



Board Office Use: Legislative File Info.	
File ID Number	12-2909
Committee	Facilities
Introduction Date	11-14-2012
Enactment Number	12-2861
Enactment Date	11-14-12

Memo

To Board of Education

From Tony Smith, PH.D., Superintendent
Timothy White, Associate Superintendent, Facilities Planning and Management

Board Meeting Date November 14, 2012

Subject Independent Consultant Agreement for Professional Services - Consolidated Engineering Laboratories - Webster Academy Kitchen Upgrade Project

Action Requested Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with Consolidated Engineering Laboratories for Testing Services on behalf of the District at the Division of Facilities, Planning and Management Project, in an amount not-to exceed \$1,256.00. The term of this Agreement shall commence on November 14, 2012 and shall conclude no later than December 2, 2012.

Background Webster Kitchen Build Out includes some Division of State Architect requirements to the handicap parking outside the cafeteria building.

Local Business Participation Percentage 0.00% (Sole Source)

Strategic Alignment Among the key purposes of the District's Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources, number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.

The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

Recommendation

Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with Consolidated Engineering Laboratories for Testing Services on behalf of the District at the Division of Facilities, Planning and Management Project, in an amount not-to exceed \$1,256.00. The term of this Agreement shall commence on November 14, 2012 and shall conclude no later than December 2, 2012.

Fiscal Impact

Measure B

Attachments

- Independent Consultant Agreement including scope of work

INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES

Webster Academy Kitchen Upgrade Project

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **28th day of August, 2012** by and between the Oakland Unified School District, Oakland, California ("District") and **Consolidated Engineering Laboratories** ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

Services. The Consultant shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope of services will generally consist of the following:

The scope of services is more specifically indicated on **Exhibit "A."**

1.1. The Services shall be performed on the following project(s) / site(s) ("Project"):

The scope of the project is to perform Moisture Density Curves and Torque Testing for the Webster Academy Kitchen Upgrade project.

2. **Term.** The term of this Agreement shall be no longer than the period of construction of the Project, unless this Agreement is terminated and/or otherwise cancelled prior to that time.

The term of the project commencing October 2, 2012 and conclude no later than November 2, 2012.

3. **Submittal of Documents.** The Consultant shall not commence the Work under this Contract until the Consultant 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 Certification
 X Insurance Certificates and Endorsements

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit "B"** (Prices for Services). District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **One thousand, two hundred fifty-six dollars and no cents (\$1,256.00)**. District shall pay Consultant according to the following terms and conditions:

4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant 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.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred

Consolidated Engineering Laboratories
Webster Academy Kitchen Upgrade
Project No.: 07106

by Consultant in performing services for District, except as follows: Not applicable.

6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its 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. Consultant 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 Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
7. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows: Not applicable.
8. **Performance of Services.**
 - 8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
 - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
 - 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
 - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
9. **Originality of Services.** Except as to standard generic details, Consultant 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 Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
10. **Copyright/Trademark/Patent.** Consultant 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. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any

purpose and in any medium.

11. Audit. Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant 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 Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

12. Termination.

12.1. Without Cause By District. District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner.

12.2. Without Cause By Consultant. Consultant may, upon thirty (30) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.

12.3. With Cause By District. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

- 12.3.1. material violation of this Agreement by the Consultant; or
- 12.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
- 12.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant'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 shall cease, 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 this termination, the District may secure the required services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

13. Indemnification. To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives,

officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.

14. Insurance.

14.1. The Consultant 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.

14.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

14.1.2. **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 Consultant 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.

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

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

14.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates

indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

- 14.2.1. 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."
 - 14.2.2. 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.
 - 14.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.
 - 14.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.
- 14.3. **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.
15. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.
16. **Compliance with Laws.** Consultant 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. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant 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 Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.
17. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.
18. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant 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.
19. **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

Consultant 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 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).

20. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services.
21. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
22. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE):** There is a twenty percent (20%) minimum participation requirement for all District contracts. Consultant shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local and/or small local resident business participation. The requirement may be wholly satisfied by a City of Oakland certified business. Business entities must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent participation requirement. Please refer to the District's S/SL/SLRBE Policy; a copy can be obtained for the OUSD website: www.ousd.k12.ca.us
23. **No Rights In Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
 - 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
 - 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **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.
26. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of

student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

27. **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:

District:

Oakland Unified School District
955 High Street
Oakland, CA 94601
ATTN: **Tadashi Nakadegawa,**
Director of Facilities

Consultant:

Rob Morse
Consolidated Engineering
Laboratories
2001 Crow Canyon Road, Suite 100
San Ramon, CA 94583

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.

28. **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.

29. **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 administrative offices are located.

30. **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.

31. **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.

32. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

33. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

34. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its

legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

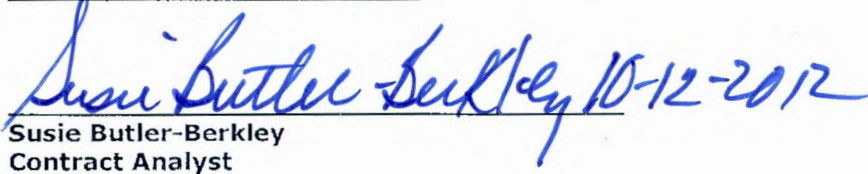
35. Calculation of Time. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

36. Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

37. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

38. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

OAKLAND UNIFIED SCHOOL DISTRICT OR THE DISTRICT VERIFIES THAT THE CONTRACTOR DOES NOT APPEAR ON THE EXCLUDED PARTIES LIST AT www.epls.gov/epls/search.do.


Susie Butler-Berkley
Contract Analyst


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

OAKLAND UNIFIED SCHOOL DISTRICT



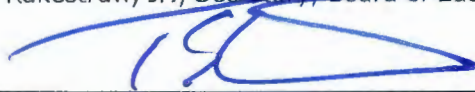
Jody London, President, Board of Education

Date: 11/15/12



Edgar Rakestraw, Jr., Secretary, Board of Education

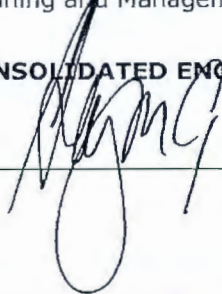
Date: 11/15/12



Timothy White, Associate Superintendent Facilities
Planning and Management

Date: —

CONSOLIDATED ENGINEERING LABORATORIES



10-11-12

APPROVED AS TO FORM:



Catherine Boskoff, Facilities Counsel

Date: 10.12.12

File ID Number: 12-2909
Introduction Date: 11-14-12
Enactment Number: 12-286
Enactment Date: 11-14-12
By:

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. 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 his 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: 10-11-12
Proper Name of Consultant: Consolidated Engineering Labs
Signature: Rita Archibald
Print Name: Rita Archibald
Title: HR Manager

(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 awarding body prior to performing any Work under this Contract.)

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Consultant currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Consultant certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

_____ The Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its sub-consultants' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, 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 Consultant's employees and of all of its sub-consultants' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, Consultant has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Consultant's employees and District pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2, Consultant certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Consultant who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Consultant's employees and its sub-consultants' employees is

Name: _____

Title: _____

_____ The Work on the Contract is at an unoccupied school site and no employee and/or sub-consultant or supplier of any tier of Contract shall come in contact with the District pupils.

Consultant's responsibility for background clearance extends to all of its employees, Sub-consultants, and employees of Sub-consultants coming into contact with District pupils regardless of whether they are designated as employees or acting as independent Consultants of the Consultant.

Date: 10-11-12

Proper Name of Consultant: Consolidated Engineering Labs

Signature: Rita Archibald

Print Name: Rita Archibald

Title: HR manager

Consolidated Engineering Laboratories
Webster Academy Kitchen Upgrade
Project No.: 07106

DRUG/SMOKE-FREE WORKPLACE CERTIFICATION

The District and all District projects are "drug-free" and "smoke-free" workplaces and, as such, require that the Project Manager be subject to the requirements mandated by California Government Code Section 8340, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Project Manager to police and oversee its personnel on the Project. If the Project Manager fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of the District, the District may enforce its lawful rights to suspend pending or subsequent payments and to terminate this Agreement and may pursue all other rights and remedies it may have against the Project Manager at law and/or in equity.

