

Board Office Use: Legislative File Info.	
File ID Number	16-1794
Introduction Date	8-24-2016
Enactment Number	16-1399
Enactment Date	8/24/16 02



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Antwan Wilson, Superintendent and Secretary, Board of Education *AW*  
By: Vernon Hal, Senior Business Officer *VH*  
Joe Dominguez, Deputy Chief, Facilities Planning and Management

**Board Meeting Date** August 24, 2016

**Subject** Independent Contractor Agreement for Professional Services - Applied Materials & Engineering, Inc. - Parker Elementary School Turf Field Project

**Action Requested** Approval by the Board of Education of an Independent Contractor Agreement for Professional Services between the District and Applied Materials & Engineering, Inc., Oakland, CA., for the latter to provide Geotech testing for paving of schoolyard to include compaction; reinforced concrete, ac paving, bioswale and synthetic turf, in conjunction with the Park Elementary School Turf Field Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing August 25, 2016 and concluding no later than May 22, 2017, in an amount not-to exceed \$14,530.00.

**Discussion** Paving and grading projects require testing and compaction services.

**LBP** (Local Business Participation Percentage) 100.00%

**Recommendation** Approval by the Board of Education of an Independent Contractor Agreement for Professional Services between the District and Applied Materials & Engineering, Inc., Oakland, CA., for the latter to provide Geotech testing for paving of schoolyard to include compaction; reinforced concrete, ac paving, bioswale and synthetic turf, in conjunction with the Park Elementary School Turf Field Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing August 25, 2016 and concluding no later than May 22, 2017, in an amount not-to exceed \$14,530.00.

**Fiscal Impact** Fund 21, Measure J

**Attachments**

- Independent Contractor Agreement including scope of work
- Consultant Proposal
- Certificate of Insurance



**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office**  
**With Every Consent Agenda Contract.**

Legislative File ID No. 16-1794

Department: DEPARTMENT OF FACILITIES

Vendor Name: APPLIED MATERIALS & ENGINEERING INC.

Project Name: PARKER TURF FIELD Project No.: 13195

Contract Term: Intended Start: 6/28/16 <sup>012</sup> 8/25/16 Intended End: 65/22/17-

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$ 14,530.00

Approved by: TADASHI NAKADEGAWA/JOE DOMINGUEZ

Is Vendor a local Oakland Business or have they met the requirements of the

Local Business Policy? Yes  No

**How was this Vendor selected?**

THIS VENDOR WAS SELECTED BASED UPON THE REQUEST FOR OUSD QUALIFICATIONS PROPOSAL AND LOCAL BUSINESS STATUS.

**Summarize the services this Vendor will be providing.**

VENDOR WILL BE PROVIDING GEOTECH TESTING FOR PAVING OF SCHOOLYARD TO INCLUDE COMPACTION. REINFORCED CONCRETE, AC PAVING, BIOSWALE AND SYNTHETIC TURF.

Was this contract competitively bid? Yes  No

If No, please answer the following:

1) How did you determine the price is competitive?

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$86,000 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

3)  **Not Applicable - no exception - Project was competitively bid**

OAKLAND UNIFIED SCHOOL DISTRICT

INDEPENDENT CONTRACTOR AGREEMENT FOR PROFESSIONAL SERVICES

Parker Elementary Turf Field Project

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the 19th day of July, 2016 by and between the Oakland Unified School District ("District") and Applied Materials & Engineering, Inc. ("Consultant"), (individually a "Party" or collectively the "Parties").

WHEREAS, the District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required;

WHEREAS, the District is in need of such services and advice and the Contractor warrants that it is specially trained, licensed and experienced and competent to perform the services required by the District;

WHEREAS, the Contractor agrees to perform the Services described in this Agreement in accordance with the standards of its profession, to District's satisfaction, and in accordance with this Agreement.

NOW, THEREFORE, the Parties agree as follows:

- 1. Services. The Contractor shall furnish to the District the services as described in Exhibit "A," attached hereto and incorporated herein by this reference ("Services" or "Work"):

The scope of the project is to provide GeoTech testing for paving of schoolyard to include compaction. Reinforced concrete Paving, Bioswale and synthetic turf.

Term. Contractor shall provide services commencing on August 25, 2016, and concluding no later than May 22, 2017 upon the Board of Education and will diligently perform as required or requested by District as applicable. This Agreement may be extended upon mutual approval of both parties on an annual basis to the extent permissible under applicable law.

- 2. Submittal of Documents. The Contractor shall not commence the Work under this Contract until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

x Signed Agreement x Workers' Compensation Certificate
x Insurance Certificates & Endorsements W-9 Form
N/A Bonds (as requested by District) Other: Fingerprinting
x Debarment Certificate

- 3. Compensation. District agrees to pay the Contractor for Services satisfactorily rendered pursuant to this Agreement, at the rates indicated and as more specifically described in Exhibit "A," on an hourly basis and a per-item basis, as applicable, and up to a maximum amount not-to-exceed Fourteen thousand, five hundred thirty dollars and no cents (\$14,530.00). District shall pay Contractor only for all undisputed amounts in installment payments within thirty (30) days after the Contractor submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.

4. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing the Work. Expenses will not be charged on the Work above the maximum not-to-exceed amount of **Zero (\$0.00)**. Rates for expenses are included on the Schedule of Fees and Charges attached hereto as **Exhibit "B"**.
  5. **Materials.** Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
  6. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees.
  7. **Standard of Care.** Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.
  8. **Originality of Services.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.
  9. **Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
10. **Termination.**
- 10.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three days after the day of mailing, whichever is sooner.
  - 10.2. **Without Cause by Contractor.** Contractor may, upon sixty (60) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Contractor for services satisfactorily rendered to the date of termination. Written notice by Contractor shall be sufficient to stop further performance of services to District. Contractor acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.
  - 10.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

- 10.3.1. material violation of this Agreement by the Contractor; or
- 10.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or
- 10.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation ceases, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of such termination, the District may secure the required services from another Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expenses, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

- 10.4. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.

**11. Indemnification.** To the furthest extent permitted by California law, Contractor shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, employees, trustees, and volunteers (the "Indemnified Parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "Claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and reasonable attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Agreement, to the extent caused by the negligence or willful misconduct of Contractor, its employees or subcontractors. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the Indemnified Parties.

**12. Insurance.**

- 12.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

- 12.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Contractor's performance of any portion of the Services. (Form CG 0001 and CA 0001)

- 12.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under

this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

**12.1.3. Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$ 1,000,000 \$ 1,000,000
<b>Automobile Liability Insurance - Any Auto</b> Each Occurrence General Aggregate	\$ 1,000,000 \$ 1,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

**12.2. Proof of Carriage of Insurance.** The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

12.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

12.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

12.2.3. An endorsement stating that the District and the State and their representatives, employees, trustees, officers, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

12.2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

**12.3. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

**13. Assignment.** The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.

**14. Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and

regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

15. **Permits/Licenses.** Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.
16. **Safety and Security.** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
17. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
18. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
19. **Fingerprinting of Employees.** The Contractor shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Contractor shall not permit any employee to have any contact with District pupils until such time as the Contractor has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Contractor's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor. Verification of compliance with this section shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.
20. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.



21. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors.** The District may evaluate the Contractor in any manner which is permissible under the law. The District's evaluation may include, without limitation:
- 21.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.
  - 21.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).
22. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
23. **Disputes.** In the event of a dispute between the parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop Work.
24. **Confidentiality.** The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
25. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**Oakland Unified School District**

955 High Street  
Oakland, CA 94601

**Attn: Tadashi Nakadegawa**  
Tel: 510-535-7038

**Contractor**

Applied Materials & Engineering, Inc.  
980 – 41<sup>st</sup> Street

Oakland, CA 94608  
Attn: Dushyant Manmohan  
Tel: 510-420-8190

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.


26. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE Program).** Contractor shall comply with the requirements of the District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's L/SL/SLRBE Program can be obtained on the District website, at [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us), under the Facilities Planning & Management Department drop down menu, Bids and Requests for Proposals.
27. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a

written instrument executed by both Parties.

28. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administration offices are located.
29. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
30. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
31. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.


**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:**

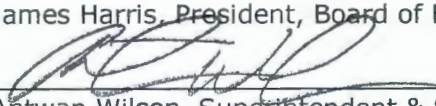
The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

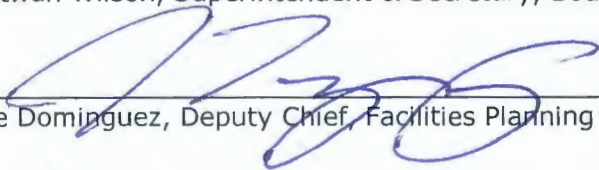
  
**Susie Butler-Berkley**  
**Contract Analyst**

ACCEPTED AND AGREED on the date indicated below:

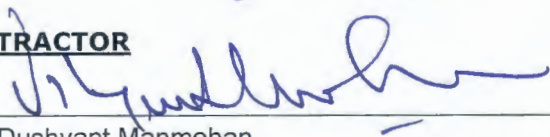
**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_  
James Harris, President, Board of Education 8/25/16  
Date

  
\_\_\_\_\_  
Antwan Wilson, Superintendent & Secretary, Board of Education 8/25/16  
Date

  
\_\_\_\_\_  
Joe Dominguez, Deputy Chief, Facilities Planning and Management Date

**CONTRACTOR**

  
\_\_\_\_\_  
By: Dushyant Manmohan 7/19/16  
Its: Principal Date

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
OUSD Facilities Legal Counsel 7.29.16  
Date

**EXHIBIT A**  
**Scope of Services**

See the attached Proposal from the Contractor:



**APPLIED MATERIALS & ENGINEERING, INC.**

980 41<sup>st</sup> Street  
Oakland, CA 94608

**EXHIBIT A**

Tel: (510) 420-8190  
FAX: (510) 420-8186  
e-mail: info@appmateng.com

**PARKER ES YARD IMPROVEMENTS, OUSD PROJECT NO. 13195**

**7929 NEY AVENUE, OAKLAND**

**TESTING & INSPECTION FEES**

**1. HOURLY AND UNIT COSTS & BASIS OF CHARGES:**

The estimated fees are based on the following State Mandated hourly inspection rates and unit tests costs, which will be maintained as long as prevailing wages do not change.

<b><u>INSPECTION RATES</u></b>	<b><u>Regular Per Hour</u></b>
1 Compaction Testing	\$98.00
2 Concrete Sampling	\$95.00
<b><u>UNIT TEST COSTS</u></b>	<b><u>Per Set</u></b>
1 Reinforcing Tensile & Bend Tests (combined) per bar	\$220.00
2 Moisture Density Curves, Includes sampling, each	\$475.00
3 Sieve Analysis, each	\$240.00
4 Sand Equivalent, each	\$105.00
5 Concrete Cylinders, per set	\$180.00
6 HMA QA Tests, per set	\$1,500.00
<b><u>OTHER COSTS</u></b>	<b><u>Per Hour</u></b>
1 Final Affidavit, each	\$300.00
2 Project Management	\$175.00
<b><u>BASIS OF CHARGES</u></b>	
<b>Minimum charge per call-out, show-up:</b>	2 Hours
<b>Work from 2-8 hours:</b>	Actual Time
<b>Travel to job site:</b>	No charge
<b>Mileage:</b>	\$0.60 per mile
<b>Parking:</b>	to be provided
Work over 8 hours per day, or on Saturday, per hour	Time & One Half
Work on Sundays and Holidays, per hour	Double Time



**PARKER ES YARD IMPROVEMENTS, OUSD PROJECT NO. 13195**

**7929 NEY AVENUE, OAKLAND**

**2. DETAILED FEES BY DISCIPLINE:**

For each of the disciplines requiring our services we have provided the basis used by us for determining the fees. The following is a summary of our testing and inspection fees, followed by a detailed

**SUMMARY OF FEES**

1	<b>Reinforced Concrete</b>	<b>\$ 3,830.00</b>
2	<b>Compaction</b>	<b>6,046.00</b>
3	<b>AC Paving</b>	<b>2,284.00</b>
4	<b>Bio Swale/Synthetic Turf</b>	<b>690.00</b>
5	<b>Mileage Allowance:</b>	<b>330.00</b>
6	<b>Project Management</b>	<b>1,050.00</b>
7	<b>Final Affidavit</b>	<b>300.00</b>
	<b>TOTAL</b>	<b>\$ 14,530.00</b>

**DETAILED FEES**

**1 Reinforced Concrete**

Basis: We are assuming concrete placements as noted in the Table below:

For each placement, we will have our technician go to the batch plant and follow the first truck to the job-site.

Per project specs. a set of 5 cylinders will be sampled every 50 cu yds

We will review two mix designs

We are budgeting three trips to sample and test 5 reinforcing steel bars.

Reinforcing placement and dowel installations to be monitored by the IOR.

	Cu. Yds.	No. of Placements	Sets of Cylinders	INSPECTION HOURS	
				Reinf	Concrete
Seatwall	N/A	1	1	0	4
Stairs, Post Footings & misc	N/A	2	2	0	8
<b>Total</b>	N/A	3	3	0	12

a) Mix Design Reviews:	2 mixes @	\$175.00	each	\$ 350.00
b) Rebar Sampling	12 hours @	\$95.00	per hour	1,140.00
c) Reinforcing Tests	3 sets @	\$220.00	per set	660.00
d) Concrete Placement Inspection:	12 hours @	\$95.00	per hour	1,140.00
e) Concrete Cylinder Tests	3 sets @	\$180.00	per set	540.00
			<b>Sub-Total</b>	<b>\$ 3,830.00</b>

**2 Compaction**

Basis: Compaction services will be required for the sub grade and aggregate base for the AC pavement sections. Sub-grade will be tested for the turf and play surface area. Compaction testing hours are as follows:

Subgrade: 7, 4 hour trips 28 hours  
 Agg. Base: 6, 4 hour trips 24 hours  
 We are also budgeting 7 soils density curves, assuming that the aggregate base will be from one source.

a) Soils Compaction	52 hours @	\$98.00	per hour	\$	5,096.00
b) Moisture Density Curves	2 test @	\$475.00	per test		950.00
			<b>Sub-Total</b>	\$	<b>6,046.00</b>

**3 AC Paving**

Basis: We are budgeting one day for HMA placement. In addition, we are budgeting one HMA QA tests.

a) Field HMA Compaction	8 hours @	\$98.00	per hour	\$	784.00
b) QA test	1 test @	\$1,500.00	per test		1,500.00
			<b>Sub-Total</b>	\$	<b>2,284.00</b>

**4 Bio Swale/Synthetic Turf**

Basis: We are budgeting one test each for sieve analysis and sand equivalent for Class II permeable base for bio retention basin and turf.

a) Sieve Analysis	2 tests @	\$240.00	per test		480.00
b) Sand equivalent	2 tests @	\$105.00	per test		210.00
			<b>Sub-Total</b>	\$	<b>690.00</b>

**5 Mileage Allowance:** 33 trips @ \$10.00 per trip \$ 330.00

**6 Project Management** 6 hours @ \$175.00 per hour \$ 1,050.00

**7 Final Affidavit** \$ 300.00

TOTAL \$ 14,530.00



**APPLIED MATERIALS & ENGINEERING, INC.**

980 41<sup>st</sup> Street  
Oakland, CA 94608

Tel: (510) 420-8190  
FAX: (510) 420-8186  
e-mail: info@appmateng.com

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8-Jun-16

Ms. Lee Sims  
Project Manager  
Oakland Unified School District  
955 High Street  
Oakland, CA 94601

Subject: Proposal for Special Inspection & Testing Services  
Parker ES Yard Improvements, OUSD Project No. 13195, 7929 Nye Avenue, Oakland

Dear Ms. Sims:

As requested, we are pleased to submit this proposal for providing construction inspection and testing services for the subject project. The following items are included:

- 1 Fees:
  - A. Hourly and Unit Costs & Basis of Charges.
  - B. Budget Estimate.

