

**AMENDMENT NO. 1 TO  
AGREEMENT FOR SERVICES**

This Amendment No. 1 (“Amendment”) to the Agreement for Services is made and entered into effective the 18th day of May, 2026 by and between the CITY OF LA HABRA, a Municipal Corporation (“CITY”), and NINYO AND MOORE GEOTECHNICAL AND ENVIRONMENTAL SCIENCES CONSULTANTS, INC. (hereinafter “CONSULTANT”). CITY and CONSULTANT are sometimes hereinafter individually referred to as “Party” and or collectively referred to as the “Parties.”

**A. Recitals.**

(i) CITY and CONSULTANT entered into a Professional Services Agreement (“Agreement”) effective July 1, 2021 through which CONSULTANT has been providing professional services as more fully explained in the Scope of Services attached to the Agreement as Exhibit “A”.

(ii) The Parties now seek to amend the Agreement to extend the term of the Agreement to June 30, 2027.

(iii) All legal prerequisites to the making of this Amendment have occurred.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

**B. Amendment to Agreement.**

1. Section 1.2 of the Agreement is hereby amended to read as follows:

The term of this Agreement shall begin on July 1, 2021 and continue until completion of the work on June 30, 2027 and its final acceptance by the CITY, or until such time as it is terminated pursuant to the provisions of this Agreement. Effective July 1, 2026, the rates for services shall be those set forth in Exhibit B to this Amendment No. 1.

2. Except as specifically modified herein, all of the terms, conditions and provisions of the Agreement shall remain in full force and effect.

3. The Agreement, all amendments together with this Amendment No. 1 and all Exhibits attached thereto, constitutes the entire Agreement between the Parties and supersedes all prior negotiations, arrangements, representations, and understandings, if any, made by or between the Parties with respect to the subject matter hereof. No amendment or other modification of the Agreement, as modified by this Amendment No. 1 shall be binding unless executed in writing by both Parties hereto, or their respective successors, assigns, or grantees.

4. Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Amendment No. 1 and that such execution is binding upon the entity for which he or she is executing this document.

IN WITNESS WHEREOF, the Parties have caused Amendment No. 1 to the Agreement for Services to be executed as of the day and year first above written.

CONSULTANT

By: Garreth M. Saiki  
Garreth Saiki  
Ninyo & Moore, Inc.

CITY OF LA HABRA

By: \_\_\_\_\_  
Jim Sadro, City Manager

ATTEST:

By: \_\_\_\_\_  
Rhonda J. Barone, CMC, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Keith F. Collins, City Attorney

**EXHIBIT A**

## **AGREEMENT FOR SERVICES**

This Agreement is made and entered into this 1<sup>st</sup> day of July, 2021, by and between **THE CITY OF LA HABRA**, (hereinafter referred to as the "**CITY**"), and Ninyo and Moore Geotechnical and Environmental Sciences Consultants, (hereinafter referred to as the "**CONSULTANT**").

### **RECITALS**

WHEREAS, **CITY** requires professional services for On Call Geotechnical Investigation and Material Testing; and,

WHEREAS, the **CONSULTANT** represents that it is qualified and experienced to provide such services; and

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, **CITY** and **CONSULTANT** hereby agree as follows:

### **ARTICLE I** **SCOPE OF SERVICES; TERM**

#### **1.1 General Scope of Services.**

A. **CITY** hereby engages **CONSULTANT**, and **CONSULTANT** hereby accepts such engagement, to perform the various services set forth in Exhibit "A" (the documents contained in Exhibit "A" shall be hereinafter referred to as the "Scope of Work").

B. All professional services to be provided by **CONSULTANT** pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence, and skill ordinarily exercised by professional consultants in similar circumstances in accordance with sound professional practices.

C. Warranty: **CONSULTANT** warrants that it shall perform the professional services required by this Agreement in compliance with the federal and California laws related to minimum hours and wages, including but not limited to, 40 U.S.C.A. §§ 3141, et seq., California Labor Code, §§ 1171, et seq. and California Labor Code, §§ 6300, et seq.; fair employment practices, including but not limited to, 29 U.S.C. 651, et seq.; and fair employment, including but not limited to, 29 U.S.C. 201, et seq., The California Fair Employment and Housing Act California Government Code, §§ 12900, et seq., Title VI of the Civil Rights Act of 1964, as amended, 49 CFR 21 through appendix H and 23 CFR 710.405 (b); and all other federal, state and local laws and ordinances applicable to the work required under this Agreement.

D. Non-exclusive Agreement. **CONSULTANT** acknowledges that **CITY** may enter into agreements similar to this Agreement with other consultants.

1.2 Term.

The term of this Agreement shall begin on July 1, 2021 and continue until June 30, 2026 or until completion of the work and its final acceptance by the CITY; or, until such time as it is terminated pursuant to the provisions in Article V of this Agreement.

**ARTICLE II**  
**RESPONSIBILITIES OF CONSULTANT**

2.1 Control and Payment of Subordinates.

CITY retains CONSULTANT as an independent contractor and not an employee of CITY. All personnel to be utilized by CONSULTANT in the performance of this Agreement shall at all times be under CONSULTANT'S exclusive direction and control. CONSULTANT shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law. CONSULTANT shall be responsible for all reports and obligations with respect to such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

2.2 Conformance to Applicable Requirements.

All services provided by CONSULTANT shall be subject to the approval of the CITY.

2.3 Standard of Care; Licenses.

All professional services to be provided by CONSULTANT pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar circumstances in accordance with sound professional practices. CONSULTANT represents and warrants to CITY that it has all licenses, permits, qualifications and approvals that are legally required to practice its profession and to provide the services hereunder. CONSULTANT further represents and warrants that it shall keep in effect all such licenses, permit, and other approvals during the term of this Agreement.

2.4 Project Representatives.

The City Manager or his designee shall be the Project Representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives and agreement on behalf of CITY, called for by this Agreement except as otherwise expressly provided in this Agreement. Project representative shall coordinate all phases of this project and shall be available to CITY at all reasonable times.

2.5 Accounting Records.

**CONSULTANT** shall maintain complete and accurate records with respect to costs and expenses incurred in the performance of this Agreement. All such records shall be clearly identifiable as being associated with this Agreement. **CONSULTANT** shall allow an authorized representative of **CITY**, during normal business hours, to examine, audit, and make transcripts of copies of such records. **CONSULTANT** shall allow **CITY** to inspect all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment (or completion of work) under this Agreement.

### **ARTICLE III** **COMPENSATION**

#### 3.1 Compensation.

Except as provided in this section, **CONSULTANT** shall receive compensation for all Services rendered under this Agreement at the rates set forth in the Schedule of Hourly Billing Rates attached hereto as Exhibit “B”, and incorporated herein by reference. Total compensation shall not exceed \$75,000 per year, without written approval of **CITY’S** Project Representative. **CONSULTANT** shall not receive compensation for any services provided outside the Scope of Work unless such additional services (hereinafter “Extra Work”) are approved in writing by **CITY** or its appointed representative prior to **CONSULTANT** performing the “Extra Work”.

#### 3.2 Payment of Compensation.

**CONSULTANT** shall provide **CITY** an itemized monthly statement which indicates work completed, hours of service rendered and units of supplies provided to the Project by **CONSULTANT**, from July 1, 2021, or the start of the subsequent billing periods, as appropriate, through the date of the statement. **CITY** shall make any payment due within forty-five (45) days after approval of the invoice by **CITY**.

#### 3.3 Extra Work.

At any time during the term of this Agreement, **CITY** may request that **CONSULTANT** perform Extra Work. As used herein, “Extra Work” means any work which is determined by **CITY** to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. **CONSULTANT** shall not perform Extra Work until receiving prior written authorization from **CITY’S** Project Representative. It is specifically understood and agreed that oral requests and/or approvals of “Extra Work” shall be barred and are unenforceable.

#### 3.4 Amendment of Scope of Work.

**CITY** shall have the right to amend the Scope of Work within the Agreement by written notification to the **CONSULTANT**. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Failure of **CONSULTANT** to secure **CITY’S** written authorization for “Extra Work” or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by

way of compensation, restitution, quantum meruit, etc. for work done without the appropriate CITY authorization.

### 3.5 Reimbursement for Expenses

**CONSULTANT** shall not be reimbursed for any expenses unless prior written authorization is obtained from **CITY**.

## ARTICLE IV INSURANCE

### 4.1 Insurance Requirements.

The **CITY** reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the existing policies do not meet the Insurance Requirements set forth herein, **CONSULTANT** agrees to amend, supplement or endorse the policies to do so.

Without limiting the indemnity provisions of the Contract, the **CONSULTANT** shall procure and maintain in full force and effect during the term of the Contract, the following policies of insurance.

### 4.2 Minimum Scope of Insurance.

- (a) **Commercial General Liability (CGL)** which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (b) **Automobile Liability Insurance** with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1) with limit no less than \$1,000,000 each accident for bodily injury and property damage.
- (c) **Workers’ Compensation** as required by the State of California with statutory limits, and Employer’s Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury or disease.

- (d) **Professional Liability** with limit of not less than \$1,000,000 each claim and \$2,000,000 aggregate. Covered Professional Services shall specifically include all work to be performed under the contract and delete any exclusion that may potentially affect the work to be performed.

If the **CONSULTANT** maintains broader coverage and/or higher limits than the minimums shown above, the **CITY** requires and shall be entitled to the broader coverage and/or higher limits maintained by the **CONSULTANT**.

#### 4.3 Endorsements.

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the **CITY** for approval. The insurance policies shall contain or be endorsed to contain, the following provisions:

- (a) Commercial General Liability

- (1) **Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of contractor
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Contract

Additional Insured Endorsements shall be at least as broad as ISO Form(s) CG 20 10 11 85; or CG 2010 and CG 20 37.

- (2) **Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

- (b) Auto Liability

- (1) **Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or

claims arising out of the work or operations performed by or on behalf of the Consultant

- (2) **Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.
- (c) Workers' Compensation
  - (1) **Waiver of Subrogation:** A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

#### 4.4 Insurance Obligations of Consultant.

The Insurance obligations under this agreement shall be: (1) all the Insurance coverage and/or limits carried by or available to the **CONSULTANT**; or (2) the minimum Insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the **CITY**. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the **CONSULTANT** under this agreement.

#### 4.5 Notice of Cancellation.

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the **CITY** except ten (10) days shall be allowed for non-payment of premium.

#### 4.6 Waiver of Subrogation.

Required insurance coverages shall not prohibit **CONSULTANT** from waiving the right of subrogation prior to a loss. **CONSULTANT** shall waive all rights of subrogation against the indemnified parties and Policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the **CITY** has received a waiver of subrogation endorsement from the insurer.

#### 4.7 Evidence of Insurance.

All policies, endorsements, certificates, and/or binders shall be subject to approval by the **CITY** as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the **CITY**. The **CITY** reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the **CITY**. If such coverage is cancelled or reduced, **CONSULTANT** shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the **CITY** evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

#### 4.8 Deductible or Self-Insured Retention.

Any deductible or self-insured retention must be approved in writing by the **CITY** and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The **CITY** may require the **CONSULTANT** to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

#### 4.9 Contractual Liability.

The coverage provided shall apply to the obligations assumed by the **CONSULTANT** under the indemnity provisions of this contract.

#### 4.10 Failure to Maintain Coverage.

**CONSULTANT** agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the **CITY**. The **CITY** shall have the right to withhold any payment due until **CONSULTANT** has fully complied with the insurance provisions of this Contract.

In the event that the **CONSULTANT'S** operations are suspended for failure to maintain required insurance coverage, the **CONSULTANT** shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

#### 4.11 Acceptability of Insurers.

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the **CITY**.

#### 4.12 Claims Made Policies.

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial **CONSULTANT'S**

Contract with the **CITY** and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this Contract.

4.13 Insurance for Subcontractors.

**CONSULTANT** shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Contract/Agreement, including adding the **CITY** as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractor's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as broad as CG 20 38 04 13.

4.14 Additional Insurance.

Further, **CONSULTANT** shall obtain any additional kinds and amounts of insurance which, in its own judgment, may be necessary for the proper protection of any of its officers', employees', or authorized sub-consultants' own actions during the performance of this Agreement.

**ARTICLE V**  
**TERMINATION AND INDEMNIFICATION**

5.1 Notice of Termination.

**CITY** may terminate the whole or any part of this Agreement at any time and without cause by giving seven (7) days written notice to **CONSULTANT** of such termination, and specifying the effective date thereof. **CONSULTANT** shall discontinue all services affected by such termination within seven (7) days of receipt of such notice, unless otherwise instructed by **CITY** in writing. **CONSULTANT** shall not terminate this Agreement except for cause.

5.2 Termination Without Cause.

If **CITY** terminates this Agreement without cause, **CONSULTANT** shall be paid for services performed through the date of termination, upon receipt of written documentation of said services by **CITY**. Such payment shall include a pro-rated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed services.

5.2 Termination for Cause.

Should **CONSULTANT** default in the performance of any covenant, condition, or agreement contained in this Agreement and the default is not cured within thirty (30) days after written notice of the default is served on **CONSULTANT** by **CITY** then **CITY**, in addition to any other remedies at law or equity, may terminate this Agreement. **CONSULTANT** shall be compensated for services which have been completed and accepted by **CITY**. **CONSULTANT**

shall be liable to CITY for any reasonable additional costs incurred to correct or cure unsatisfactory work performed by CONSULTANT which, at CITY'S discretion, must be revised, in part or in whole, to complete the Project.

#### 5.4 Procurement of Similar Services.

In the event this Agreement is terminated as provided by this Article, with or without cause, in whole or in part, CITY may procure, any and all services as may be necessary to complete the Project.

#### 5.5 Work Product.

In the event of termination of this Agreement, all finished or unfinished design, development and construction documents, data studies, drawings, maps and reports prepared by CONSULTANT shall be delivered to the CITY within seven (7) days of CONSULTANT's receipt of termination notice, and at no additional cost to CITY. Any use of uncompleted documents without specific written authorization from CONSULTANT shall be at CITY's sole risk and without liability or legal expense to CONSULTANT.

#### 5.6 Indemnification and Hold Harmless.

**These Indemnification provisions are independent of and shall not in any way be limited by the Insurance Requirements of this Agreement. CITY approval of the Insurance contracts required by this Agreement does not in any way relieve the CONSULTANT from liability under this section.**

Notwithstanding the existence of insurance coverage required of CONSULTANT pursuant to this contract, CONSULTANT shall save, keep defend, indemnify, hold free and harmless CITY, its officers, officials, employees, agents and volunteers from and against any and all damages to property or injuries to or death of any person or persons, and shall defend, indemnify, save and hold harmless CITY, its officers, officials, employees, agents and volunteers from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of CONSULTANT, its employees and/or authorized sub-consultants, whether intentional or negligent, in the performance of this Agreement.

### **ARTICLE VI** **GENERAL PROVISIONS**

#### 6.1 Notices.

All notices and written communications sent by one party to the other shall be personally delivered or sent by registered or certified U.S. Mail postage prepaid, return receipt requested to

the following addresses indicated below:

IF TO CITY: Christopher L. Johansen, P.E.  
ENGINEERING DIVISION  
CITY OF LA HABRA  
110 E. La Habra Blvd.  
La Habra, Ca. 90631

TO CONSULTANT: Robert Bigger \_\_\_\_\_  
Ninyo & Moore \_\_\_\_\_  
475 Goddard, Suite 200 \_\_\_\_\_  
Irvine, CA 92618 \_\_\_\_\_

The effective date of any notice or written communications sent by one party to the other shall be the date received if by personal service, or 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark.

#### 6.2 Entire Agreement.

This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreement whether verbal or written, concerning the same subject matter. This Agreement may be modified only by a writing signed by both parties.

#### 6.3 Successors and Assigns.

This Agreement shall be binding on the successors and assigns of the parties. This Agreement may not be sold, transferred or assigned by either party, or by operation of law, to any other person or persons or business entity, without the other party's written permission. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without written permission, may be deemed by the other party to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.

#### 6.4 Subcontracts.

**CONSULTANT** shall not subcontract any portion of the work required by this Agreement without prior written approval of **CITY**. All approved subcontracts, if any, shall be accomplished by a written instrument. Such instrument shall contain an expressed assumption by the subcontractor of all conditions and terms and covenants contained in this Agreement.

#### 6.5 Equal Opportunity Employment.

**CONSULTANT** represents that it is an equal opportunity employer and shall not discriminate either directly or indirectly against an employee or applicant for employment with **CONSULTANT** on the basis of race, color, religion, national origin, ancestry, sexual preference, sex or age. **CONSULTANT** shall also take affirmative steps to ensure that applicants are

employed and employees are treated during employment without regard to race, color, religion, national origin, ancestry, sexual preference, sex, age, or other prohibited grounds.

6.6 Attorney's Fees.

If either party commences a legal action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover reasonable attorney's fees and costs of suits.

6.7 Governing Law.

This Agreement shall be governed by and construed with the laws of the State of California. Any Action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Orange.

6.8 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

6.9 Right to Employ Other Consultants.

**CITY** reserves the right to employ other consultants in connection with this Project.

6.10 Covenant Against Contingent Fees.

**CONSULTANT** warrants that he/she/it has not employed or retained any company or person, other than a bona fide employee working with **CONSULTANT**, to solicit or secure this Agreement, and that he/she/it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, **CITY** shall have the right to annul this Agreement without liability or, in its discretion to deduct from **CONSULTANT'S** compensation provided under this Agreement, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

6.11 Conflict of Interest.

**CONSULTANT** covenants that he/she/it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its Services hereunder. **CONSULTANT** further covenants that in the performance of this Agreement, no person having any such conflict of interest shall be employed by **CONSULTANT**.

6.12 Statement of Economic Interest.

If **CITY** determines **CONSULTANT** comes within the definition of **CONSULTANT** under the Political Reform Act (Government Code §87100 et. seq.), **CONSULTANT** shall

complete and file and shall require any other person doing work under this Agreement, to complete and file a "Statement of Economic Interest" with the City Clerk of the CITY disclosing **CONSULTANT** and/or such other person's financial interests.

6.13 No Waiver of Breach; Time.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought referring expressly to this Paragraph. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.14 Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

6.15 Taxes.

**CONSULTANT** agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. **CONSULTANT** agrees to indemnify and hold **CITY** harmless from any liability which it may incur to the United States or to the State of California as a consequence of **CONSULTANT'S** failure to pay, when due, all such taxes and obligations.

6.16 Compliance With Law.

**CONSULTANT** shall comply with applicable federal, state and local laws, rules and regulations affecting the **CONSULTANT** and his/her/its work hereunder.

