Airborne Law Enforcement Services

PROJECT SCHEDULE

	Final Due Dates
City of Costa Mesa:	
Comprehensive Annual Financial Report	November 15
Management Letter (SAS No. 115)	November 15
Audit Committee Letter (SAS No. 114)	November 15
Annual Reports for:	
Costa Mesa Community Foundation	November 15
Costa Mesa Public Financing Authority	November 15
Costa Mesa Housing Authority	November 15
AQMD Fund (AB 2766)	November 15
Single Audit Reports:	December 1
<ul style="list-style-type: none"> • Independent Auditors' Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on Audit of Financial Statements Performed in Accordance With <u>Government Auditing Standards</u> • Independent Auditors' Report on Compliance with Requirements That Could Have a Direct and Material Effect on Each Major Program and Internal Control Over Compliance in Accordance with <u>OMB Circular A-133</u> and on the Schedule of Expenditures of Federal Awards. 	
Report on Compliance with Article XIII B Appropriation Limit (GANN)	November 15
Reports for 2012 fiscal year only:	
Costa Mesa Redevelopment Agency	(1)
Airborne Law Enforcement Services	November 15

(1) The due date for the financial audit of the Redevelopment Agency for the period July 1, 2011 to January 31, 2012 and any subsequent audits will be based on additional guidance from the State Controller's Office.

AUDIT TIMING

Assuming that the City's books are closed and ready for examination and that all necessary schedules and documents are available for our use by September 1st each year, the suggested time schedule for the various phases of the audit would be approximately as follows:

	<u>Completed By</u>
• Entrance conference with key City staff. Discussion of any prior audit concerns and the performance of interim work.	April 30
• Interim audit fieldwork and management review	May 31
• Final audit fieldwork and management review	September 30
• Exit conference to summarize the results of the fieldwork and to review significant findings	October 15
• Deliver draft copies of reports	October 31
• Deliver Final Reports	See page 3

COMMITMENT TO DELIVER REPORTS ON A TIMELY BASIS

If all books and records, schedules and documents are made available to us by September 1st, we make a commitment to have audit team members available and to provide all reports by the due dates specified above.

AUDITS TO BE IN ACCORDANCE WITH GAAS AND OTHER REQUIREMENTS

We will audit the financial statements of the City and the component units noted on the preceding page. The financial statements of all entities where the City exercises oversight will be combined with the City's financial statements, in accordance with GASB requirements. Our audit will be in accordance with auditing standards generally accepted in the United States of America as set forth by the AICPA, and will include such auditing procedures as we consider necessary under the circumstances. We will apply certain limited procedures, which consist principally of inquiries of management regarding methods of measurement and presentation of required supplementary information. However, we do not audit such information and do not express an opinion on it. Any supplemental financial statements will be subjected to auditing procedures as we consider necessary in relation to the financial statements taken as a whole. The scope of our audit will not include any statistical information, and we will not express an opinion concerning it.

Our audits will conform with the guidelines set forth in the AICPA's Industry Audit Guide, Audits of State and Local Governmental Units. Also, each examination will comply with the standards for financial and compliance audits contained in the Government Auditing Standards, issued by the U.S. General Accounting Office, the provisions of the Single Audit Act and the provisions of the U.S. Office of Management and Budget (OMB) Circular A-133.

Our audit of the Redevelopment Agency will include an audit on compliance in accordance with Health and Safety Code Section 33080.1 and Sections I through V of the "Guidelines for Compliance Audits of California Redevelopment Agencies" issued by the State Controller's Office or any other guidance as a result of the Dissolution of Redevelopment Agencies.

Also, we will perform an agreed-upon procedures review of the City's Gann Spending Limitation Computation as required by Section 1.5 of Article XIII B of the California Constitution. Our review will be performed in conformance with the provision of the "League of California Cities Uniform Guidelines".

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AUDIT APPROACH

- Our audit approach is tailored to meet the technical requirements while maintaining professional skepticism without forgetting that we provide a service. The following aspects of our audit approach will add additional value to the audit services.
- On a first year engagement, we will assign experienced staff auditors including the in-charge field auditor having at least 5 years of experience. You will not spend time training our auditors.
- Whenever possible, we will use same format for audit supporting schedules used in prior years for the current year audit. This will reduce time spent by the City staff in dealing with the audit when a different audit firm is chosen.
- Throughout the year we are available as a resource to our clients in researching technical questions, dealing with new pronouncements, reviewing complex financial entries and helping with any other issues as they arise.
- The work papers will be reviewed by the manager or partner as field work is being completed to minimize additional questions after the fieldwork is completed.

Our firm uses a governmental audit program which will be modified to the City of Costa Mesa's operations to accommodate specific client circumstances. Our audit programs are organized by the financial statement approach and general procedures. The requirements of Statement of Auditing Standards 104 thru 111 (Risk Assessment Standards) are utilized to modify the audit programs to focus on the higher risk areas of the financial statements.

1. Audit Planning Procedures and Interim Fieldwork:

Gather information about the City and its environment, including internal control:

- Preaudit conference with the City to establish process of communication between the audit team and City staff.
- Establish scope of working and timing of fieldwork.
- Evaluate the design of internal controls that are relevant to the audit and determine whether the control, either individually or in combination is capable of effecting, preventing or detecting and correcting material misstatements.
- Determine that the controls have been implemented, that is, that the controls exist and that the City is using it.
- Specific areas to review include:
 - Accounts payable/cash disbursements
 - Accounts receivable/cash receipts
 - Payroll disbursements
 - Utility billing process
 - Investment compliance
 - Property and equipment
- Review of minutes of the City of Costa Mesa.
- Review of important contracts and debt agreements.

AUDIT APPROACH (CONTINUED)

2. Final Audit Work:

During the final audit work, we will assess "risk" of material misstatement based on understanding of the City's audit environment, including its internal control, to identify account balances to audit that appear in the City's financial statements. Our work may include:

- Confirmation of cash and investments balances and testing of bank reconciliations.
- Confirm significant receivable balances or review subsequent cash receipts to verify receivable balance.
- Search for unrecorded liabilities.
- Testing of interfund balances and transfers.
- Test capital asset additions and depreciation expense.
- Confirm long-term debt balances and review the accounting treatment of debt issued or refunded.
- Test support for other significant assets or liabilities.
- Analytical procedures on balance sheet and revenue and expenditure accounts, to evaluate and explain unusual fluctuations from prior year balances or current year budgeted amounts.
- Review of attorney letters for significant legal matters affecting the City's financial position.

The audit workpapers will be reviewed by our management team as the work is being performed in the field so that at the conclusion of the fieldwork we are able to report any adjustments or findings. An exit conference will be held to review any significant adjustments or findings.

APPROACH TO INTERNAL CONTROL

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Our understanding of the internal controls will be completed by completing narratives and checklists for various processes related to internal control. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to Government Auditing Standards.

As required by OMB Circular A-133, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to OMB Circular A-133.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, Government Auditing Standards, and OMB Circular A-133.

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SINGLE AUDIT APPROACH

The single audit will be performed in accordance with all the requirements of the Single Audit Act Amendments of 1996, OMB Circular A-133, Government Auditing Standards issued by the GAO (the "Yellow Book") and AICPA Statement on Auditing Standards No. 117, "Compliance Audits".

Our audit will include tests of transactions related to major federal award programs for compliance with applicable laws and regulations and the provisions of contracts and grant agreements. Because an audit is designed to provide reasonable, but not absolute assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by use. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that comes to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit.

We will perform tests of controls to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to OMB Circular A-133.

We will plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Our procedures will consist of the applicable procedures described in the OMB Circular A-133 "Compliance Supplement" for the types of compliance requirements that could have a direct and material effect on each of the City's major programs and any specific requirements of ARRA funds. The purpose of those procedures will be to express an opinion on the City's compliance with requirements applicable to major programs in our report on compliance issued pursuant to OMB Circular A-133.