The fee proposal is based on a review of documents provided and past experience with similar projects. Assumptions made are clearly stated, our desire was to provide thorough competitive fees.

Please call if you have questions, we look forward to the opportunity of working together.

Sincerely,

**APPLIED MATERIALS & ENGINEERING, INC.**

Dushyant Manmohan  
Principal



**Information regarding Contractor:**

Contractor: Applied Mateials & Engineering, Inc. **EIN** 94-3055728  
License No.: N/A Employer Identification and/or Social Security Number  
Address: 980 41st Street, Oakland, CA 94608

Telephone: 510 420-8190

Facsimile: 510 420-8186

E-Mail: info@appmateng.com

Type of Business Entity:  
 Individual  Sole  
Proprietorship  
 Partnership  Limited  
Partnership  
 Limited Liability Company  
 Corporation, State: California  
 Other: \_\_\_\_\_

**NOTE: Federal Code of Regulations sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.**

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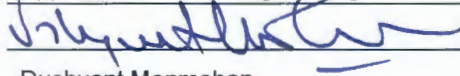
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**WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 3700 in relevant part provides that every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: 7/19/16  
Proper Name of Contractor: Applied Mateials & Engineering, Inc.  
Signature:   
Print Name: Dushyant Manmohan  
Title: Principal

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Contract.)

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Independent Contractor Agreement- Special Services ("Agreement"):

**[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Consultant's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: \_\_\_\_\_  
District Representative's Name and Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

\_\_\_\_\_ The installation of a physical barrier at the worksite to limit contact with pupils.

\_\_\_\_\_ Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

\_\_\_\_\_ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**

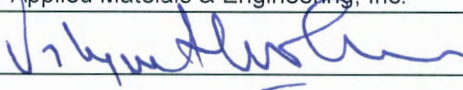
Date: \_\_\_\_\_  
District Representative's Name and Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

**Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

**[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.]** I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: 7/19/16

Name of Consultant or Company: Applied Materials & Engineering, Inc.

Signature: 

Print Name and Title: Dushyant Manmohan, Principal


**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND  
VOLUNTARY EXCLUSION**

I am aware of and hereby certify that neither Applied Materials & Engineering, Inc. nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree that I will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts.

Where the Contractor or any lower participant is unable to certify to this statement, it shall attach an explanation hereto.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the ~~above~~ Contractor on the 19th day of July 2016 for the purposes of submission of this Agreement.

By:

  
\_\_\_\_\_  
Signature

Dushyant Manmohan

\_\_\_\_\_  
Typed or Printed Name

Principal

\_\_\_\_\_  
Title

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
07/20/2016

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

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

<b>PRODUCER</b> Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090	<b>CONTACT NAME:</b> Mandy Guo <b>PHONE (A/C, No, Ext):</b> 510 465-3090 <b>E-MAIL ADDRESS:</b> mguo@dealeyrenton.com	<b>FAX (A/C, No):</b> 510 452-2193
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Applied Materials & Engineering, Inc. 980 41st Street Oakland, CA 94608	<b>INSURER A:</b> Travelers Property Casualty Co	<b>NAIC #</b> 25674
	<b>INSURER B:</b> Evanston Insurance Company	<b>NAIC #</b> 35378
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	


**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
<b>A</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N <b>N</b> N/A	UB3647T281	02/11/2016	02/11/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
<b>B</b>	<b>Professional Liability</b>			MAX7PL0002069	12/12/2015	12/12/2016	\$2,000,000 per Claim \$2,000,000 Annl Aggr.

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

Re: Parker Elementary School Turf Field Project.  
 Cancellation: 30 Day/10 Day for Non-Payment of Premium.

<b>CERTIFICATE HOLDER</b> Oakland Unified School District Attn: Tadashi Nakadegawa 955 High Street Oakland, CA 94601	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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# CERTIFICATE OF LIABILITY INSURANCE

APPLI-5

OP ID: JY

DATE (MM/DD/YYYY)

07/19/2016

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

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

PRODUCER Diablo Valley Insurance Agency 801 Ygnacio Valley Rd, Ste 100 Walnut Creek, CA 94596 Dennis Mulhall	CONTACT NAME: Dennis Mulhall	
	PHONE (A/C, No, Ext): 925-210-1717 FAX (A/C, No): 925-210-1818	
	E-MAIL ADDRESS: dennis@diablovalleyinsurance.com	
INSURED Applied Materials and Engineering, Inc. 980 41st Street Oakland, CA 94608	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : National Fire Insurance	20478
	INSURER B : Continental Insurance Company	
	INSURER C : Continental Casualty Company	
	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 INSD	SUBR VVO	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Completed Ops <input checked="" type="checkbox"/> X, C & U GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	4012495718	12/10/2015	12/10/2016	EACH OCCURRENCE	\$ 2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 2,000,000
							GENERAL AGGREGATE	\$ 4,000,000
PRODUCTS - COMP/OP AGG	\$ 4,000,000							
							\$	
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	X	4012495153	12/10/2015	12/10/2016	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
							\$	
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	X	X	4012495735	12/10/2015	12/10/2016	EACH OCCURRENCE	\$ 4,000,000
							AGGREGATE	\$ 4,000,000
								\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE	OTHER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$
A	Installation			4012495718	12/10/2015	12/10/2016	Floater	10,000
A	Tools & Equipment			4012495718	12/10/2015	12/10/2016	\$250 Ded	156,005

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

Parker Elementary Turf Field Project - District and the State and their representatives, employees, trustees, officers, and volunteers are named additional insureds under all policies per attached endorsements. Waiver of Subrogation is all included for all policies per attached endorsements. 30 days notice of cancellation provided.

## CERTIFICATE HOLDER

## CANCELLATION

OAKLA10  Oakland Unified School District 955 High Street Oakland, CA 94601	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 

© 1988-2014 ACORD CORPORATION. All rights reserved.

**IMPORTANT: THIS ENDORSEMENT CONTAINS DUTIES THAT APPLY TO THE ADDITIONAL INSURED IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT. SEE PARAGRAPH C., OF THIS ENDORSEMENT FOR THESE DUTIES.**

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

**BLANKET ADDITIONAL INSURED ENDORSEMENT  
WITH PRODUCTS-COMPLETED OPERATIONS COVERAGE**

**&  
BLANKET WAIVER OF SUBROGATION  
Architects, Engineers and Surveyors**

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS LIABILITY COVERAGE FORM  
BUSINESSOWNERS COMMON POLICY CONDITIONS**

**A. WHO IS AN INSURED** (Section C.) of the Businessowners Liability Coverage Form is amended to include as an insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement; but the written contract or written agreement must be:

1. Currently in effect or becoming effective during the term of this policy; and
2. Executed prior to the "bodily injury," "property damage," or "personal and advertising injury."