6.17 Title to Documents.

Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by **CONSULTANT** under the Agreement shall be vested in **CITY**, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of **CITY**. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to **CITY** without restriction or limitations on their use. **CONSULTANT** may retain copies of the above described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of **CITY** during the term of this Agreement or until ninety (90) days after receipt of final payment from **CITY**.

6.18 Validity.

The validity in whole or in part of any provision of this Agreement shall not void or affect

the validity of any other provisions of this Agreement.

6.19 Headings.

Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to modify or explain or to be a full or accurate description of the content thereof.

6.20 Counterparts.

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

6.21 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so, the Parties hereto are formally bound to the provision of this Agreement.

6.22 Confidentiality.

All findings, reports, information and exhibits prepared or assembled by **CONSULTANT** in connection with the performance of its professional services pursuant to this Agreement are confidential and **CONSULTANT** agrees that they shall not be made available to any individual or organization without the prior consent of **CITY**. All findings, reports, information and exhibits shall become the property of **CITY**.

6.23 Responsibility for Errors.

**CONSULTANT** shall be responsible for its own work and results under this Agreement, and shall not be responsible for any work by **CITY** performed prior to the date of this Agreement or for any other acts or omissions directly attributable to **CITY**. **CONSULTANT**, when requested, shall furnish clarification and/or explanation as may be required by **CITY** regarding any services rendered under this Agreement at no additional cost to **CITY**. In the event that an error or omission attributable to **CONSULTANT** occurs, then **CONSULTANT** shall, at no cost to **CITY**, provide all necessary design drawings, estimates and other **CONSULTANT** professional services, as authorized by this Agreement necessary to rectify and correct the matter to the sole satisfaction of **CITY** and to participate in any meeting required with regard to the correction.

6.24 Independent Contractor.

The parties hereto acknowledge and agree that the relationship between **CITY** and **CONSULTANT** is one of principal and independent contractor and no other. Nothing contained in this Agreement shall create or be construed as creating a partnership, a joint venture, employment relations, or any other relationship except as set forth between the parties. The parties


specifically acknowledge and agree that **CONSULTANT** is not a partner with **CITY**, whether general or limited, and no activities of **CITY** or **CONSULTANT** or statements made by **CITY** or **CONSULTANT** shall be interpreted by any of the parties hereto as establishing any type of business relationship other than an independent contractor relationship.

NOTE: In the event the **CONSULTANT'S** personal services are required, the following shall apply:

This Agreement is made on the express condition and understanding that Garreth Saiki's personal services are a substantial inducement to **CITY** for entering into this Agreement. If for any reason Garreth Saiki should no longer be the responsible manager for **CONSULTANT**, this Agreement shall be subject to immediate termination on written notice from **CITY**.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date and year first above written.

**CITY OF LA HABRA:**

  
\_\_\_\_\_  
JIM SADRO, CITY MANAGER


**ATTEST:**

  
\_\_\_\_\_  
LAURIE SWINDELL, MMC, CITY CLERK  
8/23/2021

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
CITY ATTORNEY

**NINYO & MOORE GEOTECHNICAL AND ENVIRONMENTAL SCIENCES CONSULTANTS:**

  
\_\_\_\_\_  
Garreth Saiki  
Principal Engineer

**EXHIBIT "A"**  
**SCOPE OF WORK AND SCHEDULE OF PERFORMANCE**



Mr. Christopher L. Johansen, P.E.  
City Engineer  
City of La Habra  
201 E. La Habra Boulevard  
La Habra, California 90631



Proposal to Provide

# On-Call Geotechnical Investigation and Material Testing for Public Works City of La Habra



May 17, 2021  
Proposal No. P4-03224

**Ninyo & Moore**  
Geotechnical & Environmental Sciences Consultants



May 17, 2021  
Proposal No. 04-03224

Mr. Christopher L. Johansen, P.E.  
City Engineer  
City of La Habra  
201 E. La Habra Boulevard  
La Habra, California 90631

Subject: On-Call Geotechnical Investigation and Material Testing for  
Public Works Projects  
City of La Habra

Dear Mr. Johansen:

Ninyo & Moore Geotechnical & Environmental Sciences Consultants is pleased to submit this proposal to provide Materials Acceptance Testing for Public Work Projects within the City of La Habra (City). We fully understand the type of services the City requires, and are ready to meet your needs by making available a dedicated team of professionals who have the requisite experience and resources to successfully complete task assignments.

Ninyo & Moore has successfully provided similar geotechnical, special inspection, and materials testing services to many cities on an as-needed/on-call basis and has developed an effective project management approach. Some of the advantages offered by Ninyo & Moore to the benefit of the City include:

- **Relevant Experience** – Ninyo & Moore is very familiar with the City's policies and procedures having provided materials testing services for the City's on-call construction materials testing services for public works capital improvement projects during the Fiscal Years 2004/2005 and again in 2009/2010. Ninyo & Moore also has a proven track record for providing similar on-call materials testing services to many other cities including the cities of Los Angeles, Long Beach, Diamond Bar, Rancho Santa Margarita, Newport Beach, Mission Viejo, Brea, Anaheim, Riverside, Fontana, Rancho Cucamonga, Moreno Valley; and other public agencies including the counties of Los Angeles, Orange, and San Bernardino; the Port of Long Beach, Los Angeles Unified School District, Los Angeles World Airports, and METRO. Ninyo & Moore is experienced with the coordination and administration of on-call contracts and can effectively provide responsive and comprehensive services to the City.
- **Ready to Start Work Immediately** – Our staff understands the technical and administrative requirements of the City as well as the geotechnical conditions throughout the City, so there will be no learning curve for us. In addition, the resources of Ninyo & Moore, one of the largest geotechnical consulting firms in southern California employing 500 professionals and possessing five fully-equipped, in-house soil and materials testing laboratories in California (three in southern California), has the manpower and equipment necessary to provide the required services for this contract and we are ready to start work immediately. This contract will be managed by our local Irvine office.
- **Experienced Professionals** – A project team composed of highly experienced and California licensed geotechnical engineers, certified engineering geologists, civil engineers, geologists, hydrogeologists, multiple certified construction inspectors, and Caltrans certified field and laboratory technicians that are available for this contract. Our engineers, field personnel, and laboratory technicians have a thorough knowledge of Greenbook Specifications and Caltrans methods, procedures, and regulations, having completed millions of dollars worth of Caltrans work.

- **Certified Laboratories and Equipment** – Our laboratories have been certified/accredited by various agencies including Caltrans, the American Association of State Highway and Transportation Officials (AASHTO), Cement and Concrete Reference Laboratory (CCRL) the City of Los Angeles, Division of the State Architect (DSA), and many other public agencies.

Our primary responsible person for this contract is Mr. Gareth Saiki. Mr. Saiki is a Principal Engineer for Ninyo & Moore's Irvine office. Mr. Saiki also has more than 35 years of experience in geotechnical consulting and materials testing services. Mr. Saiki can be reached by telephone at (949) 753-7070, ext. 12231; e-mail: gsaiki@ninyoandmoore.com; and fax; (949) 753-7071. Mr. Saiki is authorized to negotiate with the City of La Habra on behalf of Ninyo & Moore.

We emphasize that this contract is of great importance to us. Ninyo & Moore does not have any exceptions to or deviations from the requirements of this project. We are fully prepared to make every possible commitment needed for the successful and timely completion of the project. We feel that our strongest asset is our satisfied clients and encourage the City to contact our references for our performance on their contracts. Your favorable consideration of this proposal is appreciated, and we look forward to being of service to the City of La Habra.

Respectfully submitted,  
**NINYO & MOORE**



Garreth Saiki, PE, GE  
Principal Engineer

AR/GMS/klb

# Required Information



***Ninyo & Moore***

Geotechnical & Environmental Sciences Consultants

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## 1. Firm Profile

**Ninyo & Moore Geotechnical and Environmental Sciences Consultants**, a California Corporation, was established in 1986 to provide consulting services in geotechnical engineering, construction inspection and testing, engineering geology, hydrogeology, hazardous waste remediation and environmental assessment. Since our inception, we have steadily grown to 500 professionals in 16 offices throughout the southwestern United States. Our offices are located in California, Nevada, Arizona, Colorado, Utah, and Texas.

The experience of Ninyo & Moore's geotechnical staff encompasses projects throughout the southwestern United States, including evaluations for roads, highways, storm drains, pipelines, treatment plants, power plants, bridges, municipal and commercial structures, educational, medical and recreational facilities, tunnels, tanks, reservoirs, dams, waste-to-energy facilities, transmission towers, harbors and offshore structures, railroads, airports, low- and high-rise structures, landfills, and other public and private works. Our environmental staff has diverse experience in environmental assessments, water quality evaluations, environmental audits, regulatory compliance studies, water resources development, soil and groundwater contamination studies, and site remediation.

Ninyo & Moore has three fully equipped, certified soils and materials testing laboratory facilities in southern California supervised by registered engineers. Our laboratories are certified by the American Association of State Highway and Transportation Officials (AASHTO), the Cement and Concrete Reference Laboratory (CCRL), California Department of Transportation (Caltrans), DSA, the City of Los Angeles, and many other agencies. Our laboratories are equipped with the necessary testing equipment required for the proposed contract. The quality assurance manual for our laboratories assures that laboratory testing is documented and efficiently performed in accordance with the applicable testing standards. Our testing equipment is calibrated by independent, third-party calibration companies and is re-certified by the various agencies within their required time limitations. In addition to our many certifications, our laboratories participate in soil, asphalt, and concrete proficiency sampling programs, including those administered by the AASHTO Materials Reference Laboratory (AMRL), CCRL, and the Caltrans Reference Sample Program (RSP).

## 2. Company Contact Information

Mr. Gareth Saiki, PE, GE, Principal Engineer, has the authority to negotiate the contract with the City of La Habra on behalf of Ninyo & Moore. His contact information is as follows:

475 Goddard, Suite 200  
Irvine, California 92618

Office: (949) 753-7070 ext. 12231 | Fax: (949) 753-7071 | Email: [gsaiki@ninyoandmoore.com](mailto:gsaiki@ninyoandmoore.com)



**Garrett Saiki, PE, GE | Principal Engineer**

Years of Experience: 35 | Years with Ninyo & Moore: 23

Mr. Saiki is a registered Civil Engineer and Geotechnical Engineer in the State of California and holds a Master Degree in Geotechnical Engineering from the University of California, Berkeley, as well as a Master Degree in Business Administration from the University of California, Davis. Mr. Saiki has more than 35 years of experience in the geotechnical field, the past 23 years at Ninyo & Moore. As Principal Engineer, Mr. Saiki will provide oversight of our materials testing operations and review of the laboratory and field test results prior to submittal to the City. As our Laboratory Responsible Engineer, Mr. Saiki oversees our internal QA/QC Program. He is also familiar with the

Caltrans Local assistance Procedures manual and the various Quality Assurance programs for various Cities.

In addition, we have carefully selected our project team to ensure that the City receives the dedicated, skilled staff with the required local experience, licenses, and communication skills that are necessary for the successful completion of any project assigned to us. The following paragraphs describe the individual qualifications of our key personnel who have all worked on similar contracts to this RFQ. Due to the resources available at Ninyo & Moore, both in manpower and equipment, as well as the fact that geotechnical, materials, soils inspection and testing services is our area of expertise, we will be able to staff the anticipated projects without the use of subconsultants.

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**Bob Bigger | Project Manager**

**Years of Experience: 36 | Years with Ninyo & Moore: 15**

Mr. Bob Bigger will serve as Project Manager and has over 36 years of experience in geotechnical materials testing and inspection. He will be responsible for the performance of each task order assigned under this contract. He provides supervision of our engineering and field staff to ensure that the work performed meets the City's requirements for schedule, content, and budget. He provides project coordination and oversees scheduling of field activities, supervises staff-level geologists and engineers, supervises field technicians and special inspectors, reviews project plans and specifications, and reviews laboratory test results for conformance with the project documents, including the International Building Code (IBC), California Building Code (CBC), State Department of Transportation (Caltrans), American Association of State Highway and Transportation Officials (AASHTO), and the Standard Specifications for Public Works Construction (Greenbook). Mr. Bigger has managed our previous City of La Habra on-call contract with projects including Idaho Street Rehabilitation, Whittier & Beach Boulevard Intersection, and Portola and Las Lomas Park projects.

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**Lawrence Lovett, PE | Technical Advisor/Materials**

**Years of Experience: 40 | Years with Ninyo & Moore: 20**

Mr. Lawrence Lovett, PE will serve as technical advisor for Materials Engineering and Quality Assurance. Mr. Lovett is a licensed Civil Engineer in California and holds a degree in Civil Engineering from the University of Maryland, as well as a Master's Degree in Business Administration from New York State University, and has more than 40 years of experience in materials testing and inspection services. Mr. Lovett's role on this contract will be to oversee Ninyo & Moore's in-house Quality Assurance program for materials testing and inspection services is adhered to, and will also serve as an additional resource for technical expertise on materials testing and inspection issues for the District. Mr. Lovett's experience includes numerous new construction projects for various public agencies. He also serves as an expert witness for construction materials related issues on forensics/litigation cases.

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**Alfredo "Tino" Rodriguez | Construction Services Manager**

**Years of Experience: 35 | Years with Ninyo & Moore: 25**

Our Construction Services Manager, Mr. Alfredo "Tino" Rodriguez, will provide oversight of our field testing and inspection services. Mr. Rodriguez has over 35 years' experience, the past 25 years with Ninyo & Moore, in providing specialty inspection, geotechnical and materials testing services. Mr. Rodriguez also has construction management experience. He reviews daily reports and test data, performs quality control and inspections and works closely with the project Construction Managers, Project Inspectors and DSA Field Engineers in order to successfully closeout the projects assigned.

## Field Technicians and Inspectors



Ninyo & Moore's field staff is highly experienced and qualified to provide testing and inspection services for an extensive range of project requirements. Ninyo & Moore's field and laboratory technicians maintain certifications with Caltrans, ACI, ICC, DSA, OSHA, and NICET, and possess a working knowledge of the requirements and procedures as specified by these agencies. Our proposed field and laboratory technicians are extensively experienced at providing geotechnical soils and materials testing services for construction projects. In addition to the above key personnel, Ninyo & Moore is providing a sampling of technicians and inspectors available to provide materials testing, and inspection services for this project.

Team Member	Role	Registrations/Certifications	Years Exp
Kevin Tolin	Senior Field Technician	ACI Field Testing Technician Grade I Caltrans Concrete Test Methods 523.1 Caltrans Concrete Test Methods 504, 518, 524, 533, 539, 540, 556, 557 Caltrans Sampling Highway Materials Test Method 125 Caltrans Soils and Aggregates Test Methods 216, 231 OSHA 40 Hour Hazwoper Certification OSHA 8 Hour Hazwoper Certification Radiation (Nuclear Gauge) User Safety USDOT HAZMat Refresher Training	34
Lincoln Linn	Senior Field Technician	ACI Field Testing Technician Grade I City of Los Angeles Special Inspector ICC Soils Special Inspector OSHA 40 Hour Hazwoper Certification OSHA 8 Hour Hazwoper Certification Radiation (Nuclear Gauge) User Safety USDOT HAZMat Refresher Training	28
David Meras	Special Inspector	ACI Concrete Field Testing Technician Grade I AWS Certified Welding Inspector Caltrans Concrete Test Methods 504, 518, 523, 533, 539, 540, 557 Caltrans Sampling Test Method 125, 125.2, 125.3, 125.4, 125.5, 125.6 Caltrans Soils and Aggregates (Methods 216, 231) ICC Soils Special Inspector ICC Structural Steel & Bolting Special Inspector ICC Structural Welding Special Inspector OSHA Excavation Competent Person Certification Radiation (Nuclear Gauge) User Safety USDOT HAZMat Refresher Training	24
Vance Hunter	Senior Field Technician	ACI Field Testing Technician Grade I Caltrans Concrete Test Methods 504, 518, 523.1, 533, 539, 540, 556, 557 Caltrans Sampling Test Method 125 Caltrans Soils and Aggregates Test Methods 105, 201, 202, 205, 216, 217, 226, 227 eRailSafe System Badge, 300882 OSHA 40 Hour HAZWOPER Certification OSHA 8 Hour HAZWOPER Certification OSHA Excavation Competent Person Radiation (Nuclear Gauge) User Safety USDOT HAZMat Refresher Training	21

Team Member	Role	Registrations/Certifications	Years Exp
Eugene Frazier	Senior Field Technician	16-Hour Asbestos O&M Initial Certification ACI Field Testing Technician Grade I Caltrans Concrete Test Methods 504, 518, 523.1, 524, 533, 539, 540, 556, 557 Caltrans Sampling Highway Materials Test Method 125 Caltrans Soils and Aggregates Test Methods 105, 125, 201, 202, 205, 216, 217, 226, 227, 229 John Wayne Airport Security Badge OSHA 40 Hour Hazwoper Certification OSHA 8 Hour Hazwoper Certification Radiation (Nuclear Gauge) User Safety USDOT HAZMat Refresher Training	19
Joe Levario	Senior Field Technician	ACI Concrete Field Testing Technician Grade I BNSF Contractor, No. UIBNSFCACA011902740 Caltrans Concrete Test Methods 504, 518, 523, 533, 539, 540, 556, 557 Caltrans Sampling Test Method 105, 125 Caltrans Soils Test Methods 201, 202, 205, 216, 217, 226, 227 eRailSafe, Contractor, No. 727113 OSHA Excavation Competent Person Certification Radiation (Nuclear Gauge) User Safety USDOT HAZMat Refresher Training	16
James Dalgity	Laboratory Manager	ACI Aggregate Testing Technician Level I ACI Concrete Field Testing Technician Grade I ACI Concrete Laboratory Technician Level I ACI Concrete Laboratory Testing Technician level II ACI Concrete Strength Testing Technician Caltrans Concrete Test Methods 504, 518, 521, 523, 533, 539, 540, 556, 557 Caltrans Sampling Test Method 125 Caltrans Soils Test Methods 105, 201, 202, 211, 216, 217, 226, 227 Caltrans Soils Test Methods 205, 207, 234, 235 Radiation (Nuclear Gauge) User Safety USDOT HAZMat Refresher Training	15
Matthew Jacobs	Senior Field Technician	ACI Concrete Field Testing Technician Grade I City of Los Angeles Deputy Building Inspector - Grading, No. P030742 City of Los Angeles Special Inspector ICC Reinforced Concrete Special Inspector ICC Soils Special Inspector OSHA 10 Hour Certification OSHA 40 Hour Hazwoper Certification OSHA Excavation Competent Person Radiation (Nuclear Gauge) User Safety USDOT, HAZMAT 49CFR 172, Subpart H	14
Daniel Eguia	Senior Field Technician	ACI Concrete Field Testing Technician Grade I BNSF Contractor, No. UIBNSFCACA041900697 Caltrans Concrete Test Methods 504, 518, 523.1, 533, 539, 540, 556, 557 Caltrans Sampling Highway Materials Test Method 125 Caltrans Soils Test Methods 105, 201, 202, 217, 227 Caltrans Test Methods 125, 216, 231 Radiation (Nuclear Gauge) User Safety USDOT HAZMat Refresher Training	13
Jacob Huffman	Special Inspector	ACI Concrete Field Testing Technician Grade I Caltrans Concrete Test Methods 504, 518, 523.1, 533, 539, 540, 543, 556, 557 Caltrans Soils and Aggregates Test Methods 105, 125, 201, 202, 205, 216, 217, 226, 227, 229 ICC Reinforced Concrete Inspector OSHA Excavation Competent Person Radiation (Nuclear Gauge) User Safety USDOT HAZMat Refresher Training	12
Ryan Villasenor	Senior Field Technician	ACI Concrete Field Testing Technician Grade I ICC Reinforced Concrete Special Inspector ICC Structural Masonry Special Inspector OSHA Excavation Competent Person Certification Radiation (Nuclear Gauge) User Safety Transportation Worker Identification Credential (TWIC) USDOT HAZMat Refresher Training	11

### 3. List of Services / Project Experience

Based on our review of the City's RFP, we understand that our services may include construction materials acceptance testing services as well as geotechnical investigation services as may be required by the City. Our services will be performed on an as-needed or on-call basis during the five-year contract term. Individual task or work order assignments will be issued by the City with a specific scope of work and fee to be determined by the City's assigned project manager. The following paragraphs list our typical scope of services for geotechnical investigations, including roadway repair, slope stability analysis, and other possible geotechnical related issues, as well as our typical materials testing scope of services to be performed in accordance with the City's Quality Assurance Program.