When we begin the single audit, we will identify the Major and Nonmajor Federal Financial Assistance Programs of the City. Each Major and Nonmajor program will be identified as either a low risk or high risk program. Programs to be tested will be selected based on our assessment of risk for each program.

We will identify the types of activities that are either specifically allowed or prohibited by the laws, regulations, and contract or grant agreements pertaining to the programs and document an understanding of the internal controls the City has to provide reasonable assurance that federal awards are expensed only for allowable activities or costs.

We will select a sufficient number of transactions to support a low level of assessed control risk. If no exceptions in the function of key controls are noted, we will conclude that a low level of control risk was achieved. If weaknesses in the internal controls are noted, we will modify our audit program as needed.

As part of our single audit, we will request that the City assist in completing the Data Collection Form. The form will assist us in identifying the federal programs which will be required to be tested.

DETERMINING LAWS AND REGULATIONS SUBJECT TO AUDIT

Under provisions of AICPA Statement on Auditing Procedures No. 117, management of the City is responsible for identifying to its outside auditors any laws and regulations which would have a significant effect on the audit. This would include federal laws (such as federal grant regulations), State laws (such as permitted investments under the California Government Code) and local laws (such as restrictions on special revenues levied by the City). After our selection as auditors, we will consult with City officials regarding these matters, to determine what laws and regulations need to be evaluated in connection with our audit. If a City is not able to identify specific laws and regulations that effect it, we have references (California Government Code and Health and Safety Code) to the more common laws, rules and regulations in our standard audit programs for the usual activities of a California City or Redevelopment Agency which will assist us in identifying laws and regulations to review in the audit.

METHOD OF SAMPLING

Our approach is to utilize random sampling based in our testing of the internal control systems related to cash receipts, cash disbursements, payroll and utility billings. Based on a statistical conclusion used by the firm our sample sizes can range from 25 to 60 transactions for each system. A random sample selection allows each item in the population of an equal chance of being selected. In addition, for disbursements, we may select a stratified sample of all transactions over a specified dollar amount for review.

ANALYTICAL PROCEDURES

Analytical procedures are used in the planning and final stages of the audit. In the planning phase, we use analytical procedures to identify unusual financial transactions and comparing relationships to expected results. We compare current year information to the prior years for balance sheet items, revenues and expenditures. In addition, revenues and expenditures are compared to budgets to identify unexpected results. In the final stages of the audit, the financial statements are reviewed to identify expected relationships such as comparing debt paid to expenditures recorded on governmental funds, transfers between funds, depreciation expense, etc. For all significant relationships identified, explanations are obtained as to why the situation occurred and additional audit procedures are applied to resolve any concerns.

MANAGEMENT LETTERS

In connection with each audit, a complete review of internal controls will be made of all significant accounting procedures. Our firm uses an internal control questionnaire, computer systems questionnaire and narration to gain an understanding of the internal control process as part of our audit. We will identify weaknesses and after discussion with the appropriate City staff, we will submit a management letter which will identify weaknesses observed during these reviews and throughout the audit. The management letter will also assess the effect of the management letter comments on the financial reporting process and recommend steps towards eliminating the weaknesses.

RETENTION OF AND ACCESS TO AUDIT WORKPAPERS

In accordance with provisions of OMB Circular A-133, GAO requirements, and the California Board of Accountancy, our audit workpapers will be maintained for at least seven years after the date of the report. These workpapers will be made available as necessary to your cognizant audit agency (or its designee), to GAO representatives, or to any other federal or state agency needing access to the workpapers. Also, our firm will respond to any reasonable inquiries of successor auditors and we will allow any successor auditors to review our workpapers.

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OTHER PROFESSIONAL SERVICES

We will be available for any other professional assistance you require to research and answer accounting and reporting problems raised by the City, regardless of the time of year. Such assistance may include, but is not limited to, tax questions, the review of bond documents, cost allocation programs and employee benefit programs. We have provided several tax opinions to City audit clients for matters relating to deferred compensation, fringe benefits, stipends and allowances, and other issues. We also will keep the City informed of new developments affecting municipal finance and reporting, changes in grant rules and regulations, etc.

IRREGULARITIES AND ILLEGAL ACTS

We will make an immediate, written report of all irregularities, illegal acts or indications of illegal acts of which we become aware.

SEGMENTATION OF THE AUDIT HOURS, BY PARTNER AND STAFF LEVEL

	<u>Partners</u>	<u>Manager</u>	<u>Supervisor</u>	<u>Staff</u>	<u>Clerical</u>	<u>Total</u>
City of Costa Mesa:						
Audit	16	32	100	150	-	298
CAFR Preparation	-	8	-	40	7	55
Costa Mesa Community Foundation:						
Audit and Financial Report	2	4	-	24	2	32
Costa Mesa Public Financing Authority:						
Audit and Financial Report	2	8	-	32	4	46
Costa Mesa Housing Authority:						
Audit and Financial Report	4	8	16	24	3	55
Single Audit of Federal Grants	4	8	16	40	2	70
GANN Appropriation Limit	-	-	4	-	1	5
AB 2766 Audit	-	2	-	16	2	20
Costa Mesa Redevelopment Agency:						
Audit and Financial Report	4	8	16	16	4	48
Airborne Law Enforcement Agency:						
Audit and Financial Report	2	-	24	-	4	30
Total Hours	<u>34</u>	<u>78</u>	<u>176</u>	<u>342</u>	<u>29</u>	<u>659</u>

PARTNER, SUPERVISORY AND STAFF QUALIFICATIONS AND EXPERIENCE

AUDIT TEAM

The audit team assembled consists of individuals who have extensive experience auditing governmental agencies and are familiar with municipal accounting. In addition, each team member's skill and experience developed working in other industries our firm serves can be applied to the individual requirements of the City of Costa Mesa.

The personnel assigned to the engagement team are as follows:

The engagement partner will be Mr. Nitin P. Patel, CPA. Mr. Patel has over 25 years of experience with audits of local governments. He will be involved with all phases of the audit including (a) the planning phase of the audit to assess risks related to the audit (b) a final review of all the work papers and financial reports, and (c) attending any meetings with City's management and City council at the conclusion of the audit. He will be responsible for assuring that all work for the City is performed in a complete and timely manner.

Mr. Robert J. Callanan, CPA, will be the Technical Review Partner and will perform a quality review of all reports issued in connection with the audit. Mr. Callanan has over 20 years of experience with audits of local governments. He will also consult in the accounting treatment of unusual transactions or audit issues.

Mrs. Daphnie Munoz, CPA, a partner with the firm, will serve as the audit manager. Mrs. Munoz has over 13 years of experience with audits of local governments. She will be the primary contact for the City and related audits. She will (a) perform the initial review of the work papers including a review of the work completed related to internal controls, (b) supervise the completion of the financial reports and management letter and (c) assist in the audit of any complex or unusual audit areas.

The audit supervisor will be Ms. Jennifer King, CPA. Ms. King has over 10 years of public accounting experience. She will be onsite supervising staff accountants and performing the fieldwork including performing tests of internal controls, substantive tests of account balances, and analytical tests. She will also draft the financial statements and various reports required for this engagement.

Resumes for the above partners and personnel are included at pages 11 - 14.

COMMITMENT RELATED TO PERSONNEL

We make a commitment to retain the same personnel on the City from year to year, except where such personnel leave the firm, or where the change is approved by the City. If a staff member is replaced, we make a commitment to replace that person with staff of at least equal experience.

NONDISCRIMINATION POLICY

Our firm has a policy to provide equal employment opportunities to all qualified persons without regard to race, color, age, sex, religion, national origin or handicap.