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

1. That person or organization is an additional insured solely for liability due to your negligence specifically resulting from "your work" for the additional insured which is the subject of the written contract or written agreement. No coverage applies to liability resulting from the sole negligence of the additional insured.
2. The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations of this policy, whichever is less. These Limits of Insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations.
3. The coverage provided to the additional insured under this endorsement and section titled **LIABILITY AND MEDICAL EXPENSE DEFINITIONS - "Insured Contract"** (Section F.9.) within the Businessowners Liability Coverage Form, does not apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard" unless required by the written contract or written agreement.

4. The insurance provided to the additional insured does not apply to "bodily injury," "property damage," "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:

- a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project of which you serve as construction manager; or
- b. Inspection, supervision, quality control, engineering or architectural services done by you on a project of which you serve as construction manager.

5. This insurance does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of:

- a. The construction or demolition work while you are acting as a construction or demolition contractor. This exclusion does not apply to work done for or by you at your premises.

**C. BUSINESSOWNERS GENERAL LIABILITY CONDITIONS - Duties in The Event of Occurrence, Offense, Claim or Suit** (Section E.2.) of the Businessowners Liability Coverage Form is amended to add the following:

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

1. Give written notice of an occurrence or an offense to us which may result in a claim or "suit" under this insurance;

2. Tender the defense and indemnity of any claim or "suit" to us for a loss we cover under this Coverage Part;
3. Tender the defense and indemnity of any claim or "suit" to any other insurer which also has insurance for a loss we cover under this Coverage Part; and
4. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

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

**D. OTHER INSURANCE** (Section H. 2. & 3.) of the Businessowners Common Policy Conditions are deleted and replaced with the following:

2. This insurance is excess over any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance be either primary or primary and noncontributing to the additional insured's own coverage. This insurance is excess over any other insurance to which the additional insured has been added as an additional insured by endorsement.
3. When this insurance is excess, we will have no duty under Coverages A or B to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured

against that "suit" if no other insurer defends, we will undertake to do so, but we will be entitled to the additional 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:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) 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 the 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.

**E. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US** (Section K.2.) of the Businessowners Common Policy Conditions is deleted and replaced with the following:

2. We waive any right of recovery we may have against any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included within the "products-completed operations hazard."



## ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY

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

### SCHEDULE

Name of Additional Insured Persons Or Organizations
Any person or organization you are obligated to provide Insurance where required by written contract.

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

All other terms and conditions of the Policy remain unchanged.



Policy # 4012485183

## DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

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

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

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

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

Named Insured: Applied Materials & Engineering Inc.

Endorsement Effective Date: 12/10/2015

### SCHEDULE

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

Any person or organization you are obligated to provide  
insurance where required by a written contract.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement)

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I - Covered Autos Coverages of the Auto Dealers Coverage Form.

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

This endorsement modifies insurance provided under the following:

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

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

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

**Named Insured: Applied Materials & Engineering Inc.**

**Endorsement Effective Date: 12/10/2015**

### SCHEDULE

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

**Blanket Waiver of Subrogation – As required by written contract**

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

#### **The Transfer Of Rights Of Recovery Against Others**

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

COMMERCIAL UMBRELLA PLUS  
COVERAGE PART

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 identified under SECTION II - WHO IS AN INSURED of this policy.

The word "insured" means any person or organization qualifying as such under SECTION II - WHO IS AN INSURED.

The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION V - DEFINITIONS.

SECTION I - COVERAGES

1. Insuring Agreement

We will pay on behalf of the insured those sums in excess of "scheduled underlying insurance," "unscheduled underlying insurance" or the "retained limit" that the insured becomes legally obligated to pay as "ultimate net loss" because of "bodily injury," "property damage" or "personal and advertising injury" to which this insurance applies.

a. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "incident" anywhere in the world;
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) With respect to "bodily injury" or "property damage" that continues, changes or resumes so as to occur during more than one policy period, both of the following conditions are met:
  - (i) Prior to the policy period, no "authorized insured" knew that the "bodily injury" or "property damage" had occurred, in whole or in part; and
  - (ii) During the policy period, an "authorized insured" first knew that the "bodily injury" or "property damage" had occurred, in whole or in part.

For purposes of this Paragraph (1) a.(3) only, if (a) "bodily injury" or "property damage" that occurs during this policy period does not continue, change or resume after the

termination of this policy period; and (b) no "authorized insured" first knows of this "bodily injury" or "property damage" until after the termination of this policy period, then such first knowledge will be deemed to be during this policy period.

- b. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any "authorized insured" includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of 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 "authorized insured":

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand, claim or "suit" 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. This insurance applies to "personal and advertising injury" caused by an "incident" committed anywhere in the world during the policy period.

If we are prevented by law, statute or otherwise from paying on behalf of the insured, then we will indemnify the insured for those sums that the insured is legally obligated to pay as "ultimate net loss" because of "bodily injury," "property damage" or "personal and advertising injury" to which this insurance applies.

2. Exclusions

This Insurance does not apply to:

a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property. This exclusion does not apply to Employers Liability claims for "bodily injury" covered by "scheduled underlying insurance."

b. Contractual Liability

"Bodily injury," "property damage" or "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 "ultimate net loss";

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Because of "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.

c. "Personal and advertising injury" Exclusions

"Personal and advertising injury":

- (1) Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury";
  - (2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
  - (3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
  - (4) Arising out of a criminal act committed by or at the direction of the insured;
  - (5) Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
  - (6) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
  - (7) Arising out of the wrong description of the price of goods, products or services stated in your "advertisement";
  - (8) Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights;
- However, this exclusion does not apply to infringement, in your "advertisement," of copyright, trade dress or slogan;
- (9) Committed by an insured whose business is:
    - (a) Advertising, broadcasting, publishing or telecasting;
    - (b) Designing or determining content of websites for others; or
    - (c) An Internet search, access, content or service provider;

However, this exclusion does not apply to paragraphs 10, a., b. and c. of "personal and advertising injury" under SECTION V - DEFINITIONS;

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

- (10) Arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control; or

- (11) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

d. Workers' Compensation and Similar Laws

Any obligation of the insured under a:

- (1) Workers' compensation;
- (2) Disability benefits; or
- (3) Unemployment compensation law or any similar law,

e. Employers 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:

- (1) To liability assumed by the insured under an "insured contract"; or
- (2) Only to the extent that coverage is provided by "scheduled underlying insurance."

f. Pollution

- (1) "Bodily injury" or "property damage" 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;
  - (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 any insured or any person or organization for whom you may be legally responsible; or
  - (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:
    - (i) If the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
    - (ii) 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."
- (e) That are, or that are contained in property that is:
  - (i) Being transported or towed by, or handled for movement into, onto or from a covered "automobile";
  - (ii) Otherwise in the course of transit;
  - (iii) Being stored, disposed of, treated or processed in or upon the covered "automobile";
- (f) Before the "pollutants" or property in which the "pollutants" are contained are moved from the place where they are accepted by the insured for movement into or onto the covered "automobile"; or
- (g) After the "pollutants" or property in which the "pollutants" are contained are moved

from the covered "automobile" to the place where they are finally.

- (i) Delivered;
- (ii) Disposed of; or
- (iii) Abandoned by the insured.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

Subparagraph (d)(i) does not apply to "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 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.

Subparagraph (e)(iii) does not apply to fuels, lubricants, fluids, exhaust, gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "automobile" or its parts if the "pollutants" escape or are discharged, dispersed or released directly from an "automobile" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants."