#### Geotechnical Engineering Services

Our scope of services for a geotechnical design project may include the following:

- Project coordination, including meeting with the representatives of the City of La Habra and their design team to discuss our scope of work.
- Review of preliminary project plans, geologic and seismic hazard maps, and readily available geotechnical reports to evaluate possible geologic hazards that may impact the proposed construction.
- Acquisition of permits necessary to proceed with our subsurface evaluation.
- Geotechnical site reconnaissance to document the site conditions and to select and mark the proposed excavation locations for underground utility location.
- Drilling, sampling, and logging of small-diameter and/or large-diameter exploratory borings and/or excavation of exploratory test pits. The depths of the excavations will depend on the details of the proposed project and site location.
- Laboratory testing of representative soil samples to evaluate the soil characteristics. Laboratory testing may include in-situ moisture and dry density, gradation, maximum density and optimum moisture content, consolidation and expansion potential, expansion index, consolidation, shear strength, corrosivity and sulfate content, and R-value testing.
- Data compilation and geotechnical analysis of field and laboratory data. Our analyses will address the following:
  - Suitability of the site for the proposed construction from a geotechnical perspective.
  - Description of the site geology and on-site soils anticipated during construction, including an evaluation of geologic hazards that might be present at the site.
  - Excavation and compaction requirements, including suitability of the on-site soils for use as fill and/or trench backfill.
  - Analysis of the temporary stability of the trench excavations and shoring pressures, including allowable lateral earth pressures and allowable passive pressures for proposed trenches, as appropriate.
  - Evaluation of the depth to the groundwater table and potential areas of dewatering, as appropriate.
  - Evaluation of potential settlement.
  - Evaluation of the potential for liquefaction.
  - Evaluation of the corrosion potential of the on-site soils.
  - Evaluation of pavement design for the proposed roadway sections, as



applicable.

- Preparation of a written report presenting the results of our field exploration, laboratory testing, and engineering analyses, as well as our conclusions and recommendations relative to the geotechnical aspects of project design and construction.
- Upon substantial completion of the project plans and specifications, Ninyo & Moore can perform a geotechnical and geologic plan review to evaluate whether the conclusions and recommendations presented in our report were correctly interpreted and incorporated into the project plans and specifications. These services can be performed if requested and authorized.

## Soils and Materials Testing and Special Inspection Services



Our requested soils and materials testing and inspection services may include the following:

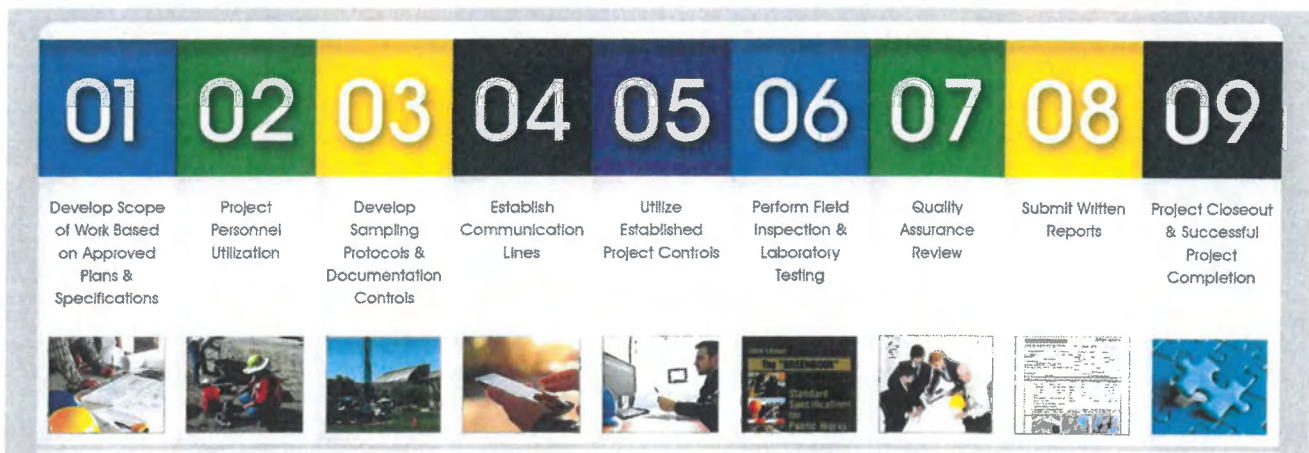
- Project coordination and client liaison, including scheduling of personnel to provide observation and materials testing services and meeting attendance.
- Review of readily available background materials pertaining to the site, including geotechnical reports, project plans, and specifications.
- Attendance at pre-construction and field meeting as requested by the client.
- On-site soil and materials testing and inspection during construction on an as-requested basis. Our inspection services will be performed in accordance with the applicable building codes and in accordance with the frequency of testing set forth in the City's Quality Assurance Program (QAP), Caltrans Local Assistance Program, Caltrans Standard Specifications, Construction Manual, Greenbook Specifications, the project's Special Provisions and/or specifications. Specifically, our soils and materials testing and inspection services may include the following:
  - Field observation and inspection during foundation construction, including observation of footing excavations, pier drilling, pile driving, as appropriate.
  - Field observation, documentation and testing during the earthwork operations. Our services will include observation and field density testing of compacted fill, including embankment fill, structure and wall backfill, utility trench backfill, subgrade, aggregate subbase, aggregate base, materials.
  - Field sampling and in-place density testing will be performed during asphalt pavement construction. Asphalt production plant inspection and sampling will be performed to evaluate conformance with project specifications. Laboratory testing of raw aggregate and completed mix samples will include sieve analysis, sand equivalent, percent asphalt, film stripping, CKE, swell, and maximum density per the Construction Manual and project specifications.
  - Field sampling and testing of concrete structures and paving during construction. Our field testing services will include sampling of concrete, and evaluating the temperature, penetration, air content, and unit weight. Concrete cylinders will be cast during concrete placement for structures and will be transported to our laboratory for compressive strength testing. Concrete beams will be cast during concrete paving and transported to our laboratory for flexural strength testing. Concrete batch plant inspection and sampling will be performed to obtain raw aggregate samples for

acceptance testing and to evaluate the batch plant operation for conformance with project specifications. Laboratory testing of aggregate samples will include sieve analysis, sand equivalent, and cleanness value per the Construction Manual, Standard Specifications, and project Special Provisions. Further, specialized tests, such as L.A. rattle, durability index, specific gravity, etc., will be performed upon request by the Resident Engineer.

- Field inspection of the construction materials, both during fabrication/erection/ construction and after construction completion (finish project inspections) performed by inspectors certified by ICBO, AWS-CWI and other agencies. Inspections may include:
  - ◆ Reinforced Concrete, including foundations, cast-in-place concrete structures, and miscellaneous concrete construction.
  - ◆ Structural Masonry, including retaining walls, sound walls, building and site walls.
  - ◆ Field and Fabrication Shop Welding of structural steel
  - ◆ High strength bolting
  - ◆ Non-Destructive Testing (ultrasonic)
  - ◆ Roofing
- Laboratory testing on collected construction material samples in accordance with the appropriate California Test, AASHTO, and ASTM test methods and utilizing calibrated and certified laboratory equipment. Laboratory testing may include maximum dry density and optimum moisture content of the soils to be placed as fill or backfill; compressive strength testing of the concrete, and conformance testing (including sieve analyses, sand equivalent, R-value, cleanness value and durability tests) on the pro-posed aggregate sub-base, aggregate base, asphalt concrete, and concrete pavement. Testing will be performed at frequencies required by the Caltrans Construction Manual and/or the project specifications.
- Preparation of daily reports and other memoranda to summarize the field operations and test results. Our reports will include the information required by the review agencies.
- Preparation of a final report summarizing the results of our field and laboratory test results, including final report of grading and certification of compliance, as required.

## Project Approach

Based on our review of the RFP documents, we understand that our services under this contract may include a variety of geotechnical engineering services, including pavement evaluations, construction materials testing, development review (plan checking), geotechnical investigation reports, and 24-hour on-call emergency response services. We have successfully performed similar services for many cities in southern California, including the City of La Habra. In order to accomplish the task assignments, we will utilize our on-call project management approach for as-needed or task-order based contracts. We have developed this approach over the past 35 years in providing these similar services for public agency clients. This approach is constantly being updated to meet the changing needs of our clients.



1. **Develop Scope of Work** – The initial step in our approach is to meet with the City Project Manager in order to get clear understanding of the project and our expected services. For the materials testing and inspection services, we will review the approved plans and specifications and will develop a detailed scope of services indicating anticipated man-hours by discipline for the required materials testing and inspection services. We will submit this plan to the City Project Manager for approval and will provide monthly up-dates to the City Project Manager as construction progresses. For geotechnical evaluations, if requested, we will develop a detailed scope of work, including the number and type of subsurface explorations, laboratory test, as well as the type of analyses.

2. **Project Personnel Utilization** – Upon approval of our scope of work, we will assign the appropriately certified personnel to the project based on the specific needs of the project. Our large pool of licensed professional geotechnical engineers, civil engineers, and certified engineering geologists will be utilized for our geotechnical investigation. Our multiple-certified special deputy inspectors and our certified field and laboratory technicians will be readily available for assignment during construction. Our project management approach and in-house computerized data base ensure that we have the appropriately certified personnel as-signed during construction. We will also review the contractor’s schedule in order to plan accordingly and anticipate the future inspections and testing requests.

3. **Sampling Protocol and Document Control** – We will next establish the sampling protocols required for the project, based on the project specifications and the requirements of the City and other governing specifications. Our document control system provides unique identification of daily reports and laboratory conformance testing for each project assignment. These systems are a part of our Quality Systems Program and will be utilized for each task order assignment.

4. **Establish Communication Lines** – The next step in our approach is to establish the communication lines for the project, including the authorized client representative who will be requesting our services. We will also request the approved distribution list for our inspection reports, daily field reports, and laboratory conformance test results. On past projects, Project Managers have coordinated our services in the field and distributed our reports. On other past projects, we were scheduled by on-site client representatives and distributed our reports to the approved distribution list. We will provide our services to meet the City’s needs. Often we will attend pre-construction meetings with the contractor and obtain from the City the approved distribution list for our materials testing and inspection reports as well as our laboratory conformance testing results. We will also provide the City representatives with our personnel’s mobile telephone numbers, and e-mail addresses for communication during the project. We will also establish the communication lines between the City Project Manager, Project Inspector, and the contractors’ and sub-contractors’ representatives.

5. **Utilize Our Project Controls** – Ninyo & Moore utilizes an internal project control system that includes budget, schedule, and document review and control. Our project manager will utilize our in-house system to keep the City Project Manager informed about the status of our services during our materials testing and inspection services during construction. We include monthly progress reports indicating the amount billed to date along with a comparison to the overall task order budget and the overall construction schedule. Our quality control includes review of our laboratory conformance test results by a California licensed engineer and geotechnical analysis review by a California licensed Geotechnical Engineer.

6. **Perform Field and Laboratory Testing** – When construction commences, we will provide the necessary personnel and equipment to inspect and test the construction materials quality and contractor’s construction methods in order to document conformance to the project plans and specifications. We will also sample the construction materials as required and perform laboratory conformance tests as specified. Our field personnel are all issued laptop computers to produce the daily field reports electronically. The results of our inspections and tests will be forwarded to the City representatives at the end of each working day. Immediate notification will be provided via phone and/or e-mail if we find non-conformance in materials or workmanship. Our local laboratory facilities will perform 100 percent of the soils and materials laboratory work for this contract.

**65,000**  
Ninyo & Moore projects company-wide

**42,000**  
projects in California

**7,500**  
projects in Los Angeles County

**84**  
projects in the City of La Habra

They are certified in compliance with ASTM E-329 and are approved/accredited by the City of Los Angeles, Division of the State Architect (DSA), Metropolitan Transportation Authority (Metro), Caltrans, and the Cement and Concrete Reference Laboratory (CCRL).

7. **Quality Assurance Review** – We understand the importance of reliability of our inspections and test results. Therefore, we have a Quality Assurance Plan in place that provides written procedures for our services. Our Quality Assurance Plan is overseen by a California licensed engineer and includes review of our training procedures, as well as participation in third party review and inspection of our facilities. All of our laboratory conformance tests are reviewed by a California licensed engineer prior to submittal.
8. **Reports** – Written reports are required for project documentation. We will submit our written reports electronically during construction, as established in the communications structure for the project that was determined during the project initiation stage. Passing tests and inspections will be filed in accordance with the document control system. Non-conforming reports will be maintained in a non-conformance log that will be maintained by our office. Non-conformance areas will need to be remedied in accordance with the project requirements. When non-conforming materials or workmanship are remedied, we will document the acceptance in the non-conformance log for project close-out purposes.
9. **Project Close-Out** – The final step in our approach is the closing out of the project and providing the project documentation, as it relates to materials testing and inspection, to the City.

## 4. References

As requested in the RFQ, we are providing our relevant project experience to demonstrate our current and past performance in providing similar scope of services for on-call material testing services to our public agency clients.

### City of La Habra / On-Call Construction Materials Testing for Capital Improvement Projects

Client: City of La Habra

Reference: Raquel Garcia ☎ (562) 383-4170

Ninyo & Moore was retained by the City of La Habra to provide on-call construction materials testing services for public works capital improvement projects during the Fiscal Years 2004/2005 and again in 2009/2010. During this time, Ninyo & Moore provided construction materials testing and inspection services for various projects, including the City Yard Improvements, Vista Grande Park Improvements, Storm Drain Improvements, and the Holgate Area Street Rehabilitation and Water Main Replacement projects. Our services for these projects included, relative compaction testing of subgrade soils, trench backfill soils, aggregate base, and asphalt concrete materials, field sampling and laboratory strength testing of Portland cement concrete, laboratory conformance testing of the construction materials, and special deputy inspection of structural steel assembly, field welding, and reinforced concrete constructions.



- ✓ City of La Habra
- ✓ Caltrans standards and specifications
- ✓ Asphalt concrete replacement
- ✓ New concrete, curb and gutter



- ✓ Caltrans standards and specifications
- ✓ Asphalt concrete replacement
- ✓ New concrete, curb and gutter

### City of Fountain Valley Residential Roadway Rehabilitation

Client: City of Fountain Valley

Reference: Mr. Temo Galvez ☎ (714) 593-4400

Ninyo & Moore was retained for materials testing services during construction of the Residential Roadway Rehabilitation Project, Project No. GT229, Quadrant H-3, J-1 and J-2 for the City of Fountain Valley. The project consisted of asphalt concrete overlays at various locations. The improvements also included new concrete curb & gutter, sidewalks, curb ramps, cross gutters, and selected areas of full depth asphalt concrete replacement. Ninyo & Moore provided quality control testing. Our scope of services included mix design review, field sampling and testing, batch plant inspection and laboratory testing. Our field services included in-place density testing during asphalt concrete placement, and concrete sampling. Field density testing was performed to evaluate the contractor's compaction efforts. The laboratory services included Hveem stability & unit weight, asphalt content, sieve analysis, sand equivalent, and concrete compressive strength testing. Testing was performed in accordance with ASTM and Caltrans test methods.

## County of Los Angeles As-Needed Materials Testing, Pavement Mix Design and Inspection Services

**Client:** Los Angeles County Department Public Works

**Reference:** Mr. Greg Johnson ☎ (626) 458-5100

Ninyo & Moore was retained to provide as-needed materials testing, pavement mix design and inspection services during the various construction and reconstruction type projects located throughout Los Angeles County, California. A second consecutive contract was awarded until 2023. Our geotechnical and materials engineering, as well as field materials testing and deputy inspection personnel have worked closely with the Los Angeles County Department Public Works staff in order to assist in them in ensuring that each project is constructed in accordance with the approved documents. Ninyo & Moore's as-needed geotechnical engineering, materials testing and inspection services included project coordination and management, in order to assist the Los Angeles County Department Public Works staff in maintaining each project's fiscal budgets. Projects have included Los Palacios Drive Cement Stabilization Mix Designs, State Route 126/Commerce Center Drive Interchange, East Fork Road over North Fork San Gabriel River Renovation, and the San Gabriel Valley Airport Apron Pavement Rehabilitation Phase 2 projects.