NITIN P. PATEL, CPA

Position Engagement Partner

Education University of California at Irvine - Bachelor of Arts in Economics
California State University at Long Beach - Masters of Accounting Program

Licensing Certified Public Accountant in California since 1988

Professional Organizations American Institute of Certified Public Accountants
California Society of Certified Public Accountants
California Society of Municipal Finance Officers (CSMFO)
- Associate Member
CSMFO Professional and Technical Standards Review Committee
- Report Reviewer for Award Program
Governmental Accounting and Auditing Committee of Orange County - Committee Chairman (2001-2002)
California Governmental Accounting and Auditing Committee Member

Range of Experience Has been with Diehl, Evans & Company, LLP since 1986 with emphasis in governmental accounting and financial reporting.
Responsible for firm's in-house governmental accounting and auditing training programs.
Experience includes supervision of over one hundred audits of governmental agencies including cities, redevelopment agencies, non-profit corporations, joint powers authorities and special districts.
Other experience includes providing consulting services for governmental agencies including special internal control reviews, cost allocation plans, cable television rate reviews, reviews of City Treasurer operations and transient occupancy tax reviews of city hotels/motels.

Continuing Professional Education For the period of January 1, 2009 through December 31, 2011:
Total Hours: 176.00 Total Government Hours: 126.00

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ROBERT J. CALLANAN, CPA

Position Technical Review Partner

Education Aquinas College, Grand Rapids, Michigan
Bachelor of Arts, Business Administration, 1988
Bachelor of Science, Accounting, 1988

Licensing Certified Public Accountant in California since 1993

Professional Organizations American Institute of Certified Public Accountants - Member
California Society of Certified Public Accountants - Member
California Society of Municipal Finance Officers (CSMFO) - Associate Member
California Governmental Accounting and Auditing Committee Member

Range of Experience Twenty-one years of experience as Certified Public Accountant with Diehl, Evans & Company, LLP

Two years of experience as Chief Financial Officer of a mortgage lending corporation

Overall Experience includes:

- Extensive supervision of audits of governmental agencies including cities, redevelopment agencies, water districts, other special districts, non-profit corporations and joint power authorities.
- Responsible for the firm's in-house governmental accounting and auditing training programs.
- Numerous presentations of accounting, auditing, tax and personnel topics at in-house training programs, meetings with clients, and board council meetings.
- Conversion of an accounting system
- Review and development of accounting control procedures, chart of accounts and internal accounting reports
- Several operational reviews of internal control systems, such as cash management, business licensing and grant accounting

Continuing Professional Education For the period of January 1, 2009 through December 31, 2011:
Total Hours: 215.00 Total Government Hours: 140.00

DAPHNIE MUNOZ, CPA

Position Partner, serving as the Audit Manager for this Engagement

Education De La Salle University, Philippines
Bachelor of Science in Accounting, 1995

Licensing Certified Public Accountant in California since 2001

Professional Organizations American Institute of Certified Public Accountants
California Society of Certified Public Accountants

Range of Experience Has been with Diehl, Evans & Company, LLP since 1998 with emphasis in governmental accounting and financial reporting.

Experience includes extensive supervision of audits of governmental agencies including cities, redevelopment agencies, water districts, other special districts, non-profit corporations and joint power authorities. Mrs. Munoz served as the Senior Audit Manager on the following local government audits:

City of Alhambra	Chino Basin Desalter Authority
City of Downey	El Toro Water District
City of Lake Forest	Inland Empire Regional Composting Authority
City of Newport Beach	Inland Empire Utilities Agency
City of Sanger	Laguna Beach County Water District
City of Tustin	Las Virgenes Municipal Water District
City of West Covina	Orange County Water District
	South Coast Water District
	Yorba Linda Water District

Other experience includes providing consulting services for governmental agencies including special internal control reviews, and transient occupancy tax reviews of city hotels/motels.

Technical reviewer for financial audit reports of governmental agencies

Speaker on numerous presentations of accounting, auditing, tax and personnel topics at in-house training programs and instructor at firm's in-house governmental accounting and auditing seminars.

Continuing Professional Education

For the period of January 1, 2009 through December 31, 2011:
Total Hours: 163.00 Total Government Hours 100.00

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JENNIFER KING, CPA

Position Audit Supervisor

Education Baruch College, City University of New York, New York
Bachelor in Business Administration, 1998

Licensing Certified Public Accountant in North Carolina since 2001
Certified Public Accountant in California since 2009

Professional Organizations California Society of Certified Public Accountants

Range of Experience Ms. King has been with Diehl, Evans & Company, LLP since January 2009. Ms. King has performed all phases of local governmental audits including Cities, Redevelopment Agencies, Single Audit of Federal Grants, Special Districts, Compliance Audits and Agreed-Upon Procedures engagements. As an audit manager, she is involved with planning the audit, supervising and performing fieldwork for all aspects of the audit, supervising staff accountants and preparation of financial statements. Ms. King served as the manager or on-site manager on the following local government audits in 2011:

City of La Habra Heights	Chino Basin Desalter Authority
City of Lake Elsinore	Inland Empire Regional
City of Lakewood	Composting Authority
City of Rancho Palos Verdes	Inland Empire Utilities Agency
City of Westminster	La Puente Valley County
	Water District
	Rowland Water District

Ms. King has also been involved with the following governmental clients:

City of Avalon	El Toro Water District
City of Fullerton	Orange County Water District
City of Huntington Beach	

Prior to coming to Diehl, Evans & Company, LLP, Ms. King provided audit, review and tax services for the private and nonprofit sectors at Stancil & Company, located in Raleigh, North Carolina.

Continuing Professional Education

For the period of January 1, 2009 through December 31, 2011
Total Hours: 188.00 Total Government Hours: 121.00

WHITE NELSON DIEHL EVANS LLP
Certified Public Accountants & Consultants

FIRM PROFILE AND QUALIFICATIONS

LICENSING AND INDEPENDENCE

Our firm, and all of our certified personnel, are properly licensed to practice public accounting in California.

Also, we meet the independence requirements of "Government Auditing Standards", as published by the U.S. General Accountability Office. We have no conflict of interest with the City and will provide written notice to the City of any professional relationships contemplated with the City during our term as auditors. We have not provided auditing or any other services to the City during the past five years.

SIZE AND LOCATION OF THE FIRM

White Nelson Diehl Evans LLP is a California accounting firm with offices in Irvine, Carlsbad and Escondido.

White Nelson Diehl Evans LLP has extensive experience in providing auditing, accounting and consulting services in the governmental sector. Over twenty thousand hours per year are devoted to this area of our practice for nearly 100 governmental units including cities, redevelopment agencies, special districts, nonprofit corporations and joint power authorities.

Our firm has 114 employees. The audit department for the firm has 52 professional staff members, including 11 partners and 15 managers. Your City would be served from our Irvine office, which has 46 professional staff members, including 10 partners and 12 managers.

Prior to the merger of the firm, Diehl, Evans and Company, LLP has 80 years of public practice experience and White, Nelson & Company, LLP has 60 years of public practice experience.

RANGE OF ACTIVITIES

White Nelson Diehl Evans LLP is a full service CPA firm. We offer a broad range of services, including:

Certified Audits	Tax Planning
Compilations and Reviews	Income Tax Preparation
Agreed-Upon Procedure Reviews	Consulting Services
Financial Services	Litigation Support Services

Our specific services available to governmental agencies are more fully set forth in this proposal.

WHITE NELSON DIEHL EVANS LLP

Certified Public Accountants & Consultants

PARTICIPATION IN "QUALITY REVIEW" PROGRAMS

In 1986, our firm began an annual internal quality review program, whereby all three offices are reviewed for compliance with all current accounting and auditing requirements. Formal reports of these reviews are presented to the partners, and adjustments in our auditing and reporting procedures are made as necessary.