Subparagraphs (f) and (g) do not apply if the "pollutants" or property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "automobile" and the discharge, dispersal, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- (2) "Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

- (3) Any loss, cost or expense arising out of any:

- (a) Request, demand or order 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."

g. Watercraft

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

- (1) Ownership;
- (2) Maintenance;
- (3) Use; or
- (4) Entrustment to others

of a "watercraft" owned or operated by or rented or loaned to an insured. Use includes operation or "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 "incident" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any 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 55 feet long; and
  - (b) Not being used to carry persons or property for a charge; or
- (3) Liability assumed under an "insured contract" for the ownership, maintenance or use of "watercraft."

h. Aircraft

The ownership, maintenance, operation, use, entrustment to others or "loading or unloading" of any "aircraft":

- (1) Owned by an insured; or
- (2) Chartered without crew by an insured or on an insured's behalf.

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 "incident" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "aircraft" that is owned or operated by or rented or loaned to any insured.

i. War

Any liability arising 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. 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.

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

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

**k. Damage to your Product**

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

**l. Damage to you 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.

**m. 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.

**n. 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.

**o. E.R.I.S.A.**

Liability for alleged or actual violations of the Employees Retirement Income Security Act of 1974 or any amendments or additions thereto.

**p. Directors and Officers**

Liability for a wrongful act, error, omission or breach of duty by an insured in the performance of the office of director or officer of an organization.

**q. Uninsured/Underinsured Motorist and Similar Laws**

Liability imposed on the insured under an uninsured/underinsured motorist law, a personal injury protection law, a reparations benefit law or other similar law.

**r. Electronic Data**

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

**s. Nonemployment Related Discrimination**

To any alleged or actual nonemployment related discrimination committed intentionally against a person.

**t. Asbestos**

- (1) "Bodily injury," "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened exposure at any time to "asbestos"; or
- (2) Any loss, cost or expense that may be awarded or incurred:
  - (a) By reason of a claim or "suit" for any such injury or damage; or
  - (b) In complying with a governmental direction or request to test for, monitor, clean up, remove, contain or dispose of "asbestos."

**u. Fungi and Microbes**

- (1) "Bodily injury," "property damage" or "personal and advertising injury," which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi or microbes"; or
- (2) Any loss, cost, or expense arising out of the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, or disposing of, or in any way responding to or assessing the effects of "fungi or microbes" by any insured or by anyone else.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage, loss, cost or expense.

**v. Silica**

- (1) "Bodily injury" arising in whole or in part out of the actual, alleged or threatened respiration or ingestion at any time of "silica;" or

- (2) "Personal and advertising injury" or "property damage" arising in whole or in part out of the actual, alleged or threatened presence of "silica."

**w. Named Insured vs. Named Insured**

Any liability arising out of claims or "suits" by a named insured against another named insured.

**x. Employment Related Practices**

Any liability arising out of:

- (1) A refusal to employ;
  - (2) Termination of employment;
  - (3) Demotion, evaluation, reassignment, discipline;
  - (4) Coercion, defamation, discrimination, harassment or humiliation; or
- any other employment related practices, policies, acts or omissions.

**y. Terrorism Limitation**

"Bodily injury" or "property damage" arising out of any act of terrorism, unless, and then only to the extent that coverage is provided by "scheduled underlying insurance."

**z. Liquor Liability Limitation**

"Bodily injury" or "property damage" for which an 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;

unless, and then only to the extent that coverage is provided by "scheduled underlying insurance."

**aa. Auto and Mobile Equipment Limitation**

Any liability arising out of the:

- (1) Ownership;
- (2) Maintenance;
- (3) Use; or
- (4) Entrustment to others

of an "automobile" or "mobile equipment" owned or operated by or rented or loaned to an insured unless, and then only to the extent that coverage is provided by "scheduled underlying insurance."

To the extent that this insurance applies to an "automobile" or "mobile equipment" it is further subject to the pollution exclusion, exclusion f. of this policy.

Use includes operation or "loading or unloading."

**bb. Do Not Call**

Any liability 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; or
- (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 the CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**SECTION II – WHO IS AN INSURED**

**1. Named Insured** means any individual or organization stated in the Declarations of this policy and if you are designated in the Declarations of this policy as:

**a.** An individual, you and your spouse, but only with respect to the conduct of a business of which you are the sole owner.

If you are designated in the Declarations of this policy as an individual, this policy shall not apply to liability arising out of your domestic or non-business activities. This does not apply to the ownership, maintenance, use or "loading or unloading" of any "automobile," or to the Personal Umbrella Liability Coverage Part.

**b.** A partnership or joint venture, you and your members, your partners, and their spouses, but only with respect to the conduct of your business.

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

**c.** An organization other than a partnership or joint venture, you and your executive officers and directors, but only with respect to their duties as your officers or directors. Your stockholders are also named insureds, but only with respect to their liability as stockholders.

**d.** A limited liability company, you and your members, but only with respect to the conduct of your business. Your managers are also named insureds but only with respect to their duties as your managers.



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

- e. A corporation or organization, other than partnerships, joint ventures or limited liability companies, that you form, acquire or gain control of during the policy period, but only with respect to "bodily injury," "property damage" or "personal and advertising injury" taking place after you form, acquire or gain control of such corporation or organization.

2. Insured means the Named Insured and:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your employees, other than your executive officers and directors (if you are an organization other than a partnership, joint venture or limited liability company) or your members (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" is an insured 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 "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.

(2) "Property damage" to property:

- (a) Owned, occupied or used by;
- (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. A person or organization for whom you are required, by virtue of a written contract entered into prior to the "bodily injury," "property damage" or "personal and advertising injury" occurring or being committed, to provide the insurance that is afforded by this policy. This insurance applies only with respect to operations by you or on your behalf or to facilities you own or use, but only to the extent of the limits of insurance required by such contract, not to exceed the limits of insurance in this policy.

- c. Any other persons or organizations included as an insured under the provisions of the "scheduled underlying insurance" shown in the Declarations of this policy and then only for the same coverage, except for limits of insurance, afforded under such "scheduled underlying insurance."

However, if a blanket additional insured endorsement is attached to the general liability "scheduled underlying insurance" pursuant to a written or oral contract or agreement between you and another person or organization (called additional insured), this insurance is excess over such insurance provided to the additional insured subject to the following conditions:

- (1) If the limits specified in the written contract or agreement are less than the limits provided by the "scheduled underlying insurance," then no coverage is provided to the additional insured under this policy.
- (2) If the limits specified in the written contract or agreement are greater than the limits provided by the "scheduled underlying insurance," then this insurance is excess over the insurance provided by the "scheduled underlying insurance." The limits of insurance for the additional insured are the lesser of:
  - (i) The limits specified in the written contract; or
  - (ii) The limits of the "scheduled underlying insurance" plus the limits of this policy.

SECTION III - LIMITS OF INSURANCE

- 1. 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;
  - c. Persons or organizations making claims or bringing "suits."

- d. "Automobiles," "aircraft" or "watercraft" to which this policy applies; or

- e. Coverages under which loss is insured in this policy.

- 2. The limit of insurance shown in the Declarations as the Aggregate Limit is the most we will pay for the sum of all "ultimate net loss," to which this insurance applies and applies separately to all "ultimate net loss":

- a. Included in the "products-completed operations hazard";
- b. To which, and in the same manner, an aggregate limit applies under "scheduled underlying insurance" other than "ultimate net loss" included in the "products-completed operations hazard"; and
- c. To which no "scheduled underlying insurance" applies.

The Aggregate Limit does not apply to "ultimate net loss" for which no aggregate limit applies in the "scheduled underlying insurance."

- 3. Subject to 2. above, the limit of Insurance shown in the Declarations as the Each Incident Limit is the most we will pay for the sum of all "ultimate net loss" to which this insurance applies arising out of any one "incident."