Date: 10-11-12
Proper Name of Consultant: Consolidated Engineering Labs
Signature: Ron Acobal
Print Name: Rita Archibald
Title: MR Manager

EXHIBIT "A"
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

Consultant's entire Proposal is not made part of this Agreement.

(PLEASE SEE THE ATTACHED PROPOSAL FROM CONSOLIDATED ENGINEERING LABORATORIES)

Consolidated Engineering Laboratories
Webster Academy Kitchen Upgrade
Project No.: 07106

Exhibit A



**CONSOLIDATED ENGINEERING
LABORATORIES**

August 2, 2012

Ms. Kenya Chatman
Facilities Planning and Management Department
Oakland Unified School District
955 High Street
Oakland, California 94601

Via E-Mail: kenya.chatman@ousd.k12.ca.us

**Subject: Webster Kitchen Build-Out, East Oakland Pride ES
8000 Birch Street, California 94621
CEL #10-26383PW; DSA File #1-29; DSA Application #112454
Materials Testing and Construction Inspection Services**

Dear Ms. Chatman:

Consolidated Engineering Laboratories (CEL) is pleased to submit our cost proposal to provide materials testing and construction inspection services for the **Webster Kitchen Build-Out project, located at 8000 Birch Street in Oakland, California**. CEL would be proud to be part of your team, helping to ensure the construction quality and success of this project.

Following are our cost estimate and scope of services. We assembled this proposal based on the following sources:

- Phone conversation regarding scope of work.

Thank you for giving CEL the opportunity to be a part of your project team. We are committed to providing our clients the very best service possible to fulfill their testing and inspection needs, and are eager to prove this commitment to you. Should you have any questions or require additional information, please do not hesitate to contact me.

Respectfully submitted,
CONSOLIDATED ENGINEERING LABORATORIES

Rob Morse
Director, Business Development

RM/clr



**WEBSTER KITCHEN BUILD-OUT
 OAKLAND, CALIFORNIA
 CEL #10-26383PW; DSA FILE #1-29; DSA APP #112454**

PRICING

Description	Quantity	Unit Rate	Subtotals	
SOILS COMPACTION				
Moisture Density Curves	2 Each	\$ 300.00	\$ 600.00	
In-Place Density Testing	8 Hours	\$ 85.00	\$ 680.00	
SUBTOTAL:			\$ 1,280.00	
POST-INSTALLED ANCHORS				
Proofload or Torque Testing	8 Hours	\$ 82.00	\$ 656.00	
SUBTOTAL:			\$ 656.00	
MISCELLANEOUS				
Final Affidavit	1 Per Permit	\$ 400.00	\$ 400.00	
Project Engineering and Management 5%			\$ 116.80	
SUBTOTAL:			\$ 516.80	
MAN-HOURS		16	GRAND TOTAL:	\$ 2,452.80

ALTERNATE PRICING

Description	Quantity	Unit Rate	Subtotals	
ASPHALTIC CONCRETE				
Field Inspection	8 Hours	\$ 82.00	\$ 656.00	
Laboratory Tests	5 Each	\$ 120.00	\$ 600.00	
SUBTOTAL:			\$ 1,256.00	

Basis of Charges: The proposed unit rates will be in effect through June 30, 2013. Thereafter, the unit rates are subject to an annual increase of four percent (4%) per year to mitigate the annual operating cost increases:

Work over 8 Hours per day	Time and One-Half
Work over 12 Hours, Monday through Friday	Double Time
Work on Saturdays	Time and One-Half
Work over 8 Hours on Saturdays	Double Time
Work on Sundays/Holidays	Double Time
Swing or Graveyard Shift Premium	\$10.00 per Hour
Work from 0-4 Hours	4-Hour Minimum Billing
Work from 4-8 Hours	8-Hour Minimum Billing
Show-Up Time	2-Hour Minimum Billing
Sample Pick-Up	\$82.00/Trip
Laboratory Testing – Rush Fee	Add 50% to Testing Cost
Final Affidavit (per permit number) (request six working days advanced notice)	\$400.00
Extra Copies (over four per issue date) of Inspection Reports and Final Affidavit	\$20.00/each
Project Engineering and Management	5% of Fees
Reimbursables	Cost + 15%
QA/QC Plan Written Procedures	Quotation upon Request
Out of Area Services (beyond 40-mile radius)	As Listed Below:
Travel Time	Basic Hourly Rate
Mileage	\$0.60/Mile
Per-Diem, including lodging	\$90.00/Day

CEL	Client
Initials	Initials

SCOPE OF SERVICES

SOILS COMPACTION

Testing will be performed during site grading, parking area baserock placement and utility trench backfill.