In January 2009 and September 2009, Diehl Evans & Company, LLP and White, Nelson & Company, LLP underwent quality reviews, respectively, by an independent CPA firm, under provisions of the AICPA Quality Review Program. These reviews are required every three years and covered our audits of governmental agencies. Final reports dated January 28, 2009 and September 30, 2009 with a pass rating on our systems and procedures were received. Copies of the independent CPA firm's reports are included herein at Attachment II. Accordingly, we are confident that our current auditing standards and techniques meet all existing requirements.

No regulatory action has ever been taken against any office of our firm due to substandard work. We had no significant deficiencies noted in any federal or state desk reviews over the past three years.

EDUCATION PROGRAMS

White Nelson Diehl Evans LLP has a formal continuing education program. All firm auditors are required to obtain 80 hours of continuing education every two years in the accounting and auditing area as required by Government Auditing Standards, and at least 24 hours of government related continuing education courses. Our staff is continually expanding their knowledge of the governmental industry through our in-house training programs, programs offered by the AICPA, GFOA, the California Society of Certified Public Accountants and other professional organizations, and through on-the-job training.

Noted below is a description of certain in-house education courses taken by our partners and staff to meet the governmental continuing education requirements. All personnel involved with governmental auditing are required to attend these courses.

- Understanding the Risk Assessment Standards (SAS 104 - 111)
- Understanding of GASB Statement No. 34; Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments
- Understanding, and Auditing, Deposits and Investments of California Governmental Units
- Understanding GASB Statements 43 and 45 related to Other Post Employment Benefits
- Reviews of Internal Controls in Accordance With Statements on Auditing Standards
- Assessing Audit Risk and Materiality in Conducting An Audit
- Understanding Statement on Auditing Standards No. 99 - Consideration of Fraud in a Financial Statement Audit
- Redevelopment Agency Compliance Audits - Interpreting the Health and Safety Code
- Computer Auditing in the Governmental Environment
- The Single Audit - New Provisions under OMB Circular A-133
- Laws and Regulations in the Government Sector
- Understanding GASB Statement 54 related to Fund Balance Reporting and Governmental Fund Type Definitions

WHITE NELSON DIEHL EVANS LLP

Certified Public Accountants & Consultants

PARTICIPATION IN PROFESSIONAL ORGANIZATIONS

Our partners and staff are actively involved in professional organizations in the governmental accounting field. Noted below is a summary of our participation in various national and California governmental organizations.

AICPA

Our firm is a member of the AICPA Governmental Audit Quality Center. The Center is a firm-based voluntary membership Center whose primary purpose is to promote the importance of quality governmental audits to purchasers of governmental audit services. The Center provides members with an online forum tool for sharing best practices, as well as discussions on audit, accounting, and regulatory issues. As a member of the Center, the firm receives updates on changes in auditing and accounting standards that effect governmental audits. The quality control partner is required to attend an annual web cast to discuss auditing and reporting issues effecting governmental audits. Our firm uses the resources of the Center to maintain the quality of our governmental audits.

GFOA, GASB and FASB

Our firm is an associate member of the Government Finance Officers Association of the United States and Canada (GFOA).

Also, we have web based access to the latest pronouncements issued by the Governmental Accounting Standards Board (GASB) and the Financial Accounting Standard Board (FASB), including Interpretations, Technical Pronouncements and Newsletters. We regularly analyze these pronouncements and advise our governmental clients of changes in accounting rules.

CSMFO and CRA

Three of our Irvine office partners (Mr. Michael Ludin, Mr. Nitin Patel and Mr. Robert Callanan) and our Director of Consulting Services (Mr. William S. Morgan) are associate members of the California Society of Municipal Finance Officers (CSMFO). Our personnel regularly attend local CSMFO chapter meetings throughout Southern California, and the annual statewide conference. We often provide public speakers for these meetings.

Our firm is also an active member in the California Redevelopment Association (CRA). We receive monthly newsletters from CRA to keep us up to date on legal developments affecting redevelopment agencies. Mr. Morgan periodically serves as a public speaker for seminars and workshops sponsored by CRA.

CSCPA

All partners and Mr. Morgan were members of the Governmental Accounting and Auditing (GAA) Committee of the Orange County Chapter, California Society of Certified Public Accountants (CSCPA). Mr. Patel, Mr. Ludin and Mr. Morgan have each served as chairman of this committee. Firm personnel have been involved over the years in preparing position papers issued for professional organizations on governmental accounting matters. Currently, Mr. Patel and Mr. Callanan are members of the State Governmental Accounting and Auditing Committee.

WHITE NELSON DIEHL EVANS LLP

Certified Public Accountants & Consultants

GFOA AND CSMFO AWARD PROGRAMS

The partner and manager will be involved in all phases of report preparation or review. Reporting checklists will be used to assure compliance with all reporting requirements. In addition, another member of the firm, not associated with the audit, and with extensive governmental auditing and accounting experience, will review each financial statement audited and related reports. Based on the high quality of our review process, we have been able to assist various cities in obtaining the GFOA "Certificate of Achievement for Excellence in Financial Reporting" or the "Outstanding Award" for financial reporting from CSMFO. During the past year, the following clients received or will receive awards:

Cities:

Alhambra
Downey
Hesperia
Lake Elsinore
Lake Forest
Lakewood
Newport Beach
Palm Desert
Rancho Palos Verdes
San Buenaventura
San Fernando
Signal Hill
Tustin
West Covina
Westminster

Special Districts:

Costa Mesa Sanitary District
Inland Empire Utilities Agency
Las Virgenes Municipal Water District
Olivenhain Municipal Water District
Otay Water District
Yorba Linda Water District

COMPUTER AUDITING CAPABILITIES

Each of our audit staff members is equipped with laptop computers with engagement software that are used for workpaper preparation and facilitates the preparation and/or review of financial statements. Utilizing spreadsheet and other programs, we will transfer data through direct input or through downloading from the City's accounting system. This will allow us to streamline substantive tests and perform analytical reviews of accounts. This process reduces the time needed to prepare lead schedules and to prepare and review financial statements. It also helps identify accounting and auditing issues that may require further inquiry or investigation.

We also have engagement software that allows for data extraction from the City's accounting records to tailor specific audit tests based on risk assessment.

The firm also has document management software which allows our clients to access our web portal. We utilize the web portal to transfer data files that are confidential or too large to be sent by e-mail.

FIRM EXPERIENCE WITH GOVERNMENTAL ENTITIES

SIMILAR ENGAGEMENTS WITH OTHER MUNICIPAL ENTITIES

Your request for proposal called for a five similar engagements. These are set forth below:

<u>City</u>	<u>Engagement Partner</u>	<u>Total Staff Hours</u>	<u>Scope of Work</u>
Alhambra	Patel	575	City, RDA & Single Audits
Lake Forest	Patel	355	City, RDA, Housing Authority & Single Audits
Newport Beach	Patel	405	City & Single Audits; State Controller's Report
Tustin	Ludin	570	City, RDA, & Single Audits; State Controller's Report
Westminster	Patel	585	City, RDA, AQMD & Single Audits

Certified audits were performed on the financial statements of all of these cities and their component units for the past year.

Client references for these cities are included below.

City of Alhambra

Mr. Dean Johnson
Assistant Finance Director
(626) 570-5017
djohnson@cityofalhambra.org

City of Lake Forest

Mr. Keith Neves
Director of Finance
(949) 461-3400
kneves@lakeforestca.gov

City of Newport Beach

Mr. Dan Matusiewicz
Deputy Finance Director
(949) 644-3126
danme@newportbeachca.gov

City of Tustin

Ms. Pamela Arends-King
Finance Director
(714) 573-3061
parends-king@tustinca.org

City of Westminster

Ms. Sherry Johnson
Accounting Manager
(714) 898-3311
sjohnson@ci.westminster.ca.us

A complete list of similar engagements for the past year is included in Attachment I of this proposal.