- 4. In the event of reduction or exhaustion of the aggregate limits of insurance under "scheduled underlying insurance" solely by reason of payments of a combination of covered:
  - a. Expenses;
  - b. Settlements; or
  - c. Judgments

paid thereunder as a result of "bodily injury," "property damage" or "personal and advertising injury" taking place during this policy period, this policy shall, subject to this limit of insurance provision and to the remaining terms and provisions and conditions of this policy:

- a. Apply in excess of such reduction of "scheduled underlying insurance"; or
- b. Apply in place of the exhausted amount of "scheduled underlying insurance."

Nothing in a. or b. above shall serve to increase the limits of insurance shown in the Declarations.

- 5. The limits of this policy shall apply separately to:
  - a. Each consecutive annual period; and
  - b. Remaining periods 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.

SECTION IV - CONDITIONS

1. Financial Impairment

Bankruptcy, rehabilitation, receivership, liquidation or other financial impairment of you or an "underlying insurer" shall neither relieve nor increase any of our obligations under this policy.

In the event there is diminished recovery or no recovery available to you as a result of such financial impairment of an insurer providing "scheduled underlying insurance," the coverage under this policy shall apply only in excess of the limits of insurance stated in the "scheduled underlying insurance." Under no circumstances shall we be required to drop down and replace the limits of insurance, or assume the obligations of a financially impaired insurer.

2. Duties of the Insured

- a. In the event of an "incident" which has not resulted in a claim or suit.

Whenever you have information of an "incident" which involves injuries or damages likely to involve this policy, written notice shall be given by or for you to us or to our authorized agent as soon as practicable. The notice shall contain:

- (1) Particular information sufficient to identify the insured;
- (2) Such information as can be reasonably obtained with respect to time, place and circumstances of the occurrence or offense; and
- (3) Names and addresses of the insured and of available witnesses.

- b. In the Event of Claims or Suit

You shall provide us with written notice as soon as practicable whenever:

- (1) A claim is made or "suit" is brought against you;
- (2) You receive notice that a right to bring claim or "suit" against you will be asserted; or
- (3) You obtain information that the obligation of "underlying insurers" to:
  - (a) Investigate;
  - (b) Defend;
  - (c) Pay on behalf of; or
  - (d) Indemnify you has ceased.

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Every demand, notice, summons, amended complaint or other process received by you or your representative shall be forwarded with each notice.

**3. Legal Action Against Us**

No legal action shall be brought against us unless you have fully complied with all the terms of this policy and the amount of your obligation to pay has been finally determined either by:

- a. Judgment against you after actual trial; or
- b. Written agreement between us, you and the claimant.

**4. Other Insurance**

This insurance is excess over and will not contribute with any other insurance available to the insured whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise. This condition does not apply to insurance purchased specifically to apply in excess of this insurance.

**5. Premium Audit**

- a. We will compute all premiums for this policy in accordance with our rules and rates.
- b. If the premium is shown in the Declarations as flat, the premium for this policy is not subject to adjustment.
- c. If the premium is shown in the Declarations as adjustable, the premium shown as the advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured shown in the Declarations. If the sum of the advance and audit premiums paid for the policy term are greater than the earned premium, we will return the excess, subject to the minimum premium, to the first Named Insured shown in the Declarations.
- d. The first Named Insured shown in the Declarations must keep records of the information we need for premium computation, and send us copies at such times as we request.

**6. Nonrenewal**

If we decide not to renew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**7. Severability of Interests**

The insurance afforded applies separately to each insured against whom claim is made or "suit" is

brought. However, the inclusion of more than one insured shall not operate to increase the limits of insurance.

**8. Annual Rating**

If this policy is issued for a period in excess of one year, the premium may be revised on each annual anniversary in accordance with our rates and rules in effect at that time.

**9. "Scheduled Underlying Insurance"**

Material change in premium for "scheduled underlying insurance" shall be promptly reported to us. Premium for this policy may be adjusted to reflect changes in underlying insurance in accordance with our manuals in effect at the time of the change.

**10. Maintenance of "Scheduled Underlying Insurance"**

While this policy is in force you agree that the policies listed in the Declarations as "scheduled underlying insurance" and their renewals and replacements shall be maintained, without alterations of terms or conditions, in full effect during the term of this policy, except for reduction or exhaustion of the aggregate limits of insurance in the "scheduled underlying insurance," provided that such reduction or exhaustion is solely the result of "incidents" taking place during this policy period, and not before. If you fail to maintain "scheduled underlying insurance," this condition shall not invalidate this policy. However, in the event of such failure, we will only be liable to the same extent as if you had complied with this condition.

**11. Appeals**

If you or your "underlying insurers" elect not to appeal a judgment in excess of the limits of insurance afforded by the:

- a. "Scheduled underlying insurance";
- b. "Unscheduled underlying insurance"; or
- c. "Retained limit";

we may elect to appeal. Our limit of liability shall not be increased because of such appeal. We will, however, pay the following costs and expenses:

- a. All premium bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy;
- b. All premiums on appeal bonds required in such defended "suit," but without obligation to apply for or furnish such bonds;
- c. Court fees;
- d. Costs and expenses taxed against you by the appellate court and interest accruing after entry of a judgment against you and before we have:

- (1) Paid;

- (2) Offered to pay; or
- (3) Deposited in court

the part of the judgment that is within the applicable limit of insurance. Where the "underlying insurers" terminate their liability to pay interest on the judgment by an offer to pay their limits, you shall demand that such limits be paid. If the appeal is successful, such amounts not obligated to be paid shall be returned to such "underlying insurer."

**12. Subrogation**

In the case of any payments by us under the coverages of this policy, we shall be subrogated to all rights of recovery against any other party which you may have and will cooperate with you and all other interests. Amounts recovered shall be apportioned in the following order:

- a. Amounts paid in excess of the payments under this policy shall first be reimbursed up to the amount paid by those, including you, who made such payments;
- b. We are then to be reimbursed up to the amount we paid;
- c. Any remainder shall be available to the interests of those over whom this coverage is in excess and who are entitled to claim such remainder.

Expenses necessary to the recovery of such amounts shall be divided between the interests concerned, including you, in the ratio of their respective recoveries as finally settled.

**13. Settlement of Claims or Suit**

We may pay, but are not obligated to pay, any part or all of the amount of the "retained limit" to effect settlement of a claim or "suit." Upon notification of the action taken you shall promptly reimburse us for such part of the "retained limit" that we had paid. All named insureds are jointly and severally responsible for our reimbursement and agree to make such reimbursement within 30 days after we give you written notice or demand for payment.

**14. Sole Agent**

The insured first named in the Declarations is authorized to act on behalf of all named insureds and other insureds with respect to:

- a. The giving and receiving of notice of cancellation; and
- b. Receiving return premium that may be payable under this policy.

The insured first named in the Declarations is responsible for the payment of premiums, but the other named insureds jointly and severally agree to make

such payments in full if the insured first named fails to pay the amount due within 30 days after we give written notice or demand.

**15. Trade Sanctions**

In accordance with laws and regulations of the United States concerning economic and trade embargoes, this policy is void ab initio (void from its inception) with respect to any term or condition of this policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

- a. Any insured, or any person or entity claiming the benefits of an insured, who is or becomes a Specially Designated National or Blocked Person or who is otherwise subject to U.S. economic or trade sanctions;
- b. Any claim or "suit" that is brought in a Sanctioned Country or by a Sanctioned Country Government, where any action in connection with such claim or "suit" is prohibited by U.S. economic or trade sanctions;
- c. Any claim or "suit" that is brought by any Specially Designated National or Blocked Person or any person or entity who is otherwise subject to U.S. economic or trade sanctions;
- d. Property that is located in a Sanctioned Country or that is owned by, rented to or in the care, custody or control of a Sanctioned Country Government, where any activities related to such property are prohibited by U.S. economic or trade sanctions; or
- e. Property that is owned by, rented to or in the care, custody or control of a Specially Designated National or Blocked Person, or any person or entity who is otherwise subject to U.S. economic or trade sanctions.