- ✓ Subgrade preparation for pavement and/or concrete
- ✓ Utility trench backfill
- ✓ Asphalt concrete paving
- ✓ Laboratory testing
- ✓ Familiarization of city plans and specifications



- ✓ Caltrans standards and specifications
- ✓ Caltrans-approved laboratory
- ✓ Pavement rehabilitation
- ✓ On-call, consecutive contracts

## City of Rancho Santa Margarita, On-Call Geotechnical and Materials Testing Services

**Client:** City of Rancho Santa Margarita

**Reference:** Mr. Brendan Dugan ☎ (949) 635-1805

Ninyo & Moore has provided on-call geotechnical engineering consulting and material testing services for various City projects. Our services during our current and previous on-call contracts with the City of Rancho Santa Margarita included geotechnical observation and materials testing services for various construction projects including numerous pavement rehabilitation projects, pavement slurry seal, and drainage improvements and third-party review of geotechnical reports, emergency observation of slope failures resulting from heavy rain events. The projects that included geotechnical and materials testing services were Antonio Parkway drainage improvements and pavement rehabilitation, El Paseo Corridor improvements, Melinda Road pavement rehabilitation, Vista Drive pavement replacement, Robinson Ranch Road pavement rehabilitation, Avenida Empresa and Santa Margarita Parkway intersection improvements, Alicia Parkway pavement resurfacing and Robinson Ranch Road traffic calming project, and the annual slurry seal program. The Trabuco Highlands slope failure project involved geotechnical consulting services that included geologic mapping, logging and sampling of exploratory test pits and borings, review of previous reports and plans at the City, engineering analysis, attending a home owner association meeting, laboratory testing and preparation and updates of draft report.

## Additional References

Project Name	Description of Services	Client/ Client Contact	N&M Project Manager/ Key Personnel	Project Dates
I-405 Improvement Project	16 miles of highway/roadway improvements, land addition, bridges, on- and off-ramps	Caltrans District 12 19601 Beach Blvd Huntington Beach, CA 92648  Mr. Frank Mai (949) 279-8846 Frank_mai@dot.ca.gov	Andy Rodriguez - Project Manager Garreth Saiki - Principal Engineer	4/2018 - On-going
City of Santa Ana Capital Improvements Program	Materials testing and inspection for Bristol Street Rehabilitation, Residential Street Repairs, West Grove Valley Water Main, Westminster Rehabilitation, and Newpark at 6th and Lacy Street projects	City of Santa Ana 20 Civic Center Plaza M36 Santa Ana, CA 92701  Mr. Victor So (714) 647-5076 vso@santa-ana.org	Andy Rodriguez - Project Manager Tino Rodriguez - Principal Construction Services	5/2016 - 5/2019
City of Irvine On-Call Geotechnical and Materials Testing Services	On-call geotechnical, environmental, and materials testing services	City of Irvine 6427 Oak Canyon, Building 1 Irvine, California 92623  Mr. Rick Torres Construction Inspection Supervisor (949) 724-7653  Mr. Gregg Gipe, Project Development (949) 724-7372	Garreth Saiki - Project Manager Matt Harrel - Project Manager Soumitra Guha - Principal Engineer	9/2013 - 6/2019
County of Orange On-Call Geotechnical Consulting Services	Third party geotechnical engineering/geologic hazard/grading report review services	County of Orange 300 N. Flower Street, 6th Floor Santa Ana, California 92703  Mr. Ryan Rose (714) 667-8876	Garreth Saiki - Project Manager Kurt Yoshii - Principal Engineer	12/2017- 12/2020

*Ninyo & Moore's range of technical expertise, commitment, and responsiveness demonstrates the company's major strengths which exemplify excellent client service and a high level of responsiveness.*

- Gregg Gipe  
Project Development/  
City of Irvine

## 6. Consulting Services Agreement

Ninyo & Moore is ready to enter into the City of La Habra's standard Consulting Agreement, **Exhibit G** of the City's RFP without any proposed modifications.



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475 Goddard, Suite 200 | Irvine, California 92618 | p. 949.353.7070 | f. 949.753.7071

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[ninyoandmoore.com](http://ninyoandmoore.com)

**EXHIBIT "B"**  
**COMPENSATION RATES AND CHARGES**

## 5. Proposal Sheet

### Schedule of Fees

#### Hourly Charges for Personnel

##### Professional Staff

Principal Engineer/Geologist/Environmental Scientist/Certified Industrial Hygienist	\$ 195
Senior Engineer/Geologist/Environmental Scientist	\$ 190
Senior Project Engineer/Geologist/Environmental Scientist	\$ 185
Project Engineer/Geologist/Environmental Scientist	\$ 175
Senior Staff Engineer/Geologist/Environmental Scientist	\$ 150
Staff Engineer/Geologist/Environmental Scientist	\$ 145
GIS Analyst	\$ 125
Technical Illustrator/CAD Operator	\$ 103

##### Field Staff

Certified Asbestos/Lead Technician	\$ 185
Field Operations Manager	\$ 125
Nondestructive Examination Technician (UT, MT, LP)	\$ 119
Supervisory Technician	\$ 115
Special Inspector (Concrete, Masonry, Structural Steel, Welding, and Fireproofing)	\$ 109
Senior Technician	\$ 108
Technician	\$ 103

##### Administrative Staff

Information Specialist	\$ 85
Geotechnical/Environmental/Laboratory Assistant	\$ 80
Data Processor	\$ 75

#### Other Charges

Concrete Coring Equipment (includes technician)	\$ 190/hr
Anchor Load Test Equipment (includes technician)	\$ 190/hr
GPR Equipment	\$ 180/hr
Inclinometer	\$ 100/hr
Hand Auger Equipment	\$ 80/hr
Rebar Locator (Pachometer)	\$ 25/hr
Vapor Emission Kit	\$ 65/kit
Nuclear Density Gauge	\$ 12/hr
X-Ray Fluorescence	\$ 70/hr
PID/FID	\$ 25/hr
Air Sampling Pump	\$ 10/hr
Field Vehicle	\$ 15/hr
Expert Witness Testimony	\$ 450/hr
Direct Expenses	Cost plus 15 %
Special equipment charges will be provided upon request.	

#### Notes

For field and laboratory technicians and special inspectors, overtime rates at 1.5 times the regular rates will be charged for work performed in excess of 8 hours in one day Monday through Friday and all day on Saturday. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day, all day Sunday and on holidays.

Field technician and special inspection hours are charged at a 4-hour minimum, and 8-hour minimum for hours exceeding 4 hours.

Invoices are payable upon receipt. A service charge of 1.5 percent per month may be charged on accounts not paid within 30 days.

Our rates will be adjusted in conjunction with the increase in the Prevailing Wage Determination during the life of the project, as applicable.

The terms and conditions are included in Ninyo & Moore's Work Authorization and Agreement form.

## Schedule of Fees for Laboratory Testing

<b>SOILS</b>		<b>CONCRETE</b>	
Atterberg Limits, D 4318, CT 204	\$ 170	Compression Tests, 6x12 Cylinder, C 39	\$ 35
California Bearing Ratio (CBR), D 1883	\$ 550	Concrete Mix Design Review, Job Spec	\$ 300
Chloride and Sulfate Content, CT 417 & CT 422	\$ 175	Concrete Mix Design, per Trial Batch, 6 cylinder, ACI	\$ 850
Consolidation, D 2435, CT 219	\$ 300	Concrete Cores, Compression (excludes sampling), C 42	\$ 120
Consolidation, Hydro-Collapse only, D 2435	\$ 150	Drying Shrinkage, C 157	\$ 400
Consolidation – Time Rate, D 2435, CT 219	\$ 200	Flexural Test, C 78	\$ 85
Direct Shear – Remolded, D 3080	\$ 350	Flexural Test, C 293	\$ 85
Direct Shear – Undisturbed, D 3080	\$ 300	Flexural Test, CT 523	\$ 95
Durability Index, CT 229	\$ 175	Gunite/Shotcrete, Panels, 3 cut cores per panel and test, ACI	\$ 275
Expansion Index, D 4829, IBC 18-3	\$ 190	Lightweight Concrete Fill, Compression, C 495	\$ 80
Expansion Potential (Method A), D 4546	\$ 170	Petrographic Analysis, C 856	\$ 2,000
Geofabric Tensile and Elongation Test, D 4632	\$ 200	Restrained Expansion of Shrinkage Compensation	\$ 450
Hydraulic Conductivity, D 5084	\$ 350	Splitting Tensile Strength, C 496	\$ 100
Hydrometer Analysis, D 422, CT 203	\$ 220	3x6 Grout, (CLSM), C 39	\$ 55
Moisture, Ash, & Organic Matter of Peat/Organic Soils	\$ 120	2x2x2 Non-Shrink Grout, C 109	\$ 55
Moisture Only, D 2216, CT 226	\$ 35		
Moisture and Density, D 2937	\$ 45	<b>ASPHALT</b>	
Permeability, CH, D 2434, CT 220	\$ 300	Air Voids, T 269	\$ 85
pH and Resistivity, CT 643	\$ 175	Asphalt Mix Design, Caltrans (incl. Aggregate Quality)	\$ 4,500
Proctor Density D1557, D 698, CT 216, AASHTO T-180	\$ 220	Asphalt Mix Design Review, Job Spec	\$ 180
Proctor Density with Rock Correction D 1557	\$ 340	Dust Proportioning, CT LP-4	\$ 85
R-value, D 2844, CT 301	\$ 375	Extraction, % Asphalt, including Gradation, D 2172, CT 382	\$ 250
Sand Equivalent, D 2419, CT 217	\$ 125	Extraction, % Asphalt without Gradation, D 2172, CT 382	\$ 150
Sieve Analysis, D 422, CT 202	\$ 145	Film Stripping, CT 302	\$ 120
Sieve Analysis, 200 Wash, D 1140, CT 202	\$ 100	Hveem Stability and Unit Weight D 1560, T 246, CT 366	\$ 225
Specific Gravity, D 854	\$ 125	Marshall Stability, Flow and Unit Weight, T 245	\$ 240
Thermal Resistivity (ASTM 5334, IEEE 442)	\$ 925	Maximum Theoretical Unit Weight, D 2041, CT 309	\$ 150
Triaxial Shear, C.D, D 4767, T 297	\$ 550	Moisture Content, CT 370	\$ 95
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt	\$ 450	Moisture Susceptibility and Tensile Stress Ratio, T 238, CT 371	\$ 1,000
Triaxial Shear, C.U., w/o pore pressure, D 4767, T 2297 per pt	\$ 350	Slurry Wet Track Abrasion, D 3910	\$ 150
Triaxial Shear, U.U., D 2850	\$ 250	Superpave, Asphalt Mix Verification (incl. Aggregate Quality)	\$ 4,900
Unconfined Compression, D 2166, T 208	\$ 180	Superpave, Gyration Unit Wt., T 312	\$ 100
		Superpave, Hamburg Wheel, 20,000 passes, T 324	\$ 1,000
<b>MASONRY</b>		Unit Weight sample or core, D 2726, CT 308	\$ 100
Brick Absorption, 24-hour submersion, 5-hr boiling, 7-day, C 67	\$ 70	Voids in Mineral Aggregate, (VMA) CT LP-2	\$ 90
Brick Compression Test, C 67	\$ 55	Voids filled with Asphalt, (VFA) CT LP-3	\$ 90
Brick Efflorescence, C 67	\$ 55	Wax Density, D 1188	\$ 140
Brick Modulus of Rupture, C 67	\$ 50		
Brick Moisture as received, C 67	\$ 45	<b>AGGREGATES</b>	
Brick Saturation Coefficient, C 67	\$ 60	Clay Lumps and Friable Particles, C 142	\$ 180
Concrete Block Compression Test, 8x8x16, C 140	\$ 70	Cleaness Value, CT 227	\$ 180
Concrete Block Conformance Package, C 90	\$ 500	Crushed Particles, CT 205	\$ 175
Concrete Block Linear Shrinkage, C 426	\$ 200	Durability, Coarse or Fine, CT 229	\$ 205
Concrete Block Unit Weight and Absorption, C 140	\$ 70	Fine Aggregate Angularity, ASTM C 1252, T 304, CT 234	\$ 180
Cores, Compression or Shear Bond, CA Code	\$ 70	Flat and Elongated Particle, D 4791	\$ 220
Masonry Grout, 3x3x6 prism compression, C 39	\$ 45	Lightweight Particles, C 123	\$ 180
Masonry Mortar, 2x4 cylinder compression, C 109	\$ 35	Los Angeles Abrasion, C 131 or C 535	\$ 200
Masonry Prism, half size, compression, C 1019	\$ 120	Material Finer than No. 200 Sieve by Washing, C 117	\$ 90
Masonry Prism, Full size, compression, C 1019	\$ 200	Organic Impurities, C 40	\$ 90
		Potential Alkali Reactivity, Mortar Bar Method, Coarse, C 1260	\$ 1,250
<b>REINFORCING AND STRUCTURAL STEEL</b>		Potential Alkali Reactivity, Mortar Bar Method, Fine, C 1260	\$ 950
Chemical Analysis, A 36, A 615	\$ 135	Potential Reactivity of Aggregate (Chemical Method), C 289	\$ 475
Fireproofing Density Test, UBC 7-6	\$ 90	Sand Equivalent, T 176, CT 217	\$ 125
Hardness Test, Rockwell, A 370	\$ 80	Sieve Analysis, Coarse Aggregate, T 27, C 136	\$ 120
High Strength Bolt, Nut & Washer Conformance, per assembly, A 325	\$ 150	Sieve Analysis, Fine Aggregate (including wash), T 27, C 136	\$ 145
Mechanically Spliced Reinforcing Tensile Test, ACI	\$ 175	Sodium Sulfate Soundness, C 88	\$ 450
Pre-Stress Strand (7 wire), A 416	\$ 170	Specific Gravity and Absorption, Coarse, C 127, CT 206	\$ 115
Reinforcing Tensile or Bend up to No. 11, A 615 & A 706	\$ 75	Specific Gravity and Absorption, Fine, C 128, CT 207	\$ 175
Structural Steel Tensile Test: Up to 200,000 lbs., A 370	\$ 90		
Welded Reinforcing Tensile Test: Up to No. 11 bars, ACI	\$ 80	<b>ROOFING</b>	
		Roofing Tile Absorption, (set of 5), C 67	\$ 250
		Roofing Tile Strength Test, (set of 5), C 67	\$ 250

Special preparation of standard test specimens will be charged at the technician's hourly rate.  
Ninyo & Moore is accredited to perform the AASHTO equivalent of many ASTM test procedures.



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

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

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

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part for "bodily injury" or "property damage" included in the "products-completed operations hazard", provided that such contract was signed and executed by you before, and is in effect when, the bodily injury or property damage occurs.

**Location And Description Of Completed Operations**

Any project to which an applicable contract described in the Name of Additional Insured Person(s) or Organization(s) section of this Schedule applies.

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

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the

location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

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

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **Names of Additional Insured Person(s) or Organization(s):**

Any person or organization that you agree in a written contract, on this Coverage Part, provided that such written contract was signed and executed by you before, and is in effect when the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

#### **Location of Covered Operations:**

Any project to which an applicable written contract with the described in the Name of Additional Insured Person(s) or Organization(s) section of this Schedule applies.

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

**A.** Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

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

This insurance does not apply to "bodily injury" or "property damage" occurring, or "personal injury" or "advertising injury" arising out of an offense committed, after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

COMMERCIAL GENERAL LIABILITY

**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.

**d. Primary And Non-Contributory Insurance If Required By Written Contract**

If you specifically agree in a written contract or agreement that the insurance afforded to an insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

**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**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

**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**

If the insured has rights to recover all or part of any payment 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.

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

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following replaces the last sentence of Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

**Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis,

that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

**K. MEDICAL PAYMENTS – INCREASED LIMIT**

The following replaces Paragraph 7. of **SECTION III – LIMITS OF INSURANCE:**

7. Subject to Paragraph 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, and will be the higher of:

- a. \$10,000; or
- b. The amount shown in the Declarations of this Coverage Part for Medical Expense Limit.

**L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY**

The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

**M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT**

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

If the insured has agreed in a written contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the signing of that contract or agreement.

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

## **BUSINESS AUTO EXTENSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li><b>A. BROAD FORM NAMED INSURED</b></li> <li><b>B. BLANKET ADDITIONAL INSURED</b></li> <li><b>C. EMPLOYEE HIRED AUTO</b></li> <li><b>D. EMPLOYEES AS INSURED</b></li> <li><b>E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</b></li> <li><b>F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS</b></li> <li><b>G. WAIVER OF DEDUCTIBLE – GLASS</b></li> </ul> | <ul style="list-style-type: none"> <li><b>H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT</b></li> <li><b>I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</b></li> <li><b>J. PERSONAL PROPERTY</b></li> <li><b>K. AIRBAGS</b></li> <li><b>L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS</b></li> <li><b>M. BLANKET WAIVER OF SUBROGATION</b></li> <li><b>N. UNINTENTIONAL ERRORS OR OMISSIONS</b></li> </ul> |
|---|---|

### **PROVISIONS**

#### **A. BROAD FORM NAMED INSURED**

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. 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. BLANKET ADDITIONAL INSURED**

The following is added to Paragraph c. in A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the **Who Is An Insured** provision contained in Section II.

#### **C. EMPLOYEE HIRED AUTO**

1. The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., **Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

## COMMERCIAL AUTO

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

### D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

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

### E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

### F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., **Policy Period, Coverage Territory**, of SECTION IV – BUSINESS AUTO CONDITIONS:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent 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.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., **Limits Of Insurance**, of SECTION II – COVERED AUTOS LIABILITY COVERAGE.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., **Limits Of Insurance**, of SECTION II – COVERED AUTOS LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

**G. WAIVER OF DEDUCTIBLE – GLASS**

The following is added to Paragraph D., **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

**H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT**

The following replaces the last sentence of Paragraph A.4.b., **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

**I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT**

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

**J. PERSONAL PROPERTY**

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

**Personal Property**

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

**K. AIRBAGS**

The following is added to Paragraph B.3., **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

**L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS**

The following is added to Paragraph A.2.a., of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

**M. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph A.5., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

**5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

## COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

### **N. UNINTENTIONAL ERRORS OR OMISSIONS**

The following is added to Paragraph B.2., **Concealment, Misrepresentation, Or Fraud**, of SECTION IV – BUSINESS AUTO CONDITIONS:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

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

**BLANKET ADDITIONAL INSURED – PRIMARY AND  
NON-CONTRIBUTORY WITH OTHER INSURANCE –  
CONTRACTORS**

This endorsement modifies insurance provided under the following:  
**BUSINESS AUTO COVERAGE FORM**

**PROVISIONS**

1. The following is added to Paragraph c. in A.1., **Who Is An Insured**, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

This includes any person or organization who you are required under a written contract or agreement, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph B.5., **Other Insurance** of SECTION IV – BUSINESS AUTO CONDITIONS:

Regardless of the provisions of paragraph a. and paragraph d. of this part 5. **Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is a named insured when a written contract or agreement with you, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.



**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY**

**ENDORSEMENT WC 99 03 76 ( A) –**

**POLICY NUMBER: UB6P428399**

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS  
ENDORSEMENT – CALIFORNIA  
(BLANKET WAIVER)**

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.