Field testing will be performed using a nuclear gauge to determine the relative compaction of the soil in conformance with American Society for Testing and Materials (ASTM) D6938.

POST-INSTALLED ANCHORS

As required, we will perform proofload/torque testing of the anchors at the percentage defined by the plans and specifications.

NOTE: These estimates assume that adequate access will be provided for performing the work at maximum production, i.e., scaffolding. Should any anchor fail, additional tests will be required per plans.

ALTERNATE SCOPE OF SERVICES

ASPHALTIC CONCRETE PAVING

Field Quality Control

- Inspection and testing will be performed under provisions of Section 01400;
- We will inspect and test base and paving, including but not limited to:
- Compaction and thickness of base according Caltrans Specification Section 26;
- Compaction of asphalt concrete tested with nuclear gauge in accordance with American Society for Testing and Materials (ASTM) D2950. Nuclear density gauge determination will be correlated with density of compacted specimens determined according to ASTM D1188;
- Temperature of asphalt concrete just prior to paving;
- Check thickness of surfacing by coring when directed by Owner's Representative.

CONTRACT TERMS AND CONDITIONS

- I. **FEES:** The estimated contract price is based on the best information made available to CEL at the time the estimate was performed. If subcontractors perform more quickly than scheduled, Client will receive a cost savings for testing. If, however, subcontractors' schedules are extended or delayed, Client may receive a resulting increase in costs for testing. Client recognizes that the additional services rendered herein under this Proposal are schedule driven and are mandated by the scheduling and staffing of the contractor(s). Should items and quantities alter from estimates outlined herein, CEL shall be entitled to compensation for services rendered. In addition, Client recognizes that, on occasion, due to the schedule of the contractor or relevant subcontractors, occasional overtime may be required. CEL typically will have no notice of this until the day the said overtime occurs. Client agrees to compensate CEL for such overtime. Any estimated quantities contained herein are estimates only and Client agrees to payment for services rendered in excess of the estimated quantities and/or cost figures as described herein. Fees for CEL's services will be billed on a time and expenses basis at the unit rates quoted and CEL shall submit biweekly invoices for services rendered and for reimbursable expenses incurred. Invoices are due within 30 days from receipt. Past due invoices are subject to a finance charge of 1% per month or the maximum rate permitted by law.
- II. **FINAL AFFIDAVIT:** The first invoice from CEL shall include the estimated cost to prepare the Final Inspection Report. However, the Final Inspection Report will not be issued until the sixth working day following the request for the Final Inspection Report by Client's authorized representative. Additionally, as a condition precedent to release of the Final Inspection Report, Client shall have paid in full for all services performed by CEL pursuant to this Agreement.
- III. **INSPECTION:** Inspection shall consist of visual observation of materials, equipment, or construction work for the purpose of ascertaining that the work is in substantial conformance with the contract documents. Such inspection shall not be relied upon by others as acceptance of the work nor shall it be construed to relieve the contractor, subcontractors, or materialmen in any way from their obligations and responsibilities under the construction contracts. Specifically, but without limitation, inspection shall not require the inspector to assume responsibilities for the means and methods of construction nor for safety on the jobsite of any party other than CEL employees.
- IV. **STANDARD OF CARE:** In providing services under this agreement, CEL shall exercise that degree of skill and care ordinarily used by other reputable members of CEL's profession, practicing in the same or similar locality and under similar circumstances at the time these services are rendered. Nothing in this agreement shall be interpreted to require CEL to meet any higher standard and this paragraph shall control over any such contrary provision. CEL makes no warranty, either expressed or implied, as to its findings, recommendations, specifications or professional advice. CEL will provide only those services that, in the opinion of CEL, lie within the technical and professional areas of expertise of CEL as set forth herein and which CEL is adequately staffed and equipped to perform. Client shall request in writing if Client desires CEL to provide services outside of the scope of services described herein. CEL shall advise Client of any services that lie outside the technical and professional expertise of CEL.
- V. **LIABILITY:** In recognition of the relative risks of the Client and CEL on the Project, Client agrees, to the maximum extent permitted by law, that CEL's liability to Client and any third party, in any way arising out of this Agreement, shall be limited to 100% of the total fees and costs paid to CEL or \$25,000, whichever is greater. Client agrees to compensate CEL at its standard hourly rates in the event CEL is requested to perform services in connection with litigation, claims or disputes arising out of this project or in the event CEL, its agents or employees are subpoenaed or otherwise compelled to participate in litigation, claims or disputes arising out of this project. CEL shall not be responsible for acts and/or omissions of any party or parties involved in the design of the Project or the failure of any Contractor or Subcontractor to construct any aspect of the Project in accordance with the Agreement documents, or in accordance with recommendations contained in any correspondence or written recommendations issued to CEL.
- VI. **LITIGATION:** In case of any dispute, claim, question, or disagreement arising out of or relating to this Contract or the breach thereof, the parties hereto shall use all reasonable efforts to settle such disputes, claims, questions, or disagreement. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. Client and CEL agree to continue to perform their obligations under this Contract during the good faith resolution of such a dispute, claim, question, or disagreement. In the event that any litigation, arbitration, or other proceeding is commenced between the parties hereto or their personal representatives, successors or assigns concerning the enforcement or interpretation of any provision of this Contract or the rights and duties of any party in relation thereto, the party or parties prevailing in such litigation, arbitration or other proceeding shall be entitled, in addition such other relief as may be granted, to reasonable attorneys' fees and costs. For the purposes of this paragraph, the "prevailing party" shall be determined in accordance with the provisions of California Civil Code section 1717.