CITY CLIENT REFERENCES

One means of judging the high quality of our auditing and accounting services would be contact with some of our clients over the past year. We are including the names and phone numbers of the city clients as presented in Attachment I of this proposal. We encourage you to contact any of these individuals and verify our level of service.

WHITE NELSON DIEHL EVANS LLP

Certified Public Accountants & Consultants

REDEVELOPMENT AGENCY EXPERIENCE

Over the past year we audited the following redevelopment agencies.

Alhambra Redevelopment Agency	Rancho Palos Verdes Redevelopment Agency
Avalon Community Improvement Agency	Redevelopment Agency of the City of San Buenaventura
Community Development Commission of the City of Downey	San Fernando Redevelopment Agency
Hesperia Redevelopment Agency	Sanger Redevelopment Agency
City of Lake Elsinore Redevelopment Agency	Signal Hill Redevelopment Agency
Lake Forest Redevelopment Agency	Tustin Redevelopment Agency
Lakewood Redevelopment Agency	West Covina Community Development Commission
Marin County Redevelopment Agency	Westminster Redevelopment Agency
Palm Desert Redevelopment Agency	

SINGLE AUDIT EXPERIENCE

We perform single audit services for most of our cities that receive federal funds as required by OMB Circular A-133. Over the past year, Single Audits were performed for the following cities.

City of Alhambra	City of Palm Desert
City of Downey	City of San Buenaventura
City of Hesperia	City of San Fernando
City of La Habra Heights	City of Sanger
City of Lake Forest	City of Signal Hill
City of Lakewood	City of Tustin
City of Newport Beach	City of West Covina
	City of Westminster

WORK REQUIRED BY CITY STAFF

Our fixed annual fees contemplate that conditions satisfactory to the normal progress and completion of the examination will be encountered and that City accounting personnel will furnish the agreed-upon assistance in connection with the audit. However, if unusual circumstances are encountered which make it necessary for us to do additional work, we shall report such conditions to the responsible City officials and provide the City with an estimate of the additional accounting fees involved.

Noted below is a listing of work required by City staff to assist in the audit.

1. Technical assistance in familiarizing our staff with:
 - The flow of information through the various departments and accounting systems.
 - Reports generated by your accounting system.
 - The system of internal controls.
 - Controls established to monitor compliance with federal grants.
2. Preparation of trial balances for all funds, after posting of all year end journal entries.
3. Preparation of schedules supporting all major balance sheet accounts, and selected revenue and expenditure accounts.
4. Typing of all confirmation requests.
5. Pulling and refileing of all supporting documents required for audit verification.
6. Preparation of the CAFR.

WHITE NELSON DIEHL EVANS LLP

Certified Public Accountants & Consultants

ATTACHMENT I

CITY CLIENT REFERENCES
AND
LISTS OF CITY AND SPECIAL DISTRICT ENGAGEMENTS

CITY CLIENT REFERENCES

One means of judging the high quality of our auditing and accounting services would be contact with some of our existing clients. We are including the names and phone numbers of our city clients over the past year. We encourage you to contact any of these individuals.

City of Alhambra

Mr. Dean Johnson
Assistant Finance Director
(626) 570-5017

City of Lake Forest

Mr. Keith Neves
Director of Finance
(949) 461-3400

City of San Fernando

Mr. Al Hernandez
City Administrator
(818) 898-7307

City of Avalon

Ms. Betty Jo Garcia
Finance Director
(310) 510-0220

City of Lakewood

Ms. Diane Perkin
Director of Finance
(562) 866-9771

City of Sanger

Ms. Debby Sultan
Administrative Services
Director
(559) 876-6300

City of Downey

Mr. John Michicoff
Finance Director
(562) 904-7262

City of Newport Beach

Mr. Dan Matusiewicz
Deputy Finance Director
(949) 644-3126

City of Signal Hill

Ms. Maida Alcantara
Director of Finance
(562) 989-7319

City of Hesperia

Mr. Brian Johnson
Director of Administrative
Services
(760) 947-1442

City of Palm Desert

Mr. Paul Gibson
Director of Finance
(760) 346-0611

City of Tustin

Ms. Pamela Arends-King
Finance Director
(714) 573-3061

City of La Habra Heights

Mr. Larry Schroeder
Interim Finance Director
(562) 694-6302

City of Rancho Palos Verdes

Ms. Kathryn Downs
Deputy Director of Finance
and Information Technology
(310) 544-5216

City of West Covina

Ms. Denise Bates
Accounting Manager
(626) 939-8463

City of Lake Elsinore

Mr. James Riley
Director of
Administrative Services
(951) 674-3124

City of San Buenaventura

Mr. Rudy Livingston
Assistant Chief Financial
Officer
(805) 654-7859

City of Westminster

Ms. Sherry Johnson
Accounting Manager
(714) 898-3311

LIST OF CITY ENGAGEMENTS

We have listed below the cities which were under contract with us during the past fiscal year.

City	Period of Service		Scope of Work
	From	To	
Alhambra	2005	Present	CA, RDA, SA
Avalon	2006	Present	CA, RDA, OCU, SCR
Downey	1987	Present	CA, RDA, AQMD, PFA, SA, OCU
Hesperia	1997	Present	CA, RDA, SA
La Habra Heights	2008	Present	CA, SA, SCR
Lake Elsinore	2005	Present	CA, RDA, PFA, RA, SA
Lake Forest	2011	Present	CA, RDA, SA, Housing Authority
Lakewood	1974	Present	CA, RDA, SA
Newport Beach	2011	Present	CA, SA, SCR
Palm Desert	2008	Present	CA, RDA, RA, SA
Rancho Palos Verdes	2008	Present	CA, RDA, PI, SCR, SR
San Buenaventura	2011	Present	CA, RDA, PFA, SA, SCR
San Fernando	2007	Present	CA, RDA, SA
Sanger	2011	Present	CA, RDA, PFA, SA, SCR
Signal Hill	1962	Present	CA, RDA, SA
Tustin	2011	Present	CA, RDA, SA, SCR
West Covina	2011	Present	CA, RDA, AQMD, SA
Westminster	1997	Present	CA, RDA, AQMD, SA

Legend:

AQMD - Air Quality Management District Audit	RA - Recreation Authority
CA - City Audit	RDA - Redevelopment Agency Audit
OCU - Other Component Unit Audits	SA - Single Audit
PFA - Public Financing Authority	SCR - State Controllers' Reports
PI - Public Improvement	SR - Street Report
PP - Pension Plans	T - Transportation

Substantially all of the above engagements were performed through the firm's Irvine office.

LIST OF SPECIAL DISTRICT ENGAGEMENTS

We have listed below the special districts which were under contract with us during the past fiscal year.

Client Name	Period of Service	
	From	To
Borrego Water District	2006	Present
Chino Basin Desalter Authority	2011	Present
Costa Mesa Sanitary District	2005	Present
Downey Cemetery District	1987	Present
El Toro Water District	2008	Present
Grossmont Healthcare District	2011	Present
Inland Empire Regional Composting Authority	2011	Present
Inland Empire Utilities Agency	2011	Present
La Habra Heights County Water District	2002	Present
La Puente Valley County Water District	1986	Present
Laguna Beach County Water District	2002	Present
Las Virgenes Municipal Water District	2007	Present
Leucadia Wastewater District	2010	Present
Municipal Water District of Orange County	2007	Present
Olivenhain Municipal Water District	2009	Present
Otay Water District	2009	Present
Padre Dam Municipal Water District	2009	Present
Pomona-Walnut-Rowland Joint Water Line Commission	2002	Present
Puente Basin Water Agency	2005	Present
Rowland Water District	2007	Present
South Coast Water District	2011	Present
Sunset Beach Sanitary District	1986	Present
Surfside Colony Stormwater Drainage District	2010	Present
Surfside Community Services District	2010	Present
Valencia Heights Water Company	2010	Present
Vallecitos Water District	2010	Present
Valley Wide Recreation and Park District	1986	Present
Ventura Port District	2011	Present
Walnut Valley Water District	2002	Present
Yorba Linda Water District	2008	Present

Substantially all of the above engagements were performed through the firm's Irvine office.