The additional premium for this endorsement shall be \_\_\_\_\_ % of the California workers' compensation premium.

**Schedule**

**Person or Organization**

**Job Description**

Any Person or organization for which the insured has agreed by written contract executed prior to loss to furnish this waiver.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Countersigned by \_\_\_\_\_

Insurance Company  
Travelers Property Casualty Company of America

**DATE OF ISSUE: 7/15/2021**



**ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY,  
ARCHITECTS, ENGINEERS AND CONTRACTORS POLLUTION LIABILITY,  
TECHNOLOGY BASED SERVICES, AND  
COMPUTER NETWORK SECURITY**

**DECLARATIONS**

PRODUCER: RT Specialty Insurance Services, LLC

POLICY NUMBER: MKLV7PL0004694

RENEWAL OF: MKLV7PL0004134

**THIS IS A CLAIMS-MADE LIABILITY INSURANCE POLICY. PLEASE READ IT CAREFULLY.**

**ITEM 1.** NAMED INSURED AND MAILING ADDRESS:

Ninyo & Moore Geotechnical & Environmental Sciences Consultants  
5710 Ruffin Road  
San Diego CA 92123

**ITEM 2.** POLICY PERIOD: From: May 1, 2021 To: October 3, 2022  
12:01 A.M. Standard Time at your mailing address

**ITEM 3.** LIMITS OF LIABILITY:

- A. \$ 5,000,000 Each Claim - includes **Claims Expenses**
- B. \$ 5,000,000 Aggregate for the **Policy Period** - includes **Claims Expenses**

**ITEM 4.** DEDUCTIBLE: \$ 150,000 each "Claim"

**ITEM 5.**

**ITEM 6.** RETROACTIVE DATE: 09/02/1986

Policy No: MKLV7PL0004694

Date: May 1, 2021

**ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY,  
ARCHITECTS, ENGINEERS AND CONTRACTORS POLLUTION LIABILITY,  
TECHNOLOGY BASED SERVICES, AND  
COMPUTER NETWORK SECURITY  
DECLARATIONS (Cont'd.)**

**ITEM 7. OPTIONAL EXTENSION PERIOD:**

- A. for 125% of the last ANNUAL PREMIUM for a 12 calendar-month extension period; or
- B. for 175% of the last ANNUAL PREMIUM for a 24 calendar-month extension period; or
- C. for 225% of the last ANNUAL PREMIUM for a 36 calendar-month extension period

**ITEM 8 NOTICES:**

- A. Notice of Claim or Potential Claim:  
Claims Manager  
Evanston Insurance Company  
P.O. Box 2009  
Glen Allen, VA 23058  
Fax: 1-855-662-7535  
Email: newclaims@markelcorp.com
- B. All other Notices  
Underwriting Department  
Evanston Insurance Company  
1185 Avenue of the Americas  
New York, NY 10036  
Fax: 1-212-898-6601

**ITEM 9. ENDORSEMENTS ATTACHED TO THE POLICY AT INCEPTION:**

**See attached Schedule A - Schedule of Forms (AM0005)**

This policy is made and accepted subject to the above statements together with the provisions, stipulations and agreements in the form(s) and endorsement(s) made a part of this policy.

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b>  <b>1</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

## **TRANSPORTATION COVERAGE ENDORSEMENT**

In consideration of the premium paid, it is hereby understood and agreed that this Policy applies to CLAIMS arising from the following PROFESSIONAL SERVICES:

Selection and/or recommendation by the INSURED of transporters and disposal facilities subject to the following:

- a. The INSURED shall not manifest documents except when a written limited agency agreement is in place between Ninyo & Moore Geotechnical & Environmental Sciences Consultants and the Generator of the material to be manifested.
- b. A hazardous waste treatment, storage or disposal (TSD) facility or landfill (non-hazardous waste) may be selected and/or recommended subject to a successful evaluation by the INSURED of the following criteria:
  - Certificate of Insurance evidencing Pollution Legal Liability (PLL) by a Best A-rated or better carrier.
- c. A transporter may be selected and/or recommended subject to a successful evaluation by the INSURED of the following criteria:
  - Certificate of Insurance evidencing the MCS-90 endorsement and the appropriate minimum limits of liability for automobile insurance.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>	<b>Endorsement Number:</b>  <b>2</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>	

## **REDUCED RETENTION ENDORSEMENT**

1. In cases where the **Insured** is required by a written contract with a third party to have in effect insurance subject to a deductible amount(s) ("Deductible(s)") that is less than the Deductible(s) specified by the Policy, with the prior written consent of the Underwriters, a certificate of insurance or other evidence of insurance document (collectively, a "Certificate") may be issued stating a Deductible(s) that is less than the Deductible(s) specified by the Policy.
2. The **Insured**, for itself and all the other parties that are insured under the Policy, agrees that the undertaking set forth in Paragraph 1 of this endorsement is made as an accommodation to the **Insured**, does not constitute an amendment to the Policy, and in no way changes, modifies or supersedes the respective rights and obligations of the Underwriters and the **Insured** or any other parties under the Policy. Accordingly, the **Insured**, regardless of the content of any Certificate issued pursuant to paragraph 1 of this endorsement, for itself and all other parties insured under the Policy, agrees that the **Insured** will be responsible in the first instance to absorb or to pay any and all amounts with respect to a **Claim** covered by the Policy that are below or within the Deductible(s) specified by the Policy, and further agrees to take all reasonable and necessary action to prevent the Underwriters, and will save the Underwriters harmless, from ever having to pay with respect to any such **Claim** any amounts below or within the Deductible(s) specified by the Policy.
3. The **Insured** acknowledges and agrees that the intent of the **Insured** and the Underwriters is that, as between them, any liability, loss, expense or cost arising out of or with respect to issuance of a Certificate stating a Deductible(s) that is less than the Deductible(s) specified by the policy shall be the sole and exclusive liability and responsibility of the **Insured**. Therefore, the **Insured**, for itself and all other parties insured by the Policy, agrees to reimburse, indemnify, save harmless and defend the Underwriters, its officers, agents, employees and reinsurers against any and all liabilities, losses, expenses, cost, suits or actions of any nature whatsoever arising from or with respect to issuance of such Certificate, including but not limited to loss and loss adjustment amounts that are below or within the Deductible(s) specified by the Policy, expenses, damages (including exemplary and punitive damages), costs, attorneys' fees, fines, and administrative penalties.
4. In the event that the Underwriters are ever required to make payment(s) to anyone of any amounts for which the **Insured** is responsible for paying in the first instance or is responsible for reimbursing and indemnifying the Underwriters pursuant to this endorsement, the Underwriters shall notify the **Insured** in writing of such payments and the **Insured** shall promptly reimburse, indemnify and pay the Underwriters such amounts. If any such payments have not been reimbursed, indemnified and paid in full to the Underwriters within thirty (30) days following receipt of such written notice, any outstanding amounts shall accrue interest at the prime rate then in effect until paid in full.

5. This endorsement represents the entire understanding and agreement of the Underwriters and the **Insured** with respect to the subject matter hereof.
6. This endorsement may be amended or modified only by an instrument in writing signed by the Underwriters and the **Insured**.
7. This endorsement shall survive the expiration, termination or cancellation of the Policy until all of the parties' rights and obligations hereunder have been fully satisfied and all **Claims** under the policy have been resolved and paid.

In Witness Whereof, the **Insured** and the Underwriters each has caused this endorsement to be signed on its behalf, in the case of **Insured**, by the **Insured** if **Insured** is an individual, by a general partner if **Insured** is a Partnership, or an authorized officer if **Insured** is a Corporation and, in the case of the Underwriters, by its authorized representative.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY WILL REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b>  <b>3</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

## **FORMAL MEDIATION DEDUCTIBLE CREDIT ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **PROFESSIONAL LIABILITY COVERAGE**

It is hereby understood and agreed that SECTION X - DEDUCTIBLE is amended by addition of the following paragraph:

In the event that a **Claim** is resolved with the consent of the Company through the use of "Mediation" the Insured will be given a credit or reimbursement for fifty percent (50%) of the Deductible amount owed or paid by the Insured, not to exceed a maximum credit or reimbursement of \$50,000.

It is further agreed that SECTION VIII – DEFINITIONS is amended by addition of the following:

"Mediation" means the non-binding process in which a qualified, professional mediator, mutually agreed upon by the parties to a **Claim** and with the prior consent of the Company, intercedes to help the parties reach an agreement to resolve the **Claim**.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b>  <b>4</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

## PROJECT SPECIFIC SUPPLEMENTAL COVERAGE ENDORSEMENT

For the project(s) specifically scheduled in this Endorsement, the Company agrees that:

1. Subject to the Deductible obligation and all other terms and conditions of this Policy, the coverage afforded under this Policy shall apply as excess over any other valid insurance, whether collectible or not, be it primary, excess, captive or contributing, including insurance provided under a certain project specific professional liability policy for policies issued by the Company.
2. Where in accordance with paragraph 1, this policy is excess insurance, the Company will pay:
  - a. only its share of the amount of **Damages** and **Claims Expenses**, if any, that exceed the total amount of all such valid insurance, whether collectible or not; and
  - b. only for such **Damages** and **Claims Expenses** that are covered by the terms and conditions of this Policy; and conditions of this Policy; and

The **Insured** shall promptly, upon request of the Company, provide the Company with copies of all policies potentially available, whether collectible or not, against the liability covered by this Policy.

3. The Company agrees to indemnify the **Insured** for **Claims Expenses** or **Damages** incurred or paid for in any amount excess of the Deductible (self-insured retention) under this Policy up to \$1,000,000 under the applicable Self-Insured obligation under the project specific policy [or policies] referenced in paragraph 5. Any such amounts paid pursuant to this paragraph shall reduce the Limits of Liability of the Company under this policy.
4. The terms of this endorsement expire upon the expiration date or earlier termination date of the **Policy Period**.

5. Scheduled Projects	Project Specific Policy #	Policy Term
Port of Oakland Capital Improvement Projects	EOC9806234-00	01/01/12 to 01/01/17

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b>  <b>5</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

## **PRIMARY AND NON-CONTRIBUTORY WORDING ENDORSEMENT**

**This endorsement modifies insurance provided under the following:**

**COVERAGE B: CONTRACTORS POLLUTION LIABILITY INSURANCE**

### **SCHEDULE**

Additional Insured Applicable to This Endorsement:

Port of Long Beach  
Risk Management Division  
4801 Airport Plaza Drive  
Long Beach, CA 90815

CH2M HILL Engineers, Inc.  
City of Chandler, its agents, representatives, officers,  
directors, officials and employees, individually and collectively  
2625 S. Plaza Drive, Suite 300  
Tempe, AZ 85282

Brown and Caldwell  
Attn: Legal Dept.  
PO Box 8045  
Walnut Creek, CA 94596-1220

Brown and Caldwell, its affiliates, subsidiaries, directors, officers and employees, Client and Owner (City of  
Phoenix)  
P. O. Box 8045  
Walnut Creek, CA 94596-1220

C. W. Driver, LLC  
Chavez Elementary, Jefferson Elementary, Perkins Elementary,  
Kimbrough Elementary, Roosevelt Middle, Rowan Elementary,  
San Diego Unified School District, and their respective officers, officials, employees, and volunteers  
11879 Sebastian Way, Suite 101  
Rancho Cucamonga CA 91730

C.W. Driver, LLC, Sand Diego Unified School District, and their respective officers, officials, employees and volunteers.

CH2M HILL ENGINEERS, INC. and  
Clark County, Nevada, Department of Public Works  
PO Agreement 148001981, CCPW – Owens Det. Basin  
c/o CertFocus  
P.O. Box 140528  
Kansas City MO 64114

Jacobs Engineering Group Inc. & Client (City of Mesa)  
c/o CertFocus  
PO Box 140528, Kansas City MO 64114

County of Orange, its elected and appointed officials, officers, employees, agents and volunteers.

County of Orange  
1143 East Fruit Street  
Santa Ana CA 92701-4047

City of Long Beach Board of Harbor Commissioners  
P.O. Box 570  
Long Beach CA 90801

0071-JACOBS ENGINEERING GROUP INC. and City of Henderson

Jacobs Engineering Group & Client (City of Las Vegas, Nevada)  
0071-JACOBS ENGINEERING GROUP INC.  
c/o CertFocus  
PO Box 140528  
Kansas City, MO 64114

It is hereby understood and agreed that such insurance as is afforded by this policy for the benefit of the Additional Insured shown in the Schedule above shall be primary insurance, but only as respects any claim or suit arising out of your work. Any other insurance maintained by the Additional Insured, shall be excess and non-contributory as respects any such claim or suit.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Name Insured: <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>	Endorsement Number: <b>6</b>
Policy Number: <b>MKLV7PL0004694</b>	This Endorsement, effective at 12:01 a.m. : <b>05/01/2021</b>
Issued By (Name of Insurance Company): <b>EVANSTON INSURANCE COMPANY</b>	

## TRANSPORTATION OF MATERIALS ENDORSEMENT

(Automobile Only)

INSURING AGREEMENT B. Architects, Engineers and Contractor's Pollution Liability

In consideration of the additional premium of \$1,000 charged, pursuant to EXCLUSIONS (Section VI.), M., Coverage shall be provided by this endorsement under COVERAGE B: ARCHITECTS, ENGINEERS AND CONTRACTOR'S POLLUTION LIABILITY of the policy for loss resulting from the **transportation of materials** by an Insured and which is otherwise covered under the terms and conditions of the policy. This coverage shall not be utilized to evidence financial responsibility under any federal, state or local law. The policy is amended as follows but only with respect to coverage provided by this endorsement.

I. EXCLUSIONS (Section VI) is amended to include the following exclusions:

**R. Material or an Automobile**

Any **Claim** for loss to **materials** or an automobile.

**S. Wrongful Delivery**

Any **Claim** for loss caused by **wrongful delivery**.

**T. Entities Other Than an Insured**

Any **Claim** for loss caused by movement or **transportation of material** by someone or some entity other than an **Insured**, unless operating under contract with the **Insured**.

II. DEFINITIONS (Section VIII) is amended to include the following definitions:

T. "**Material(s)**" means good, products or waste including, but not limited to, oil, petroleum, pesticide products and materials to be recycled, reconditioned or reclaimed **transported** by an **Insured** that is properly licensed to **transport** such goods, products or waste.

U. "**Transportation**" or "**transported**" or "**transport**" commences with the loading of the **materials** in the physical possession of the **Insured** onto an automobile and ends with the unloading of the **materials**

V. **"Wrongful delivery"** means the delivery of any **materials** into the wrong receptacle or to the wrong address, or the delivery of one type of **material** in error for another in the physical possession of the **Insured** from the automobile is complete.

It is further understood and agreed that a retroactive date of 1/01/2015 shall apply to this endorsement.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b>  <b>7</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

## **30 DAY NOTICE OF CANCELLATION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**PROFESSIONAL LIABILITY INSURANCE**

**EARLIER NOTICE OF CANCELLATION PROVIDED BY US**

**Number of Days' Notice: 30**

For any statutorily permitted reason **other than nonpayment of premium**, the number of days required for notice of cancellation is increased to the number of days shown in the Schedule above.

If this policy is cancelled by us we will send the Named Insured and any party listed in the following schedule notice of cancellation based on the number of days' notice shown above.

### **SCHEDULE**

**Name of Person or Organization:** Riverside County Flood Control and Water Conservation District

**Mailing Address:** Attn: Design and Construction Division  
1995 Market Street  
Riverside, CA 92501

**Name of Person or Organization:** Ghirardelli Associates, Inc.

**Mailing Address:** 2055 Gateway Place, Suite 470  
San Jose, CA 95110

**Name of Person or Organization:** Otay Water District

**Mailing Address:** c/o: my COI  
Broad Ripple Ave., Suite #313  
Indianapolis, IN 46220-0000

**Name of Person or Organization:** Bradburn Northern Associates, LLC  
Together with its affiliates, successors and assigns.

**Mailing Address:** 1400 16th Street, Suite 320  
Denver, CO 80202-0000

**Name of Person or Organization:** CalAtlantic Group, Inc.

**Mailing Address:** Attn: Insurance Office  
P.O. Box 91149  
Austin, TX 78709-1149

**Name of Person or Organization:** Ronald Gerhard  
Vice-Chancellor, Finance and Administration  
District College of San Francisco  
San Francisco Community College District, its Officers, Agents, and  
Employees

**Mailing Address:** 33 Gough Street  
San Francisco, CA 94103

**Name of Person or Organization:** City and County of San Francisco  
San Francisco Public Works  
Contract Administration Division

**Mailing Address:** 1155 Market Street, Fourth Floor  
San Francisco, CA 94103

**Name of Person or Organization:** Lockwood, Andrews & Newnam, Inc.

**Mailing Address:** 2925 Briarpark Drive  
Houston, TX 77042-3720

**Name of Person or Organization:** Brown and Caldwell

**Mailing Address:** Attn: Legal Dept.  
PO Box 8045  
Walnut Creek, CA 94596-1220

**Name of Person or Organization:** Ghirardelli Associates and the METRO  
And their respective directors, officers, and employees,  
Los Angeles County Metropolitan Transportation Authority,  
Its subsidiaries, officials and employees.

**Mailing Address:** 2055 Gateway Place, Suite 410  
San Jose, CA 95110

**Name of Person or Organization:** Brown and Caldwell  
Subcontractor Vendor No: 58728  
Attn: Legal Department

**Mailing Address:** P.O. Box 8045  
Walnut Creek, CA 94596-1220

**Name of Person or Organization:** Anslow Bryant Construction, LTD.

**Mailing Address:** 945 Bunker Hill Road, Suite 900  
Houston TX 77024

**Name of Person or Organization:** Sweetwater Authority

**Mailing Address:** 505 Garrett Ave  
Chula Vista, CA 91910

**Name of Person or Organization:** Primus Design Services, LLC

**Mailing Address:** 294 Highway 92  
Woodstock, GA 30189

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>	<b>Endorsement Number:</b>  <b>8</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>	

**ADDITIONAL INSURED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COVERAGE B: CONTRACTORS POLLUTION LIABILITY INSURANCE**

**SCHEDULE**

Name: C.W. Driver, LLC, Sand Diego Unified School District, and their respective officers, officials, employees and volunteers - Retroactive Date: 4/1/2019

Name: City of Phoenix and its subsidiaries and affiliates - Retroactive Date: 10/10/2019

Name: CH2M HILL ENGINEERS, INC. & CLIENT (City of Goodyear, Arizona)

Name: CH2M HILL ENGINEERS, INC. & CLIENT (Clark County, Nevada (Dept. of Public Works)

Name: County of Orange, its elected and appointed officials, officers, employees, agents and volunteers.