As used in this policy a Specially Designated National or Blocked Person is any person or entity that is on the list of Specially Designated Nationals and Blocked Persons issued by the U.S. Treasury Department's Office of Foreign Asset Control (O.F.A.C.) as it may be from time to time amended.

As used in this policy a Sanctioned Country is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States of America.

**SECTION V - DEFINITIONS**

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition



- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding websites, only that part of a website that is about your goods or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Automobile" means
- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads; including any attached machinery or equipment; or
  - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.
- However, "automobile" does not include "mobile equipment."
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at any time which results as a consequence of the bodily injury, sickness or disease.
4. "Aircraft" means a vehicle designed to transport persons or property in the air.
5. "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.
6. "Insured contract" means:
- a. A lease of premises;
  - b. A sidetrack agreement;
  - c. An easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
  - e. An elevator maintenance agreement; or
  - f. The part of other contracts or agreements 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 to pay damages because of "bodily injury" or "property damage" to a third person or organization, if the contracts or agreements are made prior to the "bodily injury" or "property damage."

Tort liability means liability that would be imposed by law in the absence of contracts or agreements.

An "insured contract" does not include that part of a contract or agreement:

- a. That indemnifies an architect, engineer or surveyor for an injury or damages arising out of:
  - (1) Preparing, approving or failing to prepare or approve:
    - (a) Maps;
    - (b) Drawings;
    - (c) Opinions;
    - (d) Reports;
    - (e) Surveys;
    - (f) Change orders;
    - (g) Designs; or
    - (h) Specifications; or
  - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- b. Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in a.(1) above and supervisory, inspection or engineering services; or
- c. That indemnifies a person or organization for damage by fire to premises rented or loaned to an insured.

7. "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 "automobile";
- b. While it is in or on an "aircraft," "watercraft" or "automobile"; or
- c. While it is being moved from an "aircraft," "watercraft" or "automobile" 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 "automobile."

8. "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 that travel on crawler treads;
  - c. Vehicles maintained for use solely on or next to premises you own or rent;
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to 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 type of permanently attached equipment are not "mobile equipment" but will be considered "automobiles":

- (1) Equipment 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 "automobiles" 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.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a

compulsory or financial responsibility law or other motor vehicle insurance law are considered "automobiles"

9. "Incident"
- a. With respect to "bodily injury" and "property damage," "incident" means an occurrence. An occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
  - b. With respect to "personal and advertising injury," "incident" means an offense arising out of your business.
10. "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 or abuse of process;
  - c. Wrongful eviction from, wrongful entry into, or the invasion of the right of private occupancy of a room, dwelling or premises that a person occupies committed by or on behalf of its owner, landlord or lessor;
  - d. Discrimination, unless such insurance is prohibited by law;
  - e. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - f. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - g. The use of another's advertising idea in your "advertisement";
  - h. Infringing upon another's copyright, trade dress or slogan in your "advertisement."
11. a. "Products-completed operations hazard" includes "bodily injury" and "property damage" occurring away from premises an insured owns or rents and arising out of "your product" or "your work" except:
- (1) Products in your physical possession; or
  - (2) Work not yet completed or abandoned.
- b. "Your work" will be deemed completed at the earliest of the following:
- (1) When all work called for in the "insured contract" has been completed;
  - (2) When all of the work to be done at the site has been completed if the "insured contract" calls for work at more than one site; or





(3) When that part of the work done at a job site has been put to its intended use by a person or organization other than another contractor or subcontractor working on the same project. Work that may need:

- (a) Service;
- (b) Maintenance;
- (c) Correction;
- (d) Repair; or
- (e) Replacement;

but which is otherwise complete, will be treated as completed.

c. This hazard 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 created by the "loading or unloading" of it; or
- (2) The existence of:
  - (a) Tools;
  - (b) Uninstalled equipment; or
  - (c) Abandoned or unused materials.

12. "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 shall be deemed to occur at the time of the occurrence that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

13. "Suit" means a civil proceeding in which damages because of:

- a. "Bodily injury";
- b. "Property damage"; or
- c. "Personal and advertising injury";

to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding alleging such damages to which you must submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

14. "Your product" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (1) You;
  - (2) Others trading under your name; or
  - (3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes warranties or representations made with respect to the fitness, quality, durability, performance or use of "your product" and the providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

15. "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes warranties or representations made with respect to the fitness, quality, durability, performance or use of "your work" and the providing of or failure to provide warnings or instructions.

16. "Retained limit" means the amount stated as such in the Declarations. The "retained limit" is retained and payable by the insured as respects all "incidents" not covered by "scheduled underlying insurance" or by "unscheduled underlying insurance."

17. "Scheduled underlying insurance" means the insurance policies listed in the Schedule of Underlying Insurance including renewal or replacement of such contracts which are not more restrictive than those listed in the aforementioned Schedule of Underlying Insurance.

18. "Ultimate net loss"

- a. "Ultimate net loss" means the actual damages the insured is legally obligated to pay, either through:
  - (1) Final adjudication on the merits; or
  - (2) Through compromise settlement with our written consent or direction;
 because of "incident(s)" covered by this policy.
 

However, it includes the above mentioned sums only after deducting all other recoveries and salvages.

b. "Ultimate net loss" does not include the following:

(1) Costs or expenses related to:

- (a) Litigation;
- (b) Settlement;
- (c) Adjustment; or
- (d) Appeals;

nor costs or expenses incident to the same which an "underlying insurer" has paid, incurred or is obligated to pay to or on behalf of the insured;

- (2) Pre-judgment interest;
- (3) Office costs and expenses and salaries and expenses of the employees of an insured;
- (4) Our office costs and expenses and salaries of our employees; or
- (5) General retainer and/or monitoring fees of counsel retained by the insured.

19. "Underlying insurer" means an insurer whose policy covers "bodily injury," "property damage" or "personal and advertising injury" also covered by this policy but does not include insurers whose policies were purchased specifically to be in excess of this policy. It includes all insurers providing:

- a. "Unscheduled underlying insurance"; and
- b. "Scheduled underlying insurance."

20. "Unscheduled underlying insurance"

a. "Unscheduled underlying insurance" means insurance policies available to an insured, whether:

- (1) Primary;
- (2) Excess;
- (3) Excess-contingent; or
- (4) Otherwise;

except the policies listed in the Schedule of Underlying Insurance.

b. "Unscheduled underlying insurance" does not include insurance purchased specifically to be in excess of this policy.

21. "Watercraft" means a vehicle designed to transport persons or property in or on water.

22. "Authorized insured" means any named insured or any employee authorized by a named insured to give or receive notice of a claim or "suit."

23. "Electronic data" means information, facts or programs stored as or on, created or used on, or 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.

24. "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.

25. "Fungi or microbes" means:

- a. Any form of fungus, yeast, mold, mildew, or mushroom, including mycotoxins, spores, scents, byproducts or other substances produced or released by fungi; and
- b. Any bacteria, virus, or any other non-fungal, single celled or colony-form organism, including any toxins, scents, byproducts or other substances it produces or releases, whose injurious source is in or on a building or its contents.

But "fungi and microbes" does not include fungi that were deliberately grown for human consumption, microbes that were transmitted directly from person to person, or microbes that caused food poisoning, if your business is food processing, sales, or serving.

26. "Silica" means the chemical compound silicon dioxide (SiO<sub>2</sub>) in any form, including dust which contains "silica."