Contract Terms and Conditions (cont'd)

- VII. STATE PREVAILING WAGE:** It shall be Client's sole responsibility to notify CEL of any prevailing wage requirements before any services are performed for the Project. Should it be revealed subsequent to the execution of an agreement for services that this project is indeed a prevailing wage project and if CEL is thereafter mandated to comply with those requirements, there will be a 10% surcharge to the hourly rates quoted in our Proposal. In addition, in the event notification is not given to CEL, Client shall be fully responsible for payment of all fines, penalties, and/or damages imposed upon CEL for any failure to comply with the prevailing wage laws.
- VIII. CLIENT'S RESPONSIBILITIES:** Client or Client's authorized representatives will promptly and timely provide CEL with all revised and updated plans, specifications, addenda, change orders, approved shop drawings and any other information for the proper performance of CEL pursuant to this Contract. Client agrees that CEL has been engaged to provide technical professional services only, and that CEL does not owe a fiduciary responsibility to Client. Client shall secure and maintain throughout the full period of this Contract, sufficient insurance to protect it adequately from claims under applicable Worker's Compensation Acts and from claims for bodily injury, death or property damage as may arise from the performance of services under this Contract. CEL shall not be responsible for any errors and/or omissions in the performance of CEL's work or services rendered resulting from Client's failure to provide CEL with revised and updated plans, specifications, addenda, change orders, approved shop drawings and other information for the proper performance of CEL. Client or Client's authorized representatives will give a minimum of 24 hours notification for all dispatch requests. Cancellations received on the day of inspection are subject to a 2-hour show-up charge.
- IX. HAZARDOUS MATERIALS REQUIREMENT:** If hazardous materials are encountered by CEL's employees on Client's project site resulting in the need for specialized training or certifications as required by State and Federal agencies in order for CEL's inspection personnel to perform their duties, then all related costs for such specific training, including class time, will be billed to Client with a 15% markup. Personnel time for necessary training classes will be billed at the hourly rate quoted herein.
- X. ADDITIONAL SERVICES:** Should additional services be requested that are not included in CEL's proposed scope of services, CEL will provide these services at the unit rates listed in our published 2012 Fee Schedule.
- XI. ACCEPTANCE OF CONTRACT:** This Contract is subject to acceptance only of the terms and conditions stated herein. Any additional or different terms and conditions proposed by Client are hereby rejected, and shall be of no force or effect unless expressly assented to in writing by CEL. There shall be no contract except upon the terms and conditions provided herein. By directing CEL to commence performance, after your receipt of this Contract, you agree to comply with all the terms and conditions set forth herein. This Contract contains the entire and integrated agreement between Client and CEL and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract cannot be amended or modified except by a written addendum, executed by each of the parties hereto. This Contract shall be interpreted and enforced in accordance with the laws of the State of California.
- XII. BASIS OF CHARGES:** The proposed unit rates will be in effect through June 30, 2013. Thereafter, the unit rates are subject to an annual increase of four percent (4%) per year to mitigate the annual operating cost increases:

Work over 8 Hours per day	Time and One-Half
Work over 12 Hours, Monday through Friday	Double Time
Work on Saturdays	Time and One-Half
Work over 8 Hours on Saturdays	Double Time
Work on Sundays/Holidays	Double Time
Swing or Graveyard Shift Premium	\$10.00 per Hour
Work from 0-4 Hours	4-Hour Minimum Billing
Work from 4-8 Hours	8-Hour Minimum Billing
Show-Up Time	2-Hour Minimum Billing
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Travel Time	Basic Hourly Rate
Mileage	\$0.60/Mile
Per-Diem, including lodging	\$90.00/Day



CERTIFICATE OF LIABILITY INSURANCE

CONSO-2 OP ID: EB

DATE (MM/DD/YYYY)

10/05/12

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 Butwin Insurance Group Suite 414 60 Cutter Mill Road Great Neck, NY 11021-3104 Richard S. Butwin	516-466-4200	CONTACT NAME:	
	516-466-4213	PHONE (A/C, No, Ext):	FAX (A/C, No):
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A : The Hartford Insurance Co	NAIC # 19682
		INSURER B : National Union Fire Ins Co	19445
		INSURER C : Admiral Insurance Company	24856
		INSURER D :	
		INSURER E :	
		INSURER F :	

INSURED Quality Assurance Engineering
dba Consolidated Engineering Laboratories
2001 Crow Canyon Road #100
San Ramon, CA 94583

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X	X	12UENOH1550	07/01/12	07/01/13	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY	X		12UENOH1551	07/01/12	07/01/13	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
							\$
B	UMBRELLA LIAB	X		BE080609017	07/01/12	07/01/13	EACH OCCURRENCE \$ 5,000,000
	EXCESS LIAB						AGGREGATE \$ 5,000,000
	DED <input checked="" type="checkbox"/> RETENTION \$ 10000						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	N/A	X	12WEOH1549	07/01/12	07/01/13	<input checked="" type="checkbox"/> WC STATUTORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E L EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E L DISEASE - EA EMPLOYEE \$ 1,000,000
							E L DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liab			EO00001416201	07/01/12	07/01/13	Ea Claim 2,000,000
	Retro date 9/1/85						Aggregate 2,000,000

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

Webster Kitchen Build-Out, East Oakland Pride ES 8000 Birch Street, CA; CEL No 10-26383PW; DSA File #1-29; DSA Application #112454
Oakland Unified School District, its Directors, Officers, Employees, Agents and Representatives are additional insureds on a primary and non contributory basis

CERTIFICATE HOLDER

CANCELLATION

OAKUNIS

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

Oakland Unified School District, Dept of Facilities Planning and Management
955 High Street
Oakland, CA 94601

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (a) That is a partnership, joint venture or limited liability company
 - (b) That is an "insured" under any other policy,
 - (c) That has exhausted its Limit of Insurance under any other policy, or
 - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
 - (1) The agreement requires you to provide direct primary insurance for the lessor and
 - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

D. Additional Insured if Required by Contract

(1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

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

(3) Additional Insureds Other Insurance

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

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

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - OF SECTION IV - BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

E. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

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

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

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

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

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

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

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

2. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

3. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

6. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties; interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

7. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

a. Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs a. and b. above; or
- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. \$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph b.(1) above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

9. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT,

CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

14. HIRED AUTO - COVERAGE TERRITORY

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

- e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

15. WAIVER OF SUBROGATION

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

16. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

17. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

18. HYBRID PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

- c. Regardless of the number of autos damaged in any one "loss", the most we will pay under this Hybrid Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto.
- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.



COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

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

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

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

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

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

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:

- (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
- (b) You are not engaged in the business or occupation of providing such services.

- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. 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" or "property damage" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

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

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

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

d. Workers' Compensation And Similar Laws

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

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

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

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

f. Pollution

- (1) "Bodily injury" 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. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or

- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

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

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

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

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

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

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

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors

working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

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

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" arising from the use of elevators.

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

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

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 Your Work

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

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

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. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

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

As used in this exclusion, 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.

q. Employment-Related Practices

"Bodily injury" to:

- (1) A person arising out of any "employment-related practices"; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

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

r. Asbestos

- (1) "Bodily injury" or "property damage" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
 - (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or

kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning Or Explosion

Exclusions c. through h. and j. through n. do not apply to damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

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

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services.

i. Infringement Of Intellectual Property Rights

"Personal and advertising injury" arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

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

- (1) Copyright;

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

- (3) Title of any literary or artistic work.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;

- (2) Designing or determining content of web sites for others; or

- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 17.a., b. and c. of "personal and advertising injury" under the Definitions Section.

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

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers.

m. Pollution

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

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

- (2) 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".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

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

p. Internet Advertisements And Content Of Others

"Personal and advertising injury" arising out of:

- (1) An "advertisement" for others on your web site;
- (2) Placing a link to a web site of others on your web site;
- (3) Content, including information, sounds, text, graphics, or images from a web site of others displayed within a frame or border on your web site; or
- (4) Computer code, software or programming used to enable:
 - (a) Your web site; or
 - (b) The presentation or functionality of an "advertisement" or other content on your web site.

q. Right Of Privacy Created By Statute

"Personal and advertising injury" arising out of the violation of a person's right of privacy created by any state or federal act.

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

r. Violation Of Anti-Trust law

"Personal and advertising injury" arising out of a violation of any anti-trust law.

s. Securities

"Personal and advertising injury" arising out of the fluctuation in price or value of any stocks, bonds or other securities.

t. Discrimination Or Humiliation

"Personal and advertising injury" arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

u. Employment-Related Practices

"Personal and advertising injury" to:

- (1) A person arising out of any "employment-related practices"; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

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

v. Asbestos

- (1) "Personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
 - (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
 - (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
 - (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

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

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
 - (1) First aid administered at the time of an accident;
 - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
 - (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

- 1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. Up to \$1,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
 - c. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

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

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee,

necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

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

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

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

2. Each of the following is also an insured:

a. Employees and Volunteer workers

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

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

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

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

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

(2) "Property damage" to property:

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

b. Real Estate Manager

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

c. Temporary Custodians of Your Property

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

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

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will

have all your rights and duties under this Coverage Part.

e. Unnamed Subsidiary

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

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

3. Newly Acquired or Formed Organization

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

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Mobile Equipment

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

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

5. Nonowned Watercraft

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

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

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

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

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

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

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

a. Vendors

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

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

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Sub-paragraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.
- (2) With respect to the insurance afforded to these additional insureds this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

c. Lessors of Land or Premises

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

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

This insurance does not apply to:

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

d. Architects, Engineers or Surveyors

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In connection with your premises; or
- (2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

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

e. Permits Issued By State Or Political Subdivisions

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

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

f. Any Other Party

Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations;
- (2) In connection with your premises owned by or rented to you; or
- (3) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (a) The written contract or agreement requires you to provide such coverage to such additional insured; and
 - (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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

The limits of insurance that apply to additional insureds under this provision is described in Section III – Limits Of Insurance.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section IV – Commercial General Liability Conditions.

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

SECTION III – LIMITS OF INSURANCE

1. The Most We will Pay

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

- a. Insureds;
- b. Claims made or "suits" brought; or

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

2. General Aggregate Limit

The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- c. Damages under Coverage B.

3. Products-Completed Operations Aggregate Limit

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Personal and Advertising Injury Limit

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

5. Each Occurrence Limit

Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C
- because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Damage To Premises Rented To You Limit

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

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

7. Medical Expense Limit

Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

8. How Limits Apply To Additional Insureds

If you have agreed in a written contract or written agreement that another person or organization be

added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- a. The limits of insurance specified in the written contract or written agreement; or
- b. The Limits of Insurance shown in the Declarations.