ATTACHMENT II
RESULTS OF OUTSIDE QUALITY REVIEWS

HEIDENREICH & HEIDENREICH, CPAs, PLLC

10201 S. 51st Street #170
Phoenix, AZ 85044
(480)704-6301 fax 785-4619

System Review Report

January 28, 2009

To the Owners of
Diehl, Evans & Company, LLP
and the Peer Review Committee of the CA Society of CPAs

We have reviewed the system of quality control for the accounting and auditing practice of Diehl, Evans & Company, LLP (the firm) in effect for the year ended September 30, 2008. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under the *Government Auditing Standards* and audits of employee benefit plans.

In our opinion, the system of quality control for the accounting and auditing practice of Diehl, Evans & Company, LLP in effect for the year ended September 30, 2008, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Diehl, Evans & Company, LLP has received a peer review rating of *pass*.

Heidenreich & Heidenreich

Heidenreich & Heidenreich, CPAs, PLLC



System Review Report

To the Partners
White Nelson & Co., LLP
and the Peer Review Committee of the California Society of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of White Nelson & Co., LLP (the firm) in effect for the year ended March 31, 2009. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagement selected for review included engagements performed under the *Government Auditing Standards* and audits of employee benefit plans.

In our opinion, the system of quality control for the accounting and auditing practice of White Nelson & Co., LLP in effect for the year ended March 31, 2009, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. White Nelson & Co., LLP has received a peer review rating of *pass*.

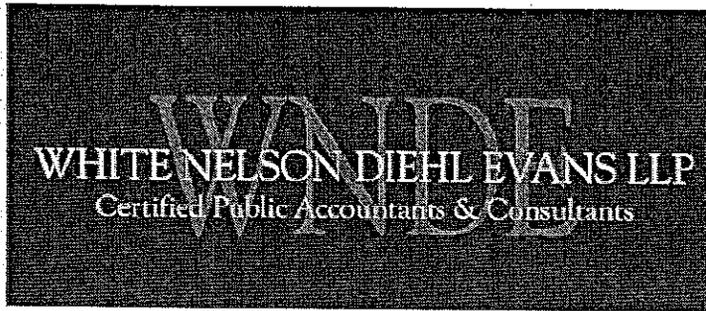
Phoenix, Arizona
September 30, 2009

EXHIBIT B
FEE SCHEDULE

SEALED DOLLAR COST BID FOR
THE CITY OF COSTA MESA

FOR THE THREE YEARS ENDING JUNE 30, 2014
(WITH AN OPTION FOR EACH OF THE TWO YEARS
ENDING JUNE 30, 2015 AND JUNE 30, 2016)





March 27, 2012

Ms. Kim Wilson
RFP Facilitator
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Ms. Wilson:

At your request, we have submitted our statement of qualifications under a separate cover.

The following information is included herein:

1. Cost Proposal Sheet.
2. Schedules of Professional Fees and Expenses.
3. Hourly Rates for Special Services.

This proposal constitutes a firm and irrevocable offer for 180 days from the date of this letter. Mr. Robert J. Callanan, CPA and I are authorized to represent our firm, and bind the firm to a contract. Please contact us if there are any questions regarding the fees or hourly rates quoted herein.

Very truly yours,

WHITE NELSON DIEHL EVANS LLP

By


Nitin P. Patel, CPA
Engagement Partner

CITY OF COSTA MESA
 COST PROPOSAL SHEET
 PROPOSED BY WHITE NELSON DIEHL EVANS LLP

	Fiscal Year <u>2011-12</u>	Fiscal Year <u>2012-13</u>	Fiscal Year <u>2013-14</u>
City of Costa Mesa:			
Audit	\$ 31,750	\$ 32,703	\$ 33,684
CAFR Preparation	4,985	5,135	5,289
Costa Mesa Community Foundation:			
Audit and Financial Report	3,150	3,245	3,342
Costa Mesa Public Financing Authority:			
Audit and Financial Report	4,540	4,676	4,816
Costa Mesa Housing Authority:			
Audit and Financial Report	5,965	6,144	6,328
Single Audit of Federal Grants (1)	7,270	7,488	7,713
GANN Appropriation Limit	495	510	525
AB 2766 Audit	1,770	1,823	1,878
Costa Mesa Redevelopment Agency:			
Audit and Financial Report	5,340	-	-
Airborne Law Enforcement Agency:			
Audit and Financial Report	3,260	-	-
Total all inclusive price	<u>\$ 68,525</u>	<u>\$ 61,724</u>	<u>\$ 63,575</u>

(1) The fee quoted above is for four major programs. An additional fee of \$750 for each additional major program will be charged.

CITY OF COSTA MESA

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
 FOR THE FISCAL YEAR 2011-12
 CITY AUDIT

	<u>HOURS</u>	<u>STANDARD HOURLY RATES</u>	<u>QUOTED HOURLY RATES</u>	<u>TOTAL FY 11-12</u>
Partners	16	\$ 300	\$ 200	\$ 3,200
Manager	32	225	150	4,800
Supervisor	100	135	110	11,000
Staff	150	100	85	12,750
Clerical	<u>-</u>	75	55	<u>-</u>
Subtotal	<u>298</u>			31,750
Out - of - pocket expenses: Transportation, meals and lodging				<u>-</u>
Total all - inclusive maximum price				<u>\$ 31,750</u>

CITY OF COSTA MESA

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
 FOR THE FISCAL YEAR 2011-12
 CAFR PREPARATION

	<u>HOURS</u>	<u>STANDARD HOURLY RATES</u>	<u>QUOTED HOURLY RATES</u>	<u>TOTAL FY 11-12</u>
Partners	-	\$ 300	\$ 200	\$ -
Manager	8	225	150	1,200
Supervisor	-	135	110	-
Staff	40	100	85	3,400
Clerical	<u>7</u>	75	55	<u>385</u>
Subtotal	<u>55</u>			4,985
Out - of - pocket expenses:				
Transportation, meals and lodging				<u>-</u>
Total all - inclusive maximum price				<u>\$ 4,985</u>

CITY OF COSTA MESA

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
 FOR THE FISCAL YEAR 2011-12
 COSTA MESA COMMUNITY FOUNDATION

	<u>HOURS</u>	<u>STANDARD HOURLY RATES</u>	<u>QUOTED HOURLY RATES</u>	<u>TOTAL FY 11-12</u>
Partners	2	\$ 300	\$ 200	\$ 400
Manager	4	225	150	600
Supervisor	-	135	110	-
Staff	24	100	85	2,040
Clerical	<u>2</u>	75	55	<u>110</u>
Subtotal	<u>32</u>			3,150
Out - of - pocket expenses:				
Transportation, meals and lodging				<u>-</u>
Total all - inclusive maximum price				<u>\$ 3,150</u>

CITY OF COSTA MESA

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
 FOR THE FISCAL YEAR 2011-12
 COSTA MESA PUBLIC FINANCING AUTHORITY