27. "Asbestos" means the mineral in any form whether or not the asbestos was at any time:

- a. Airborne as a fiber, particle or dust;
- b. Contained in or formed a part of a product, structure or other real or personal property;
- c. Carried on clothing;
- d. Inhaled or ingested; or
- e. Transmitted by any other means.

28. "Volunteer worker" means a person who is not your employee, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

**SECTION VI - DEFENSE PAYMENT AND RELATED DUTIES**

1. If a claim or "suit" alleges damages covered by underlying policies and the obligation of all "underlying insurers" either to:

- a. Investigate and defend the insured; or
  - b. Pay the cost of such investigation and defense;
- ceases solely through exhaustion of all underlying limits of insurance through payment of a combination

of covered expenses, settlements or judgments for "bodily injury," "property damage" or "personal and advertising injury" taking place during our policy period, then we will either:

- a. Assume the investigation and defense of the insured against "suits" seeking damages; or
- b. If we elect not to assume the investigation and defense in 1.a. above, we will reimburse the insured for reasonable defense costs and expenses incurred with our written consent. However, such reimbursement excludes:

- (1) Office expenses of the insured;
- (2) Salaries and expenses of employees; and
- (3) General retainer fees of counsel retained by the insured.

2. We will investigate and defend an insured or reimburse an insured for "suits" brought against an insured for a claim or "suit" that alleges damages because of "bodily injury," "property damage" or "personal and advertising injury" not covered under:

- a. "Scheduled underlying insurance"; and
- b. "Unscheduled underlying insurance";

but which seeks damages because of "bodily injury," "property damage" or "personal and advertising injury" otherwise covered under this policy. Costs and expenses of such investigation and defense are not subject to the "retained limit."

3. We will investigate and defend an insured or reimburse an insured for such costs of investigation and defense described in either 1. or 2. above, even if the allegations of a "suit" are:

- a. Groundless;
- b. False; or
- c. Fraudulent;

but only until we make payment or offer to pay or deposit in court that part of judgment(s) not exceeding our limit of insurance.

4. We shall also have the sole right to make settlement of a "suit" as we deem expedient.
5. If not permitted by law or otherwise to perform these duties, we will pay an insured for defense costs and expenses incurred with our prior written consent.
6. Amounts we pay or incur pursuant to the obligation to defend or pay the costs and expenses of defense are in addition to, and not subject to, the limits of insurance stated in the Declarations.
7. In addition to our limits of insurance, we will pay prejudgment interest awarded against an insured on that part of a judgment covered by this policy. We will

not pay prejudgment interest on that period of time after we offer to pay:

- a. Our limit of insurance; or
  - b. That portion of our limit of insurance which equals the amount of a settlement demand when combined with the limits of "underlying insurers."
8. We will pay interest on a judgment that accrues after entry of that judgment, but before we have:
    - a. Paid;
    - b. Offered to pay; or
    - c. Deposited in court

that part of the judgment that is within the limit of insurance of this policy. The amount of interest we pay will be in direct proportion that amount we pay as damages bears to the total amount of judgment. We will not pay additional interest that accrues after we have:

- a. Paid;
- b. Offered to pay;
- c. Deposited in court

that part of the judgment that is within the limit of insurance of this policy.

9. We will pay all reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit." This includes actual loss of earnings up to liability \$250, a day because of time off from work.

**NUCLEAR ENERGY LIABILITY EXCLUSION  
ENDORSEMENT  
(BROAD FORM)**

It is agreed that:

- I. This policy does not apply:

- A. Under Liability Coverage to "bodily injury" "personal and advertising injury" or "property damage"

f. With respect to which an insured under this policy, is also an insured under a nuclear energy liability policy issued by the:

- a. Nuclear Energy Liability Insurance Association;
- b. Mutual Atomic Energy Liability Underwriters; or
- c. Nuclear Insurance Association of Canada;

or any of their successors, or would be an insured under any such policy but for its

termination upon exhaustion of its limit of liability; or

2. Resulting from the "hazardous properties" of "nuclear material" and with respect to which:
  - a. Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law or amendment thereof; or
  - b. The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material," and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" "personal and advertising injury" or "property damage" resulting from the "hazardous properties" of "nuclear material," if:

1. The "nuclear material":
  - a. Is at any "nuclear facility" owned by, or operated by or on behalf of, an insured; or
  - b. Has been discharged or dispersed therefrom;
2. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
3. The "bodily injury," "personal and advertising injury," or "property damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the:
  - a. Planning;
  - b. Construction;
  - c. Maintenance;
  - d. Operation; or
  - e. Use of

any "nuclear facility," but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (C.3.) applies only to "property damage" to such "nuclear facility" and any property threat.

II. As used in this endorsement:

- A. "Hazardous properties" include radioactive, toxic or explosive properties.
- B. "Nuclear material" means "source material," "special nuclear material" or "byproduct material."
- C. "Source material," "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- D. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor."
- E. "Waste" means waste material:

1. Containing "by-product material" other than the tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its "source material" content; and
2. Resulting from the operation by any person or organization, of a "nuclear facility" included within paragraphs 1. and 2. of the definition of "nuclear facility."

F. "Nuclear facility" means:

1. Any "nuclear reactor";
2. Any equipment or device designed or used for:
  - a. Separating the isotopes of uranium or plutonium;
  - b. Processing or utilizing "spent fuel"; or
  - c. handling, processing or packaging "waste";
3. Any equipment or device used for the processing, fabricating or alloying of special "nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment is located consists of or contains more than:
  - a. 25 grams of plutonium or uranium 233 or any combination thereof; or
  - b. 250 grams of uranium 235;
4. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

G. "Nuclear reactor" means an apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

H. "Property damage" includes all forms of radioactive contamination of property.



### INDEPENDENT CONTRACTOR AGREEMENT ROUTING FORM

#### Project Information

<b>Project Name</b>	Parker Elementary School Turf Field	<b>Site</b>	144
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#### Basic Directions

Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.

<b>Attachment Checklist</b>	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
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#### Contractor Information

<b>Contractor Name</b>	Applied Materials & Engineering, Inc.	<b>Agency's Contact</b>	Dushyant Manmohan				
<b>OUSD Vendor ID #</b>	V015478	<b>Title</b>	Project Manager				
<b>Street Address</b>	980 41 <sup>st</sup> Street	<b>City</b>	Oakland	<b>State</b>	CA	<b>Zip</b>	94608
<b>Telephone</b>	510-420-8190	<b>Policy Expires</b>	12-10-2016				
<b>Contractor History</b>	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
<b>OUSD Project #</b>	13195						

#### Term

<b>Date Work Will Begin</b>	8-24-2016 <sup>or</sup> 8/25/16	<b>Date Work Will End By</b> (not more than 5 years from start date)	5-22-2017
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#### Compensation

<b>Total Contract Amount</b>	\$	<b>Total Contract Not To Exceed</b>	\$14,530.00
<b>Pay Rate Per Hour (If Hourly)</b>	\$	<b>If Amendment, Changed Amount</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

#### Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Funding Source	Org Key	Object Code	Amount
9450	Fund 21, Measure J	1449905892	6265	\$14,530.00

#### Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Director, Facilities Planning and Management</b>	<b>Signature</b>		<b>Date Approved</b>	8/4/16
2.	<b>General Counsel, Department of Facilities Planning and Management</b>	<b>Signature</b>		<b>Date Approved</b>	8-4-16
3.	<b>Deputy Chief, Facilities Planning and Management</b>	<b>Signature</b>		<b>Date Approved</b>	
4.	<b>Senior Business Officer</b>	<b>Signature</b>		<b>Date Approved</b>	
5.	<b>President, Board of Education</b>	<b>Signature</b>		<b>Date Approved</b>	