Name: Riverpoint Investments LLC and Recreational Equipment, Inc. d/b/a REI #018 – Retroactive Date: 4/29/2020

The person(s) or organization(s) listed in the above Schedule is included as an Additional Insured under this policy. Such Additional Insured is covered under Insuring Agreement B of this Policy solely with respect to "Damages" and "Claims Expenses" arising from "Professional Services" rendered or "Contracting Services" performed by or on behalf of the "Insured Organization", and are not covered for any "Damages" and "Claims Expenses" arising from the Additional Insured sole acts, errors or omissions.

Where there is no coverage herein for the "Named Insured", no coverage or defense shall be afforded to the Additional Insured.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>	<b>Endorsement Number:</b> <b>9</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>	

## **WAIVER OF SUBROGATION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COVERAGE B: CONTRACTORS POLLUTION LIABILITY INSURANCE**  
**COVERAGE A: PROFESSIONAL LIABILITY**

It is hereby understood and agreed that, only as respects C.W. Driver, LLC, San Diego Unified School District, and their respective officers, officials, employees and volunteers, SECTION XIX-SUBROGATION is deleted and replaced with the following:

In the event of any payment under this policy, the Company shall be subrogated to the right of recovery of all Insureds to the extent of such payment. The Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after the Claim to prejudice such rights. The Company shall waive any right of subrogation to the extent the Named Insured waived its right to subrogate against such person or organization by a formal written contract which was fully executed prior to any Claim arising from such contract being made.

Any amount recovered from subrogation, whether by the Company or by the Insured, shall first be used for the repayment of expenses incurred toward subrogation; second, for any Damages and Claim Expenses payment by the Insured which is in excess of the amount of the Limit of Liability under this policy and which is excess of any amount paid by any insurer under any other policy; third, for any damages and claims expenses payment by any excess carrier on behalf of the Insured; and, last, for repayment of the Insured's Deductible.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b> <b>10</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

## **FORGIVENESS OF CHARGES ENDORSEMENT**

It is hereby understood and agreed that if outstanding charges for **Professional Services, Contracting Services** or **Technology Based Services** are forgiven by the **Insured** in connection with the settlement of a suit or **Claim** or in connection with the satisfaction of a judgment, then, and only at the reasonable discretion of the Insurers with their prior written consent, such charges for goods and services forgiven by the **Insured** shall be allowed to reduce or exhaust the Retention, and if applicable, shall be allowed as an insurable loss hereunder.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> Ninyo & Moore Geotechnical & Environmental Sciences Consultants		<b>Endorsement Number:</b> 11
<b>Policy Number:</b> MKLV7PL0004694	<b>This Endorsement, effective at 12:01 a.m. :</b> 05/01/2021	
<b>Issued By (Name of Insurance Company):</b> EVANSTON INSURANCE COMPANY		

## **ADDITIONAL NAMED INSURED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **PROFESSIONAL LIABILITY COVERAGE**

The persons or entities listed in the Schedule below are included as Named Insured(s) under this policy:

#### **SCHEDULE**

#### **Retroactive Date:**

If no date is shown below, the Retroactive date shown in the Declarations Page of this Policy shall apply:

09/02/1986

#### **Name:**

Ninyo & Moore, Geotechnical Consultants

This endorsement in no way increases the Limits of Liability shown in the Declarations Page of this policy.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b>  <b>12</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

## **ANNUAL AGGREGATE DEDUCTIBLE**

This endorsement modifies insurance provided under the following:

### **PROFESSIONAL LIABILITY COVERAGE**

The following is added to this policy and amends the Deductible provisions of the policy:

The Annual Aggregate Deductible amount is the maximum deductible liability amount payable by all insureds under all Coverage Parts forming this Policy and shall not exceed \$ 300,000 . This amount includes loss payments and investigations, adjustment and legal expenses, interest and fees, including court costs and premiums on bonds, regardless of whether loss payment is made.

The Annual Aggregate Deductible applies separately to each consecutive annual policy period and includes 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 Annual Aggregate Deductible amount.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b> <b>13</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

## **AMENDED DEFINITION OF DAMAGES ENDORSEMENT**

It is hereby understood and agreed that Section VIII – Definitions, Item I. “**Damages**”, is amended to include the following:

**Damages**, shall also include the **Insured’s** legal obligation to reimburse any person or entity for their reasonable defense costs, but only to the extent caused by an actual negligent act, error or omission in the performance of **Professional Services, Contracting Services** or **Technology Based Services** to which this Policy applies, and only if such defense costs are awarded by a court or arbitrator of competent jurisdiction.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b>  <b>14</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

## **SETTLEMENT OF PROVISIONS ENDORSEMENT**

In consideration of the premium charged, it is hereby understood and agreed that upon the reporting of a claim, the insured shall be afforded the opportunity to settle the claim within the deductible subject to the following conditions:

1. Markel will be noticed on all **Claims** and **Circumstances** pursuant to the Policy Terms and Conditions.
2. **Insured** is required to notify and obtain Markel's prior written consent, which shall not be unreasonably withheld, for any claim matters to be handled or settled by **Insured**.
3. **Insured** will have settlement authority for damages up to 50% of the **Deductible** amount stated in the declarations, or as otherwise provided with the prior written approval of Markel.
4. As a condition to this settlement authority provision, any settlement reached must be a full and final settlement and release of the entire **Claim** and is subject to approval by Markel.
5. **Insured** shall not admit or assume liability for any **Wrongful Act** or **Pollution Incident**, or settle any **Claim**, or incur any damages, expenses, including Claims Expenses, in excess of 50% of the **Deductible** stated in the declarations without prior written consent of the Company.
6. Unless otherwise approved by Markel, Insured will be afforded a 60 day settlement window from the date of the original notice of **Claim** or **Circumstance**. After the settlement window has expired, Markel reserves the right to process with the defense, settlement, and investigation of claims pursuant to Section III DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS (A – E) of the Policy.
7. Nothing contained herein shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements or declarations of the Policy, other than as herein stated.
8. For purposes of this endorsement only **'Insured'** shall mean a Director or Officer of the **Insured Organization**, or as otherwise approved by Markel.
9. This endorsement shall be null and void upon exhaustion of the aggregate deductible.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>	<b>Endorsement Number:</b> <b>15</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>	

**SINGLE REINSTATED LIMIT OF LIABILITY ENDORSEMENT**

It is agreed that the following is added to Section IX. Limit of Liability:

Subject to the following:

If the Limit of Liability set forth in Item 3 of the Declarations is exhausted by the payment of claims or setting of reserves, this Policy's Limit of Liability shall be reinstated once in the same amount set forth in Item 3 of the Declarations (Reinstated Limit of Liability). Such Reinstated Limit of Liability shall not apply to any **Claim** for which there has been any payment of **Loss** under the Limit of Liability of this Policy or any other **Claim** based upon, arising out of or related in any way to such **Claim**, and such Reinstated Limit of Liability shall be excess of amounts payable under all other valid and collectible insurance policies, unless such other insurance is written only as specific excess over the Limit of Liability of this policy.

The Underwriters will provide written notice to the Named Insured within 15 days of the exhaustion of the Policy's Limit of Liability. The insured will have 30 days from the date of such written notice to request in writing and remit payment of \$567,187.50 for a one-time reinstatement of the Policy's Limit of Liability set forth in Item 3 of the Declarations.

Upon exhaustion of the Reinstated Limit of Liability, this Policy shall be deemed fully exhausted.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>	<b>Endorsement Number:</b>  <b>16</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>	

**SPECIFIC PROJECT EXCESS ENDORSEMENT**

THIS ENDORSEMENT IS ONLY APPLICABLE TO THE FOLLOWING PROJECT:

SR210 Widening San Bernardino.

The Policy to which this endorsement is attached shall be considered the underlying policy. This endorsement follows the underlying policy as applicable, and is subject to all terms and conditions of the underlying policy except as set forth herein.

Limit of Liability: This endorsement shall provide excess insurance over the amounts set forth in the Declarations of the underlying policy, only for the project set forth above, in the following amounts:

\$0 each claim

\$4,000,000 in the aggregate

subject to the deductible set forth in the Declarations.

In the event of reduction or exhaustion of the aggregate limits contained in the underlying policy solely by payment of losses or claims expenses in respect to claims made during the period of such underlying policy, whether such claims arise out of the Project set forth above, or any other project for which said underlying policy applies, it is hereby understood and agreed that the excess insurance afforded by this endorsement shall apply in excess of the reduced underlying insurance, subject to the deductible set forth in the Declarations, notwithstanding anything to the contrary contained in this endorsement or in the terms and conditions of the underlying policy.

It is understood and agreed that the deductible set forth in the Declarations shall apply to the excess insurance afforded by this endorsement if the underlying limits are exhausted.

It is further understood and agreed notwithstanding the foregoing or anything to the contrary contained in this endorsement, nothing contained herein shall operate to increase the limits of liability of the Company as set forth in the underlying policy or this endorsement.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b> <b>17</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

**INSTALLMENT AGREEMENT ENDORSEMENT**

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>	<b>Endorsement Number:</b> <b>18</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>	

## **PRIMARY AND NON-CONTRIBUTORY WORDING ENDORSEMENT**

**This endorsement modifies insurance provided under the following:**

**COVERAGE B: CONTRACTORS POLLUTION LIABILITY INSURANCE**

### **SCHEDULE**

Additional Insured Applicable to This Endorsement:

City of San Diego  
9601 Viewridge Court, Suite 310  
San Diego, CA 92123

It is hereby understood and agreed that such insurance as is afforded by this policy for the benefit of the Additional Insured shown in the Schedule above shall be primary insurance, but only as respects any claim or suit arising out of your work. Any other insurance maintained by the Additional Insured, shall be excess and non-contributory as respects any such claim or suit.

It is further understood and agreed that, except with respects to the Limits of Insurance and any rights or duties specifically assigned in the Coverage Part to the first Name Insured, this insurance applies:

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

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b> <b>19</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

## **NOTICE OF CANCELLATION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **PROFESSIONAL LIABILITY INSURANCE**

#### **EARLIER NOTICE OF CANCELLATION PROVIDED BY US**

**Number of Days' Notice: 30**

For any statutorily permitted reason **other than nonpayment of premium**, the number of days required for notice of cancellation is increased to the number of days shown in the Schedule above.

**Number of Days' Notice: 10**

For nonpayment of premium, the number of days required for notice of cancellation is increased to the number of days shown in the schedule above.

If this policy is cancelled by us we will send the Named Insured and any party listed in the following schedule notice of cancellation based on the number of days' notice shown above.

#### **SCHEDULE**

**Name of Person or Organization:** City of Long Beach Board of Harbor Commissioners

**Mailing Address:** P.O. Box 570  
Long Beach CA 90801

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b>  <b>20</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

**AMENDED EXCLUSION ENDORSEMENT**

It is agreed, section V. EXCLUSIONS J. is deleted in its entirety and replaced with the following:

This Policy does not apply to and the Company shall not be liable for **Damages** and/or **Claims Expenses** resulting from any **Claim** made against an **Insured**:

- J. for, based upon, or arising from the **Insured**'s ownership, maintenance, operation, use, loading or unloading, by or on behalf of an **Insured**, or at the direction of the **Insured** of watercraft, automobiles, motor vehicles, aircraft or mobile vehicles of any kind, including drones. This Exclusion shall not apply, however, to the data collected from the use of such vehicle(s) by an **Insured**, provided the data is obtained as part of the **Insured**'s **Professional Services**.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>	<b>Endorsement Number:</b>  <b>21</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>	

## **TERRORISM EXCLUSION**

This endorsement modifies insurance provided under the following:

### **PROFESSIONAL LIABILITY COVERAGE**

The coverage under this policy does not apply to any loss, injury, claim or damage arising directly or indirectly out of or relating to:

1. Any act of "terrorism"; or
2. Any action authorized by a government authority or agency for the purpose of preventing or minimizing the consequences of any act or threat of "terrorism".

"Terrorism" means an activity that involves any violent act, including the threat of any activity or preparation for an activity that:

1. Causes either:
  - a. Damage to property;
  - b. Injury to person(s); or
  - c. Loss of income or increased expense; and
2. Appears to be intended to:
  - a. Intimidate or coerce a civilian population;
  - b. Disrupt any segment of an economy;
  - c. Influence the policy of a government by intimidation or coercion;
  - d. Affect the conduct of a government by destruction, assassination, kidnapping or hostage-taking;  
or
  - e. Advance a political, religious or ideological cause.

"Terrorism" shall also include any incident determined to be such by any official, department or agency that has been specifically authorized by federal statute to make such a determination.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b>		<b>Endorsement Number:</b>  <b>22</b>
<b>Policy Number:</b> <b>MKLV7PL0004694</b>	<b>This Endorsement, effective at 12:01 a.m. :</b> <b>05/01/2021</b>	
<b>Issued By (Name of Insurance Company):</b> <b>EVANSTON INSURANCE COMPANY</b>		

## **MINIMUM POLICY PREMIUM**

This endorsement modifies and amends insurance provided under the following:

### **PROFESSIONAL LIABILITY COVERAGE**

This endorsement sets forth the minimum earned premium for the policy. The minimum earned premium for this policy is calculated in accordance with the following:

1. The minimum earned premium for the policy period is the total policy premium as shown on the policy declarations page plus any premium adjustment by endorsements and any additional premium developed by audit.
2. Audits that indicate a return premium will not reduce the minimum as stated in paragraph (1).
3. If the insured cancels this policy, the return premium will be 90% of the unearned premium subject to a minimum of 25% of the minimum earned premium described in paragraph (1).
4. If the company cancels the policy for any reason, other than for non-payment of premium, then the insured will be returned the full amount of the unearned premium without any minimum premium restrictions.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

<b>Name Insured:</b> Ninyo & Moore Geotechnical & Environmental Sciences Consultants		<b>Endorsement Number:</b>  23
<b>Policy Number:</b> MKLV7PL0004694	<b>This Endorsement, effective at 12:01 a.m. :</b> 05/01/2021	
<b>Issued By (Name of Insurance Company):</b> EVANSTON INSURANCE COMPANY		

## NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 FARM COVERAGE PART  
 LIQUOR LIABILITY COVERAGE PART  
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
 POLLUTION LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
 PROFESSIONAL LIABILITY COVERAGE PART  
 RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
 UNDERGROUND STORAGE TANK POLICY

**1. The insurance does not apply:**

**A. Under any Liability Coverage, to "bodily injury" or "property damage":**

- (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the

United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

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

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

- (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
- (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or

(3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

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

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

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



**EVANSTON INSURANCE COMPANY**

10275 West Higgins Road  
Suite 750, Rosemont , IL 60018

**INSURANCE POLICY**

**Coverage afforded by this policy is provided by the Company (Insurer) and named in the Declarations.**

In **Witness Whereof**, the company (insurer) has caused this policy to be executed and attested and countersigned by a duly authorized representative of the company (insurer) identified in the Declarations.

*Kathleen Anne Sturgeon*

**Secretary**

*Barry W. Saker*

**President**



# EVANSTON INSURANCE COMPANY

## PRIVACY NOTICE

U. S. Consumer Privacy Notice

Rev. 1/1/2020

<b>FACTS</b>	<b>WHAT DOES MARKEL GROUP OF COMPANIES REFERENCED BELOW (INDIVIDUALLY OR COLLECTIVELY REFERRED TO AS "WE", "US", OR "OUR") DO WITH YOUR PERSONAL INFORMATION?</b>
<b>Why?</b>	In the course of Our business relationship with you, We collect information about you that is necessary to provide you with Our products and services. We treat this information as confidential and recognize the importance of protecting it. Federal and state law gives you the right to limit some but not all sharing of your personal information. Federal and state law also requires Us to tell you how We collect, share, and protect your personal information. Please read this notice carefully to understand what We do.
<b>What?</b>	<p>The types of personal information We collect and share depend on the product or service you have with Us. This information can include:</p> <ul style="list-style-type: none"> <li>● your name, mailing and email address(es), telephone number, date of birth, gender, marital or family status, identification numbers issued by government bodies or agencies (i.e.: Social Security number or FEIN, driver's license or other license number), employment, education, occupation, or assets and income from applications and other forms from you, your employer and others;</li> <li>● your policy coverage, claims, premiums, and payment history from your dealings with Us, Our Affiliates, or others;</li> <li>● your financial history from other insurance companies, financial organizations, or consumer reporting agencies, including but not limited to payment card numbers, bank account or other financial account numbers and account details, credit history and credit scores, assets and income and other financial information, or your medical history and records.</li> </ul> <p>Personal information does not include:</p> <ul style="list-style-type: none"> <li>● publicly-available information from government records;</li> <li>● de-identified or aggregated consumer information.</li> </ul> <p>When you are no longer Our customer, We continue to share your information as described in this Notice as required by law.</p>
<b>How?</b>	All insurance companies need to share customers' personal information to run their everyday business. In the section below, We list the reasons financial companies can share their customers' personal information; the reasons We choose to share; and whether you can limit this sharing. We restrict access to your personal information to those individuals, such as Our employees and agents, who provide you with insurance products and services. We may disclose your personal information to Our Affiliates and Nonaffiliates (1) to process your transaction with Us, for instance, to determine eligibility for coverage, to process claims, or to prevent fraud, or (2) with your written authorization, or (3) otherwise as permitted by law. We do not disclose any of your personal information, as Our customer or former customer, except as described in this Notice.

Reasons We can share your personal information	Do We share?	Can you limit this sharing?
<b>For Our everyday business purposes and as required by law –</b> such as to process your transactions, maintain your account(s), respond to court orders and legal/regulatory investigations, to prevent fraud, or report to credit bureaus	Yes	No
<b>For Our marketing purposes –</b> to offer Our products and services to you	Yes	No
<b>For Joint Marketing with other financial companies</b>	Yes	No
<b>For Our Affiliates' everyday business purposes –</b> information about your transactions and experiences	Yes	No
<b>For Our Affiliates' everyday business purposes –</b> information about your creditworthiness	No	We don't share
<b>For Our Affiliates to market you</b>	No	We don't share
<b>For Nonaffiliates to market you</b>	No	We don't share
<b>Questions?</b> Call (888) 560-4671 or email <a href="mailto:privacy@markel.com">privacy@markel.com</a>		

Who We are	
<b>Who is providing this Notice?</b>	A list of Our companies is located at the end of this Notice.