	<u>HOURS</u>	<u>STANDARD HOURLY RATES</u>	<u>QUOTED HOURLY RATES</u>	<u>TOTAL FY 11-12</u>
Partners	2	\$ 300	\$ 200	\$ 400
Manager	8	225	150	1,200
Supervisor	-	135	110	-
Staff	32	100	85	2,720
Clerical	<u>4</u>	75	55	<u>220</u>
Subtotal	<u>46</u>			4,540
Out - of - pocket expenses:				
Transportation, meals and lodging				<u>-</u>
Total all - inclusive maximum price				<u>\$ 4,540</u>

CITY OF COSTA MESA

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
 FOR THE FISCAL YEAR 2011-12
 COSTA MESA HOUSING AUTHORITY

	<u>HOURS</u>	<u>STANDARD HOURLY RATES</u>	<u>QUOTED HOURLY RATES</u>	<u>TOTAL FY 11-12</u>
Partners	4	\$ 300	\$ 200	\$ 800
Manager	8	225	150	1,200
Supervisor	16	135	110	1,760
Staff	24	100	85	2,040
Clerical	<u>3</u>	75	55	<u>165</u>
Subtotal	<u>55</u>			5,965
Out - of - pocket expenses:				
Transportation, meals and lodging				<u>-</u>
Total all - inclusive maximum price				<u>\$ 5,965</u>

CITY OF COSTA MESA

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
 FOR THE FISCAL YEAR 2011-12
 SINGLE AUDIT OF FEDERAL GRANTS

	<u>HOURS</u>	<u>STANDARD HOURLY RATES</u>	<u>QUOTED HOURLY RATES</u>	<u>TOTAL FY 11-12</u>
Partners	4	\$ 300	\$ 200	\$ 800
Manager	8	225	150	1,200
Supervisor	16	135	110	1,760
Staff	40	100	85	3,400
Clerical	<u>2</u>	75	55	<u>110</u>
Subtotal	<u>70</u>			<u>7,270</u>
Out - of - pocket expenses:				
Transportation, meals and lodging				<u>-</u>
Total all - inclusive maximum price				<u>\$ 7,270</u>

CITY OF COSTA MESA

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
 FOR THE FISCAL YEAR 2011-12
 GANN APPROPRIATION LIMIT

	<u>HOURS</u>	<u>STANDARD HOURLY RATES</u>	<u>QUOTED HOURLY RATES</u>	<u>TOTAL FY 11-12</u>
Partners	-	\$ 300	\$ 200	\$ -
Manager	-	225	150	-
Supervisor	4	135	110	440
Staff	-	100	85	-
Clerical	<u>1</u>	75	55	<u>55</u>
Subtotal	<u><u>5</u></u>			495
Out - of - pocket expenses:				
Transportation, meals and lodging				<u>-</u>
Total all - inclusive maximum price				<u><u>\$ 495</u></u>

CITY OF COSTA MESA

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
 FOR THE FISCAL YEAR 2011-12
 AB 2766 AUDIT

	<u>HOURS</u>	<u>STANDARD HOURLY RATES</u>	<u>QUOTED HOURLY RATES</u>	<u>TOTAL FY 11-12</u>
Partners	-	\$ 300	\$ 200	\$ -
Manager	2	225	150	300
Supervisor	-	135	110	-
Staff	16	100	85	1,360
Clerical	<u>2</u>	75	55	<u>110</u>
Subtotal	<u>20</u>			1,770
Out - of - pocket expenses:				
Transportation, meals and lodging				<u>-</u>
Total all - inclusive maximum price				<u>\$ 1,770</u>

CITY OF COSTA MESA

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
 FOR THE FISCAL YEAR 2011-12
 COSTA MESA REDEVELOPMENT AGENCY

	<u>HOURS</u>	<u>STANDARD HOURLY RATES</u>	<u>QUOTED HOURLY RATES</u>	<u>TOTAL FY 11-12</u>
Partners	4	\$ 300	\$ 200	\$ 800
Manager	8	225	150	1,200
Supervisor	16	135	110	1,760
Staff	16	100	85	1,360
Clerical	<u>4</u>	75	55	<u>220</u>
Subtotal	<u>48</u>			5,340
Out - of - pocket expenses:				
Transportation, meals and lodging				<u>-</u>
Total all - inclusive maximum price				<u>\$ 5,340</u>

CITY OF COSTA MESA

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
 FOR THE FISCAL YEAR 2011-12
 AIRBORNE LAW ENFORCEMENT AGENCY

	<u>HOURS</u>	<u>STANDARD HOURLY RATES</u>	<u>QUOTED HOURLY RATES</u>	<u>TOTAL FY 11-12</u>
Partners	2	\$ 300	\$ 200	\$ 400
Manager	-	225	150	-
Supervisor	24	135	110	2,640
Staff	-	100	85	-
Clerical	<u>4</u>	75	55	<u>220</u>
Subtotal	<u>30</u>			3,260
Out - of - pocket expenses:				
Transportation, meals and lodging				<u>-</u>
Total all - inclusive maximum price				<u>\$ 3,260</u>

CITY OF COSTA MESA

HOURLY RATES FOR SPECIAL SERVICES

If the City wishes us to perform consulting or other services outside the scope of the services described herein, a separate written request from the City will be required. Our hourly rates for these services during each year under the basic contract will be as follows:

	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>2015-16</u>
Nitin P. Patel, CPA - Engagement Partner.	\$ 200	\$ 206	\$ 212	\$ 219	\$ 225
Robert J. Callanan, CPA - Technical Review Partner	200	206	212	219	225
Managers	150	155	159	164	169
Supervisor	110	113	117	120	124
Staff	85	88	90	93	96
Clerical	55	57	58	60	62

EXHIBIT C

CITY COUNCIL POLICY 100-5

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

- b. Establishing a Drug-Free Awareness Program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
 - 1. Abide by the terms of the statement; and
 - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

- g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
 3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.

EXHIBIT D
CERTIFICATES OF INSURANCE



CAMICO Insurance Services
1800 Gateway Drive, Suite 300, San Mateo, CA 94404
Tel: 800.652.1772 • Fax: 800.227.2090
CA License # 0C09618

New York
45 Broadway, 16th Floor, New York, NY 10006
Tel: 212.908.1298
www.camico.com

CERTIFICATE OF INSURANCE

Date: July 16, 2012

To: City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Bobby Young

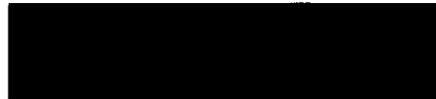
Re: White Nelson Diehl Evans LLP
2875 Michelle Drive, Suite 300
Irvine, CA 92606
Policy No.: CPL100621-12

This is to certify that as of the date hereof a Liberty Insurance Underwriters Inc. policy of accountants professional liability insurance insuring White Nelson Diehl Evans LLP as the Named Insured is in effect. The policy period of such policy is 01/01/2012 to 01/01/2013 and the per claim/aggregate limits of liability thereunder are \$5,000,000 / \$10,000,000 respectively. Such insurance is subject to cancellation as provided in the policy and to non-renewal by the Company or by the Named Insured. Coverage is subject to all the terms and conditions of the policy.

Should any of the above described policies be cancelled before the expiration date thereof, CAMICO will mail 30 days written notice to the certificate holder.

CAMICO INSURANCE SERVICES

BY



Ronald C. Parisi, CPA, JD
Executive Vice President of Risk Management

SILVER CREEK INSURANCE AGY INC/PHS
PO BOX 33016
SAN ANTONIO TX, 78266

City of Costa Mesa
Attn: Bobby Young
77 FAIR DR
COSTA MESA, CA 92626

Additional Certholder Text

The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to; Liability arising out of activities performed by, or on behalf of the consultant pursuant to its contract with the city; products and completed operations of the consultant; premises owned, occupied or used by the consultant; automobiles owned, leased, hired, or borrowed by the consultant per Business Liability coverage form SS0008. Waiver of Subrogation applies in favor of the Certificate holder per the Business Liability Coverage Form SS0008 attached to this policy. Coverage is primary & non-contributory per the Business Liability Coverage Form SS0008, attached to this policy.