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

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

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

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

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

a. Notice Of Occurrence Or Offense

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

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

b. Notice Of Claim

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

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

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

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;

- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insureds Own Cost

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

e. Additional Insureds Other Insurance

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

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

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

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

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

This duty applies separately to you and any additional insured.

3. Legal Action Against Us

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

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

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or

that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

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

b. Excess Insurance

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

(1) Your Work

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

(2) Premises Rented To You

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

(3) Tenant Liability

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

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability;

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

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion j. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

(6) When You Are Added As An Additional Insured To Other Insurance

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

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

Any other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

(a) Primary Insurance When Required By Contract

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

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

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

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

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

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

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

(2) The total of all deductible and self-insured amounts under all that other insurance.

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

c. Method Of Sharing

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

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

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and
- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

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

7. Separation Of Insureds

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

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

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the

insured will bring "suit" or transfer those rights to us and help us enforce them.

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

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

9. When We Do Not Renew

If we decide not to renew this Coverage Part, 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.

SECTION V – DEFINITIONS

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

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper; or
- b. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

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

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

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

5. "Bodily injury" means physical:

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

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

6. "Coverage territory" means:
- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory or in a settlement we agree to.

7. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
8. "Employment-Related Practices" means:
- a. Refusal to employ a person;
 - b. Termination of a person's employment; or
 - c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at a person.
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while

rented to you or temporarily occupied by you with permission of the owner is subject to the Damage to Premises Rented To You Limit described in Section III – Limits of Insurance;

- b. A sidetrack agreement;
 - c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.
- However, Paragraph f. does not include that part of any contract or agreement:
- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

- b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, 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 types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

 - (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or 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. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
18. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
19. "Products-completed operations hazard":
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

20. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

As used in this definition, computerized or electronically stored data, programs or software are not tangible property. Electronic data means information, facts or programs:

- a. Stored as or on;
- b. Created or used on; or
- c. Transmitted to or from;

computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

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

22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

23. "Volunteer worker" means a person who

- a. Is not your "employee";
- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

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

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA

*14002120H15490101 02238

Policy Number: 12 WE OH1549

Endorsement Number:

Effective Date: 7/1/12 Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: ENGINEERING & TESTING SERVICES CORPORATION 2001 CROW CANYON RD., STE. 100 SAN RAMON, CA 94583

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

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

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

SCHEDULE

Person or Organization

Job Description

ANY PERSON OR ORGANIZATION FROM WHOM YOU ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT TO OBTAIN THIS WAIVER OF RIGHTS FROM US.

Countersigned by Ellen Begun Authorized Representative

INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

Project Information			
Project Name	Webster Academy Kitchen Upgrade	Site	Webster Elementary School
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<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		

Contractor Information							
Contractor Name	Consolidated Engineering Laboratories	Agency's Contact	Rob Morse				
OUSD Vendor ID #	I023870	Title	Project Manager				
Street Address	2001 Crow Canyon Road, Suite 100	City	San Ramon	State	CA	Zip	94583
Telephone	925-314-7100	Policy Expires	10-1-2013				
Contractor History	Previously been an OUSD contractor? <input type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input type="checkbox"/> No				
OUSD Project #	07106						

Term			
Date Work Will Begin	10-2-2012	Date Work Will End By <small>(not more than 5 years from start date)</small>	11-2-2012

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$1,256.00
Pay Rate Per Hour (if Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information				
<i>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</i>				
Resource #	Funding Source	Org Key	Object Code	Amount
9399, 9599, 9699	Measure B	1629901891	6265	\$1,256.00

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.				
1.	Division Head	Charles Love	Phone	510-535-7081
				Fax
1.	Capital Program Contract & Accounting Manager			
	Signature		Date Approved	10-12-12
2.	General Counsel, Department of Facilities Planning and Management			
	Signature		Date Approved	10-12-12
3.	Associate Superintendent, Facilities Planning and Management			
	Signature		Date Approved	
4.	President, Board of Education			
	Signature		Date Approved	