What We do	
<b>How do We protect your personal information?</b>	We maintain reasonable physical, electronic, and procedural safeguards to protect your personal information and to comply with applicable regulatory standards. For more information, visit <a href="http://www.markel.com/privacy-policy">www.markel.com/privacy-policy</a> .
<b>How do We collect your personal information?</b>	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> <li>• complete an application or other form for insurance</li> <li>• perform transactions with Us, Our Affiliates, or others</li> <li>• file an insurance claim or provide account information</li> <li>• use your credit or debit card</li> </ul> <p>We also collect your personal information from others, such as consumer reporting agencies that provide Us with information such as credit information, driving records, and claim histories.</p>
<b>Why can't you limit all sharing of your personal information?</b>	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> <li>• sharing for Affiliates' everyday business purposes – information about your creditworthiness</li> <li>• Affiliates from using your information to market to you</li> <li>• sharing for Nonaffiliates to market to you</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing. See the Other Important Information section of this Notice for more on your rights under state law.</p>

Definitions	
<b>Affiliates</b>	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• Our Affiliates include member companies of Markel Group.</li> </ul>
<b>Nonaffiliates</b>	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• Nonaffiliates that We can share with can include financial services companies such as insurance agencies or brokers, claims adjusters, reinsurers, and auditors, state insurance officials, law enforcement, and others as permitted by law.</li> </ul>
<b>Joint Marketing</b>	<p>A formal agreement between Nonaffiliated companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>• Our Joint Marketing providers can include entities providing a service or product that could allow Us to provide a broader selection of insurance products to you.</li> </ul>

Other Important Information
<p><b>For Residents of AZ, CT, GA, IL, ME, MA, MN, MT, NV, NJ, NC, OH, OR, and VA:</b> Under state law, under certain circumstances you have the right to access and request correction, amendment or deletion of personal information that We have collected from or about you. To do so, contact your agent, visit <a href="http://www.markel.com/privacy-policy">www.markel.com/privacy-policy</a>, call (888) 560-4671, or write to Markel Corporation Privacy Office, 4521 Highwoods Parkway, Glen Allen, VA 23060.</p> <p>We may charge a reasonable fee to cover the costs of providing this information. We will let you know what actions We take. If you do not agree with Our actions, you may send Us a statement.</p>
<p><b>For Residents of CA:</b> You have the right to review, make corrections, or delete your recorded personal information contained in Our files. To do so, contact your agent, visit <a href="http://www.markel.com/privacy-policy">www.markel.com/privacy-policy</a>, call (888) 560-4671, or write to Markel Corporation Privacy Office, 4521 Highwoods Parkway, Glen Allen, VA 23060. We do not and will not sell your personal information.</p> <p>For the categories of personal information We have collected from consumers within the last 12 months, please visit: <a href="http://www.markel.com/privacy-policy">www.markel.com/privacy-policy</a>.</p>
<p><b>For Residents of MA and ME:</b> You may ask, in writing, for specific reason, for an adverse underwriting decision.</p>
<p><b>Markel Group of Companies Providing This Notice:</b> City National Insurance Company, Essentia Insurance Company, Evanston Insurance Company, FirstComp Insurance Company, Independent Specialty Insurance Company, National Specialty Insurance Company, Markel Bermuda Limited, Markel American Insurance Company, Markel Global Reinsurance Company, Markel Insurance Company, Markel International Insurance Company Limited, Markel Service, Incorporated, Markel West, Inc. (d/b/a in CA as Markel West Insurance Services), Pinnacle National Insurance Company, State National Insurance Company, Inc., Superior Specialty Insurance Company, SureTec Agency Services, Inc. (d/b/a in CA as SureTec Agency Insurance Services), SureTec Indemnity Company, SureTec Insurance Company, United Specialty Insurance Company, Inc.</p>



## **EVANSTON INSURANCE COMPANY**

### **IMPORTANT NOTICE**

#### **CALIFORNIA SURPLUS LINES NOTICE (D-2)**

**1. The insurance policy that you have purchased is being issued by an insurer that is not licensed by the State of California. These companies are called “nonadmitted” or “surplus lines” insurers.**

**2. The insurer is not subject to the financial solvency regulation and enforcement that apply to California licensed insurers.**

**3. The insurer does not participate in any of the insurance guarantee funds created by California law. Therefore, these funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised.**

**4. The insurer should be licensed either as a foreign insurer in another state in the United States or as a non-United States (alien) insurer. You should ask questions of your insurance agent, broker, or “surplus line” broker or contact the California Department of Insurance at the toll-free number 1-800-927-4357 or internet website [www.insurance.ca.gov](http://www.insurance.ca.gov). Ask whether or not the insurer is licensed as a foreign or non-United States (alien) insurer and for additional information about the insurer. You may also visit the NAIC’s internet website at [www.naic.org](http://www.naic.org). The NAIC – the National Association of Insurance Commissioners – is the regulatory support organization created and governed by the chief insurance regulators in the United States.**

**5. Foreign insurers should be licensed by a state in the United States and you may contact that state’s department of insurance to obtain**

more information about that insurer. You can find a link to each state from this NAIC internet website: [https://naic.org/state\\_web\\_map.htm](https://naic.org/state_web_map.htm).

6. For non-United States (alien) insurers, the insurer should be licensed by a country outside of the United States and should be on the NAIC's International Insurers Department (IID) listing of approved nonadmitted non-United States insurers. Ask your agent, broker, or "surplus line" broker to obtain more information about that insurer.

7. California maintains a "List of Approved Surplus Line Insurers (LASLI)." Ask your agent or broker if the insurer is on that list, or view that list at the internet website of the California Department of Insurance:

[www.insurance.ca.gov/01-consumers/120-company/07-lasli/lasli.cfm](http://www.insurance.ca.gov/01-consumers/120-company/07-lasli/lasli.cfm).

8. If you, as the applicant, required that the insurance policy you have purchased be effective immediately, either because existing coverage was going to lapse within two business days or because you were required to have coverage within two business days, and you did not receive this disclosure form and a request for your signature until after coverage became effective, you have the right to cancel this policy within five days of receiving this disclosure. If you cancel coverage, the premium will be prorated and any broker's fee charged for this insurance will be returned to you.



## EVANSTON INSURANCE COMPANY

### CALIFORNIA SHORT RATE CANCELLATION PENALTY DISCLOSURE

Please be advised that there may be a short rate cancellation penalty of up to 25% applied to your policy premium if you request cancellation of your policy prior to the expiration date.

Please refer to your policy for specific terms and conditions.



## EVANSTON INSURANCE COMPANY

### U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <https://www.treasury.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

# EVANSTON INSURANCE COMPANY

## ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY, ARCHITECTS, ENGINEERS AND CONTRACTORS POLLUTION LIABILITY, TECHNOLOGY BASED SERVICES AND COMPUTER NETWORK SECURITY

### TABLE OF CONTENTS

THIS TABLE OF CONTENTS IS FOR REFERENCE PURPOSES ONLY. IT IS NOT PART OF THE TERMS, CONDITIONS OR EXCLUSIONS OF THIS POLICY, AND IS NOT INTENDED TO AFFECT THE MEANING OF SUCH TERMS, CONDITIONS OR EXCLUSIONS.

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**ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY,  
ARCHITECTS, ENGINEERS AND CONTRACTORS POLLUTION LIABILITY,  
TECHNOLOGY BASED SERVICES AND COMPUTER NETWORK SECURITY**

**THIS COVERAGE IS PROVIDED ON A CLAIMS MADE BASIS. EXCEPT AS OTHERWISE PROVIDED, THIS COVERAGE APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE UNDERWRITERS PURSUANT TO THE TERMS OF THIS INSURANCE POLICY. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES SHALL BE REDUCED AND MAY BE COMPLETELY EXHAUSTED BY PAYMENT OF CLAIMS EXPENSES.**

**PROVISIONS**

**Read the entire Policy carefully.**

In consideration of the payment of the premium and reliance upon the statements in the **Application** which is deemed a part of this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and subject to the Limit of Liability, Deductible, exclusions, conditions and other terms of this Insurance, the Underwriters agree with the Named Insured set forth at Item 1 of the Declarations made a part hereof, as follows:

**SECTION I - INSURING AGREEMENTS**

**A. Architects and Engineers Professional Liability**

To pay on behalf of the **Insured** for **Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become obligated to pay because of any **Claim** first made against the **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to Underwriters either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period** (if applicable) arising out of any act, error or omission in rendering or failure to render **Professional Services** by the **Insured** or by any person, including an independent contractor or consultant, for whose act, error or omission the Insured Organization is legally responsible provided that such wrongful act was committed or alleged to have been committed on or after the Retroactive Date(s) stated in Item 6. of the Declarations.

**B. Architects, Engineers and Contractors Pollution Liability**

To pay on behalf of the **Insured** for **Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become obligated to pay because of any **Claim** first made against the **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to Underwriters either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period** (if applicable) for a **Pollution Condition** arising out of the rendering or failure to render **Professional Services** or the performance of or failure to perform **Contracting Services** by the **Insured** or by any person, including an independent contractor or consultant, for whose **Pollution Condition** the **Insured Organization** is legally responsible provided that such wrongful act was committed or alleged to have been committed on or after the Retroactive Date(s) stated in Item 6. of the Declarations.

C. **Technology Based Services**

To pay on behalf of the **Insured** for **Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become obligated to pay because of any **Claim** first made against the **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to Underwriters either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period** (if applicable) arising out of any act, error or omission, or any breach of contract, in rendering or failure to render **Technology Based Services** by the **Insured** or by any person, including an independent contractor or consultant, for whose act, error or omission or unintentional breach of contract the **Insured Organization** is legally responsible provided that such wrongful act was committed or alleged to have been committed on or after the Retroactive Date(s) stated in Item 6. of the Declarations.

D. **Computer Network Security**

To pay on behalf of the **Insured** for **Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become obligated to pay because of any **Claim** first made against any **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to Underwriters either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period** (if applicable) arising out of any act, error or omission in the course of providing or managing **Computer Systems** security by the **Insured** or by any person, including an independent contractor or consultant, for whose act, error or omission the **Insured Organization** is legally responsible, provided that such wrongful act was committed or alleged to have been committed on or after the Retroactive Date(s) stated in Item 6. of the Declarations, that results in:

1. the inability of a third party, who is authorized to do so, to gain access to **Computer Systems** or **Technology Based Services**;
2. the failure to prevent **Unauthorized Access** to **Computer Systems** that results in:
  - (a) the destruction, deletion or corruption of electronic data on **Computer Systems**;
  - (b) **Theft of Data** from Computer Systems; or
  - (c) denial of service attacks against internet sites or computers; or
3. the failure to prevent transmission of **Malicious Code** from **Computer Systems** to third party computers and systems.

**SECTION II - SUPPLEMENTARY PAYMENTS**

All payments made under this Section are not subject to the Deductible and are payable by the Underwriters in addition to the Limits of Liability.

A. **Pre-Claims Assistance**

If the **Insured** reports a **Circumstance** during the **Policy Period**, in accordance with Section XII.B, until such time a **Claim** is made, any costs or expenses the Underwriters incur as a result of investigating or monitoring such **Circumstance**, will be paid for by the Underwriters. The decision to incur any costs or expenses to monitor or investigate such **Circumstance** shall be at the sole discretion of the Underwriters.

B. **Defendants Reimbursement**

Upon the Underwriter's request, the **Insured** shall attend mediations, settlement conferences, arbitration proceedings, hearings, depositions and trials relative to the defense of a **Claim**. The

Underwriters shall reimburse the **Insured**, upon written request, for actual loss of earnings and reasonable expenses due to such attendance up to \$400, per Insured attendee, for each day, subject to a maximum of \$5,000 for any particular **Claim** and \$15,000 in the aggregate for in any one **Policy Period**.

C. ADA, FHA, OSHA Regulatory / Administrative Actions Reimbursement

Underwriters will reimburse the **Insured**, upon written request, for legal fees and expenses up to \$25,000 in the aggregate for the **Policy Period**, incurred by the **Insured** with the prior written consent of the Underwriters, in responding to a regulatory or administrative action brought directly against the **Insured** during the **Policy Period** by a government agency under the Americans with Disabilities Act of 1990 (ADA), the Fair Housing Act (FHA) or the Occupational Safety and Health Act (OSHA), provided that the regulatory or administrative action:

1. arises out of the rendering of or failure to render **Professional Services**; and
2. is reported to the Underwriters during the **Policy Period**.

After the Underwriters have paid \$25,000 under this Section II.C., the Underwriters shall not be obligated to pay any further legal fees and expenses pursuant to this section.

D. Disciplinary Proceedings Reimbursement

Underwriters will reimburse the **Insured**, upon written request, for legal fees and expenses up to \$7,500 in the aggregate for the **Policy Period**, incurred by the **Insured** with the prior written consent of the Underwriters, in responding to a disciplinary proceeding brought directly against the **Insured** during the **Policy Period**, provided that the disciplinary proceeding:

1. arises out of the rendering of or failure to render **Professional Services**; and
2. is reported to the Underwriters during the **Policy Period**.

After the Underwriters have paid \$7,500 under this Section II.D., the Underwriters shall not be obligated to pay any further legal fees and expenses pursuant to this section.

E. Subpoena/Record Request Assistance

If during the Policy Period, the Insured first receives a subpoena or a request for the Insured's records or files or notice of deposition relative to a Wrongful Act in the performance of Professional Services rendered or that should have been rendered by the Insured and provided the Insured reports the receipt of such subpoena or request or notice of deposition within thirty days of receipt and prior to a Claim being first made against the Insured arising out of such Wrongful Act the Underwriters shall pay on behalf of the Insured up to five thousand dollars (\$5,000) per Policy Period for the reasonable and necessary legal fees and legal expenses incurred for engaging legal counsel selected by the Underwriters to assist the Insured in responding to such subpoena, request or notice of deposition.

### SECTION III - DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. The Underwriters shall have the duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions of this Policy, any **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.

- B. The Underwriters shall have the duty to defend, subject to the Limit of Liability, exclusions, and other terms and conditions of this Policy, any **Claim** in the form of a civil suit against the **Insured** that seeks injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) for one or more of the acts listed in Insuring Agreement C if:
1. the **Claim** is first made during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to the Underwriters pursuant to the terms of this Policy; and
  2. the act or acts were committed on or after the Retroactive Date and before the end of the **Policy Period** in the course of the **Insured Organization's** performance of **Professional Services** or **Technology Based Services**.
- C. The Underwriters shall pay **Claims Expenses** reasonably incurred. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Each **Claim** Deductible.
- D. The Underwriters shall have the right to make any investigation they deem necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.
- E. It is further provided that the Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expenses** or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

#### SECTION IV - THE INSURED AND THE INSURED ORGANIZATION

As used throughout this Policy, whether expressed in singular or plural, "**Insured**" shall mean:

- A. the Named Insured and any **Subsidiaries** of the Named Insured (together, the "**Insured Organization**");
- B. a director or officer of the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- C. an employee, including any contract or temporary employee, of the **Insured Organization**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Insured Organization's** business;
- D. a principal if the Named Insured is a sole proprietorship or limited liability company, or a partner if the Named Insured is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- E. any person who previously qualified as an **Insured** under B, C or D above prior to the termination of the required relationship with the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- F. the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Insurance;
- G. any joint venture in which the **Insured Organization** participates, but solely for the **Insured Organization's** liability that arises out of an act, error or omission in rendering or failure to render **Professional Services** by or on behalf of the **Insured Organization** or for a **Pollution Condition** that arises out of the rendering of or failure to render **Professional Services** or the performance of or failure to perform **Contracting Services** by or on behalf of the **Insured Organization**; and

- H. solely with respect to Insuring Agreement B, the client for whom the **Insured Organization** renders or rendered **Professional Services** or performs or performed **Contracting Services**, provided that a written contract or agreement is in effect between the **Insured Organization** and the client requiring the client to be an additional Insured under the **Insured Organization's** architects, engineers and contractors' pollution liability policy. However, such clients are covered under Insuring Agreement B of this Policy solely with respect to **Damages** and **Claims Expenses** arising from **Professional Services** rendered or **Contracting Services** performed by or on behalf of the **Insured Organization** and are not covered for any **Damages** and **Claims Expenses** arising from the client's own acts, errors or omissions. Clients of the **Insured Organization** are covered under Insuring Agreement B of this Policy, subject to Section IX, only for the Limits of Liability required by the written contract or agreement.

## SECTION V - TERRITORY

This Policy applies to **Claims** made and acts, errors or omissions or **Professional Services Performed** committed or arising anywhere in the world, regardless of the jurisdiction in which the **Claim** may be brought.

## SECTION VI - EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The coverage under this Insurance does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**:

- A. **Criminal, Dishonest, Intentional, Fraudulent, Malicious, Willful or Knowing Acts** except as provided for in insuring Agreement C, arising out of or resulting from any criminal, dishonest, intentional, fraudulent, malicious, willful or knowing act, error or omission committed by any **Insured**; however, this exclusion shall not apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Insured**, or admission by the **Insured**, establishing such criminal, dishonest, intentional, fraudulent, malicious, willful or knowing conduct, or a plea of *nolo contendere* or no contest regarding such conduct.

This exclusion shall not apply to any **Claim** based upon or arising from the **Insured's** unintentional breach of a written agreement to refrain from disclosing confidential or proprietary information in rendering or failure to render **Professional Services** or in the performance of or failure to perform **Contracting Services**.

- B. **Insured versus Insured** by or on behalf of one or more **Insureds** under this Insurance against any other **Insured** or **Insureds** under this Insurance; provided that this exclusion shall not apply to a **Claim** by or on behalf of any client of the **Insured Organization** who is an **Insured** by virtue of Section IV.H.
- C. **Ownership Interest and Outside Positions**
1. arising out of or resulting from any **Insured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **Insured Organization**; or
  2. made by any entity, arising out of **Professional Services, Contracting Services, or Technology Based Services** performed for such entity, or Technology Products provided to such entity which:

- (a) is operated, managed or controlled by an **Insured**, or in which any **Insured** has an ownership interest in excess of 50%; or in which any **Insured** is an officer or director; or
  - (b) operates, controls or manages the Named Insured, or has an ownership interest of more than 15% in the Named Insured.
- D. **Discrimination, Humiliation, Harassment and Misconduct** for or arising out of or resulting from any actual or alleged discrimination, humiliation, harassment or misconduct because of age, color, race, sex, creed, national origin, marital status, sexual preference or orientation, religion, disability or pregnancy; provided, that this exclusion shall not apply to any **Claim** based upon the Americans with Disabilities Act of 1990 (ADA), as amended, or the Fair Housing Act (FHA), or any state or local versions of those acts, and arising out of the **Insured's** rendering or failure to render **Professional Services**.
- E. **Assumption of Contractual Liability of Others** arising out of or resulting from the liability of others assumed by the **Insured** under any contract or agreement either oral or written, including any hold harmless or indemnity agreements, except:
- 1. with respect to Insuring Agreement C for liability assumed under contract; or
  - 2. to the extent the **Insured** would have been liable in the absence of such contract or agreement.
- F. **Express Warranties, Representations, Guarantees and Promises** for or arising out of or resulting from:
- 1. breach of any express warranty or representation except for an agreement to perform within a reasonable standard of care or skill consistent with applicable industry standards; or
  - 2. breach of guarantee or any promises of cost savings, profits or return on investment.
- G. **Faulty Workmanship** under Insuring Agreement A arising out of the cost to repair or replace any faulty construction workmanship performed in whole or in part by any **Insured** on any construction, erection, fabrication, installation, assembly, manufacture or remediation, including any materials, parts, labor or equipment furnished in connection with such repair or replacement.
- H. **Asbestos** either in whole or in part, directly or indirectly, arising out of the Insureds' knowing specification of asbestos-containing products.
- I. **Employers Liability** for or arising out of or resulting from:
- 1. **Bodily Injury** to any employee of the **Insured Organization** arising out of and in the course of employment by the **Insured Organization**; or
  - 2. the **Insured Organization's** employment obligations, decisions, practices or policies as an employer.
- J. **Worker's Compensation** arising out of any obligation for which the **Insured** or any carrier as insurer may be liable under any worker's compensation, unemployment compensation or disability benefits law or similar law.