CERTIFICATE OF LIABILITY INSURANCE

EM
R001

DATE IMM/DU/YYYY
07-13-2012

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

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

PRODUCER SILVER CREEK INSURANCE AGY INC/PHS 186579 P: (866)467-8730 F: (877)905-0457 PO BOX 33015 SAN ANTONIO TX 78265		CONTACT NAME: PHONE (A/C, No, Ext): (866)467-8730 FAX (A/C, No): (877)905-0457 E-MAIL: ADDRESS:	
INSURED WHITE NELSON DIEHL EVANS LLP 2875 MICHELLE STE 300 IRVINE CA 92606		INSURER(S) AFFORDING COVERAGE NAIC# INSURER A: Hartford Casualty Ins Co INSURER B: Hartford Underwriters Ins Co INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000	
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> General Liab	<input checked="" type="checkbox"/>	<input type="checkbox"/>	72 SBA K29101	01/01/2012	01/01/2013	DAMAGE TO RENTED PREMISES (Per occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000	
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ <input checked="" type="checkbox"/> LOC						PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000	
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
A	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	<input type="checkbox"/>	<input type="checkbox"/>	72 SBA K29101	01/01/2012	01/01/2013	
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	72 SBA K29101	01/01/2012	01/01/2013	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 DIB <input checked="" type="checkbox"/> RETENTION \$ 10,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input checked="" type="checkbox"/> W/C STAT-LIAB LIMITS OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Indicate in 999) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N					E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Those usual to the Insured's Operations.

CERTIFICATE HOLDER City of Costa Mesa Attn: Bobby Young 77 FAIR DR COSTA MESA, CA 92626	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

BUSINESS LIABILITY COVERAGE FORM

**QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY**

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BUSINESS LIABILITY COVERAGE FORM

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

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

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no Insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any Insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- e. **Incidental Medical Malpractice**
- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
 - (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES**Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:
- (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
- (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

BUSINESS LIABILITY COVERAGE FORM

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.5.(b) of Section B. - Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS**1. Applicable To Business Liability Coverage**

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "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; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily Injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily Injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

BUSINESS LIABILITY COVERAGE FORM

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

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

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

BUSINESS LIABILITY COVERAGE FORM

- (III) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
- (I) Any insured; or
- (II) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
- (I) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
- (II) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

BUSINESS LIABILITY COVERAGE FORM**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

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

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

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

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

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- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, 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 you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your 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, including the contents of such premises, rented to you 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 Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

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

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (5) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

BUSINESS LIABILITY COVERAGE FORM**c. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

- (8) Arising out of an offense committed by an insured whose business is:
 - (a) Advertising, broadcasting, publishing or telecasting;
 - (b) Designing or determining content of web sites for others; or
 - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section G. – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:
 - (a) An "advertisement" for others on your web site;
 - (b) Placing a link to a web site of others on your web site;
 - (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
 - (d) Computer code, software or programming used to enable:
 - (I) Your web site; or
 - (II) The presentation or functionality of an "advertisement" or other content on your web site;

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- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

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

s. Asbestos

- (1) "Bodily Injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

(a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

(c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You - Exception For Damage By Fire, Lightning or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

BUSINESS LIABILITY COVERAGE FORM**2. Applicable To Medical Expenses Coverage**

We will not pay expenses for "bodily injury":

- a. **Any Insured**
To any insured, except "volunteer workers".
- b. **Hired Person**
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. **Injury On Normally Occupied Premises**
To a person injured on that part of premises you own or rent that the person normally occupies.
- d. **Workers' Compensation And Similar Laws**
To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. **Athletics Activities**
To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.
- f. **Products-Completed Operations Hazard**
Included with the "products-completed operations hazard".
- g. **Business Liability Exclusions**
Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:**a. Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

(a) Owned, occupied or used by,

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

b. Real Estate Manager

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

c. Temporary Custodians Of Your Property

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

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

d. Legal Representative If You Die

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

e. Unnamed Subsidiary

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

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

3. Newly Acquired Or Formed Organization

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

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

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

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

5. Operator of Nonowned Watercraft

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

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

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

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

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

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

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

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

a. Vendors

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

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

This insurance does not apply to:

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

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

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

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

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

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

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

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

b. Lessors Of Equipment

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

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

c. Lessors Of Land Or Premises

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

d. Architects, Engineers Or Surveyors

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

e. Permits Issued By State Or Political Subdivisions

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

f. Any Other Party

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

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- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

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

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

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

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**1. The Most We Will Pay**

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

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

2. Aggregate Limits

The most we will pay for:

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

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

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

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

3. Each Occurrence Limit

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

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

4. Personal And Advertising Injury Limit

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

5. Damage To Premises Rented To You Limit

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

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

6. How Limits Apply To Additional Insureds

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

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

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

BUSINESS LIABILITY COVERAGE FORM

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

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

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

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

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

a. Notice Of Occurrence Or Offense

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

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

b. Notice Of Claim

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

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

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

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

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

d. Obligations At The Insured's Own Cost

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

e. Additional Insured's Other Insurance

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

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

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

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

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

BUSINESS LIABILITY COVERAGE FORM

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

3. Financial Responsibility Laws

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

4. Legal Action Against Us

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

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

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

5. Separation Of Insureds

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

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

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

By accepting this policy, you agree:

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

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

b. Unintentional Failure To Disclose Hazards

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

7. Other Insurance

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

a. Primary Insurance

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

b. Excess Insurance

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

(1) Your Work

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

(2) Premises Rented To You

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

(3) Tenant Liability

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

(4) Aircraft, Auto Or Watercraft

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

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

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

BUSINESS LIABILITY COVERAGE FORM**(6) When You Are Added As An Additional Insured To Other Insurance**

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

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

That is other insurance available to an additional insured.

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

(a) Primary Insurance When Required By Contract

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

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

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

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

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

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

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

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

c. Method Of Sharing

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

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

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

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

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

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

BUSINESS LIABILITY COVERAGE FORM**F. OPTIONAL ADDITIONAL INSURED COVERAGES**

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, 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; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

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

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

BUSINESS LIABILITY COVERAGE FORM

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional Insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional Insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- b. The insurance afforded to the vendor is subject to the following additional exclusions:

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

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

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

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

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

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

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

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

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, 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:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

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

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

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labelling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising Idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

BUSINESS LIABILITY COVERAGE FORM

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
- c. All other parts of the world if the injury or damage arises out of:
- (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication
- provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "sue" on the merits according to the substantive law in such territory, or in a settlement we agree to.
7. "Electronic data" means information, facts or programs:
- a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from
- computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.
12. "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, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. - Liability and Medical Expenses Limits of Insurance.
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement; or
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.
- However, Paragraph f. does not include that part of any contract or agreement:

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- (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, designs 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; or
- (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.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

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- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral, written or electronic publication of material that violates a person's right of privacy;
- f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
- g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
- h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
19. "Products-completed operations hazard";
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
- (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
20. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
23. "Volunteer worker" means a person who:
- a. Is not your "employee";

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- b. Donates his or her work;
 - c. Acts at the direction of and within the scope of duties determined by you; and
 - d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
- 24. "Your product":**
- a. Means:
 - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
 - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
 - b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2) The providing of or failure to provide warnings or instructions.
- 25. "Your work":**
- a. Means:
 - (1) Work or operations performed by you or on your behalf; and
 - (2) Materials, parts or equipment furnished in connection with such work or operations.
 - b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
 - (2) The providing of or failure to provide warnings or instructions.