- K. **Property Liability** arising out of or resulting from the **Insured's** ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment or condemnation of any real or personal property, including, without limitation, automobiles, aircraft, watercraft and other kinds of conveyances.
- L. **Products Liability** arising out of or resulting from the design or manufacture of any goods or products for multiple sales or mass distribution which are sold or supplied by the **Insured** or by others under license from the **Insured**; provided that this exclusion shall not apply to any **Claim** which is covered pursuant to Insuring Agreements C and D of this Policy.
- M. **Transportation, Shipment or Delivery of Waste, Products or Materials** under Insuring Agreement B arising out of or resulting from any waste or any products or materials transported, shipped or delivered via watercraft, aircraft, motor vehicle, mobile equipment or rolling stock to a location beyond the boundaries of a site at which **Professional Services** are being rendered or **Contracting or Consulting Services** are being performed.
- N. **Property Damage to Insured Organization's Work and Products** under Insuring Agreement B for any **Property Damage**:
  - 1. to work performed by or on behalf of the **Insured Organization** resulting from the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith; or
  - 2. to any goods or products which are sold or supplied by the **Insured** or by others under license from the **Insured** resulting from such goods or products or any portion thereof.
- O. **Patent Infringement** for any **damages**, other than **claims expenses**, arising out of or related to actual or alleged infringement of patent or patent rights or misuse of patent.
- P. **Insolvency and Bankruptcy** arising out of or resulting from the insolvency or bankruptcy of any **Insured** or of any other entity including but not limited to the failure, inability, or unwillingness to pay **Claims**, losses, or benefits due to the insolvency, liquidation or bankruptcy of any such individual or entity.
- Q. **War and Terrorism** directly or indirectly caused by, resulting from or in connection with:
  - 1. any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
    - (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
    - (b) any act of terrorism.
  - 2. any action taken in controlling, preventing, suppressing or in any way relating to (a) or (b) above.

For the purpose of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s),

committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

Notwithstanding the foregoing, this exclusion shall not apply to any **Claim** arising out of or resulting from any act, error or omission or **Professional Services** committed or performed by any **Insured**.

## SECTION VII - EXCLUSIONS APPLICABLE TO INSURING AGREEMENTS C AND D

The coverage under Insuring Agreements C and D of this Insurance does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**:

### A. **Contractual Liability** arising out of or resulting from:

1. any contractual liability or obligation, or arising out of or resulting from breach of contract or either oral or written agreement, except:
  - (a) with respect to:
    - (i) Insuring Agreement C for breach of an agreement by the **Insured Organization** to perform **Technology Based Services**; or
    - (ii) Insuring Agreement D for breach of an agreement by the **Insured Organization** to manufacture, develop, create, distribute, license, lease or sell Technology Products;provided, this exception VII.A.1(a) shall not apply to breach of any hold harmless or indemnity agreement;
  - (b) with respect to Insuring Agreement C for liability:
    - (i) **Assumed under Contract**; or
    - (ii) misappropriation of ideas under an implied contract; or
  - (c) to the extent the **Insured** would have been liable in the absence of such contract or agreement.
2. breach of any contractual obligation which goes beyond an express or implied duty to exercise a degree of care or skill as is consistent with applicable industry standards.

### B. **Business Risks** for or arising out of or resulting from:

1. inaccurate, inadequate or incomplete description of the price of goods, products or services;
2. cost guarantees, cost representations, or contract price estimates of probable costs or cost estimates actually or allegedly being exceeded;
3. the failure of goods, products, or services to conform with any represented quality or performance contained in Advertising; or

4. any actual or alleged gambling, contest, lottery, promotional game or other game of chance.
- C. **Licensing Fees and Royalty Payments** arising out of or resulting from any actual or alleged obligation to make licensing fee or royalty payments, including but not limited to the amount or timeliness of such payments.
  - D. **Computer Systems Security** arising out of or resulting from:
    1. the failure of **Computer Systems** to be protected by security practices and procedures equal to or superior to those disclosed in response to questions in the **Application** relating to **Computer Systems** security, including access protection, intrusion detection, data backup procedures, **Malicious Code** protection, and data encryption procedures; or
    2. the failure to install available software product updates and releases, or to apply security related software patches, to computers and other components of **Computer Systems**.
  - E. **Electrical and Telecommunications Failure and Malfunction and Force Majeure** arising out of, resulting from or alleging any failure or malfunction of electrical or telecommunications infrastructure or services, unless under the **Insured Organization's** operational control.
  - F. **Antitrust** for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, violation of the Sherman Antitrust Act, the Clayton Act, the Robinson- Patman Act, as amended, or any similar law or legislation of any state, province or other jurisdiction, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive or misleading advertising.
  - G. **Federal Trade Commission and Federal Communications Commission** brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any similar governmental entity, in such entity's regulatory or official capacity.
  - H. **Electromagnetic Fields and Radiation** with respect to Insuring Agreement D, for or arising out of or resulting from the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property.

#### SECTION VIII - DEFINITIONS

Wherever used in this Policy in bold face type, the following definitions shall apply.

- A. **"Application"** means all applications specifically prepared and signed in connection with the underwriting of this Policy.
- B. **"Bodily Injury"** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting there from.
- C. **"Circumstance"** means any fact, event or situation that could reasonably be the basis for a **Claim**.
- D. **"Claim"** means:

1. A written demand for monetary damages, services or non-monetary relief;
2. A civil proceeding commenced by the service of a complaint, indictment or similar proceeding;
3. A formal or informal (i) administrative or regulatory proceeding, or (ii) civil, administrative or regulatory investigation;
4. An arbitration, mediation or alternative dispute resolution proceeding against any Insured, including any appeal there from.

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, omissions or **Pollution Conditions** or from any continuing acts, errors, omissions or **Pollution Conditions** shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants or **Insureds** involved in the **Claim**.

All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

**E. "Claims Expenses"** means:

1. reasonable and necessary fees charged by an attorney designated or consented to by the Underwriters;
2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, if incurred by the Underwriters, or by the **Insured** with the prior written consent of the Underwriters; and
3. premiums for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required for a **Claim** against any **Insured** for a covered act, error or omission, provided however that the Underwriters shall have no obligation to appeal or to obtain such bonds.

**F. "Cleanup Costs"** means reasonable and necessary costs, charges and expenses incurred with the prior written consent of the Underwriters in the investigation, removal or neutralization of a **Pollution Condition**, provided that such costs, charges and expenses are caused by a **Pollution Condition** arising out of the rendering of or failure to render **Professional Services** or the performance of or failure to perform **Contracting Services** by or on behalf of the **Insured Organization**.

**G. "Computer Systems"** means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:

1. operated by and either owned by or leased to the **Insured Organization**; or
2. operated by a third party service provider and used for the purpose of providing hosted computer application services to the **Insured Organization** or for processing, maintaining, hosting or storing the **Insured Organization's** electronic data, pursuant to written contract with the **Insured Organization** for such services.

**H. "Contracting Services"** means the performance of construction, drilling or remediation activities by or on behalf of the **Insured Organization**.

- I. **"Damages"** means a monetary judgment, award or settlement of compensatory damages, including any pre-judgment and/or post-judgment interest thereon, punitive damages and/or penalties in the nature of punitive damages.

For the purpose of determining the insurability of punitive damages under this Policy, the Underwriters agree with the Insured that it is intended that coverage for punitive damages will be provided except to the extent that it is uninsurable by law, and that to give effect to this intention, the law of the jurisdiction permitting insurance coverage for punitive damages will apply for the sole purpose of interpreting this paragraph, provided that such jurisdiction:

- a. is where such punitive damages were awarded or imposed; or
- b. is where the act, error or omission occurred for which such punitive damages were awarded or imposed; or
- c. is where any Insured has an office; or the Named Insured is incorporated, has its principal place of business or transacts business; or
- d. any other jurisdiction which the Insured demonstrates has a relationship to the claim under this Policy.

It is further understood and agreed that if the choice of law provision set forth above is subject to final determination by the court, then the parties will abide by such final judicial determination; provided however, that the parties will take no position inconsistent with the intent of this paragraph, which is to provide coverage for punitive damages where permitted by law as set forth above.

The term **Damages** shall not include or mean:

1. future profits, restitution, disgorgement of unjust enrichment or profits by an **Insured**, or the costs of an **Insured** to comply with orders granting injunctive or equitable relief;
  2. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
  3. costs incurred by the **Insured** to correct, re-perform or complete any **Technology Based Services**;
  4. fines, taxes or loss of tax benefits, sanctions or penalties assessed against the **Insured**;
  5. discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients;
  6. liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement; or
  7. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**.
- J. **"Malicious Code"** means any virus, Trojan Horse, worm or other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.

- K. **“Optional Extension Period”** means the period of time after the end of the **Policy Period** for reporting **Claims** as provided in Section XIII of this Policy.
- L. **“Policy Period”** means the period of time between the inception date and the expiration date shown in either the Declarations of this Insurance or any endorsements subsequently made a part of this Insurance, but specifically excludes any **Optional Extension Period** or any prior policy period or renewal period.
- M. **“Pollution Condition”** means the actual or alleged discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in **Bodily Injury, Property Damage or Cleanup Costs**.
- N. **“Professional Services”** means those services performed for others by or on behalf of the **Insured Organization** in the practice of architecture, engineering, land surveying, landscape architecture, interior design, project or construction management or environmental consulting, or as set forth in endorsements to this Policy.
- O. **“Property Damage”** means:
1. physical injury to or destruction of any tangible property, including the loss of use thereof; or
  2. loss of use of tangible property that has not been physically injured or destroyed.
- P. **“Subsidiary”** means any corporate entity while more than 50% of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the Named Insured directly or indirectly, if such entity was so owned on the inception date of this Policy; or:
1. was so owned prior to the inception date of this Policy and was insured under a policy issued by Underwriters of which this Policy is a renewal;
  2. becomes so owned after the inception date of this Policy, provided the revenues of the entity do not exceed 20% of the Named Insured's Annual Revenues as set forth in their most recent **Application**; or
- Provided that this Policy only provides coverage for acts, errors or omissions or **Pollution Conditions** taking place while the corporate entity is so owned by the Named Insured.
- Q. **“Technology Based Services”** means any type of computer or electronic information technology services, including but not limited to:
1. consulting, systems analysis and programming, data processing, software development and coding, systems integration and outsourcing, and any associated training and technical support; and
  2. the management, repair, installation, operation, hosting and maintenance of computer systems and networks of any sort.
- R. **“Theft of Data”** means the unauthorized taking, misuse or disclosure of information on **Computer Systems**, including but not limited to charge, debit, and credit card information, banking, financial, and investment services account information, proprietary information, and personal, private, and confidential information.

- S. **“Unauthorized Access”** means:
1. the use of or access to **Computer Systems** by a person not authorized to do so by the **Insured Organization**; or
  2. the authorized use of or access to **Computer Systems** in a manner not authorized by the **Insured Organization**.

#### SECTION IX - LIMIT OF LIABILITY

- A. The Limit of Liability stated in Item 3(a) of the Declarations for “Each **Claim**” is the limit of the Underwriters’ liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.
- B. The “Aggregate for the **Policy Period**” stated in Item 3(b) of the Declarations is the Underwriters’ combined total Limit of Liability for all **Damages** and **Claims Expenses** arising out of all **Claims** or **Circumstances** which are covered under the terms and conditions of this Policy, and neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** by more than one person or entity, shall increase the Limit of Liability.
- C. For the purpose of determining the Limit of Liability for the **Optional Extension Period**, such period shall be deemed to be a separate **Policy Period**.

#### SECTION X - DEDUCTIBLE

The Deductible stated in Item 4 of the Declarations applies separately to each **Claim**. The Each **Claim Deductible** shall be satisfied by monetary payments by the Named Insured of **Damages** and **Claims Expenses** resulting from **Claims** first made during the **Policy Period** and the **Optional Extension Period** and reported to the Underwriters pursuant to the terms of this Policy. Satisfaction of the Each **Claim Deductible** is a condition precedent to the payment by the Underwriters of any amounts hereunder, and the Underwriters shall be liable only for the amounts in excess of the Each **Claim Deductible** subject to the Underwriters’ total liability not exceeding the Limits of Liability stated in Items 3(a) and 3(b) of the Declarations. The Named Insured shall make direct payments within the Each **Claim Deductible** to appropriate other parties designated or consented to by the Underwriters.

#### SECTION XI - INNOCENT INSURED

- A. Whenever coverage under this Insurance would be excluded, suspended or lost because of Exclusion VI.A relating to criminal, dishonest, intentional, fraudulent, malicious, willful or knowing acts, errors or omissions by any **Insured**, and with respect to which any other **Insured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof, then the Underwriters agree that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in Exclusion VI.A.

This provision is inapplicable to any **Claim** or **Circumstance** against the **Insured Organization** arising from acts, errors or omissions known to any officer of the **Insured Organization**.

- B. With respect to this provision, the Underwriters’ obligation to pay in such event shall only be in excess of the full extent of any recoverable assets of any **Insured** to whom Exclusion VI.A applies and shall be subject to the terms, conditions and limitations of this Policy.

## SECTION XII - NOTICE OF CLAIM OR CIRCUMSTANCE

- A. If any **Claim** is made against an **Insured**, the **Insured** shall forward as soon as practicable to the Underwriters through the persons named in Item 8 of the Declarations written or electronic notice of such **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period** or the last day of the **Optional Extension Period**, if purchased.
- B. If during the **Policy Period** any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Insured Organization** first becomes aware of any **Circumstance** and gives written notice to the Underwriters of:
1. the specific details of the act, error or omission or **Pollution Condition** in the provision of **Professional Services, Contracting Services, or Technology Based Services** that gave rise to the **Circumstance**;
  2. the injury or damage which may result or has resulted from the **Circumstance**; and
  3. the facts by which such director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Insured Organization** first became aware of the act, error or omission or **Pollution Condition** then any subsequent **Claim** made against the **Insured** arising out of such **Circumstance** which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the Underwriters.

## SECTION XIII - OPTIONAL EXTENSION PERIOD

- A. This policy is non-cancellable during the Policy Period.
- B. If this Policy is non-renewed by either the Underwriters or the Named Insured, then the Named Insured designated in Item 1 of the Declarations shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 7(a), (b) or (c) of the Declarations of the total premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the period of time set forth in Item 7(a), (b) or (c) of the Declarations after the end of the **Policy Period**, but only with respect to any act, error or omission or **Pollution Condition** committed or arising on or after the Retroactive Date and before the effective date of cancellation or non-renewal.
- C. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Policy must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice, together with full payment of the premium for the **Optional Extension Period**, is given to the Underwriters within forty-five (45) days after the effective date of cancellation or non-renewal. If such notice and premium payment is not so given to the Underwriters, there shall be no right to purchase the **Optional Extension Period**.
- D. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.
- E. An offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Section XIII.
- F. All notices and premium payments made under this section shall be directed to Underwriters through the entity named in Item 8 of the Declarations.

## SECTION XIV - REPRESENTATIONS

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **Application** are their agreements and representations, that they shall be deemed material to the risk assumed by the Underwriters, and that this Policy is issued in reliance upon the truth thereof.

## SECTION XV - OTHER INSURANCE

This Insurance shall apply in excess of:

- A. any other valid and collectible insurance available to any **Insured**, including, but not limited to, any project-specific professional liability and/or contractors' pollution liability insurance; and
- B. any self insured Deductible or Deductible portion thereof

unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

## SECTION XVI - MERGERS AND ACQUISITIONS

- A. If any firm is merged into or acquired by the Named Insured, the Underwriters shall pay on behalf of the **Insured** (subject to its terms, conditions, exclusions and limitations) with respect to **any claim** first made against the merged or acquired firm, but only for acts committed subsequent to the date of their joining the Named Insured, and such merged or acquired firm shall be included hereunder effective from the date of joining as an additional **Insured**.

Provided that:

- 1. when any such merger or acquisition increases the total revenue of the **Insured Organization** by more than 10% of the **Insured Organization's** total annual revenue, then within 120 days of the merger or acquisition, the **Named Insured** shall notify the underwriters; and
  - 2. within 15 days of receipt of notification, the Underwriters agree to add the merged or acquired firm subject to such terms and conditions as the Underwriters and the Named Insured may agree. If, however, within 30 days of receiving notification of the merger or acquisition the Underwriters do not propose any terms and conditions to the merger or acquisition, or the Named Insured and the Underwriters are not able to reach mutually acceptable terms and conditions, then the additional premium for the merged or acquired firm or individuals shall be calculated at pro rata (from the date of merger or acquisition) of 50% of the difference between the premium based on the combined revenue of the **Insured Organization** and the merged or acquired firm and the premium charged by the Underwriters for this Policy at the preceding **Anniversary Date**.
- B. If during the **Policy Period** the Named Insured consolidates or merges with another entity such that the Named Insured is not the surviving entity, is acquired by another entity, or sells substantially all of its assets to any other entity, then coverage under this Policy shall not apply to acts, errors or omissions or **Pollution Conditions** committed or arising subsequent to such consolidation, merger or acquisition and Underwriters shall retain the total premium for this Policy, such total premium to be deemed earned at the date of such consolidation, merger or acquisition. The Named Insured shall provide written notice of such consolidation, merger or acquisition to the Underwriters as soon as practicable, together with such information as the Underwriters may require.

- C. All notices and premium payments made under this section shall be directed to the Underwriters through the entity named in Item 8 of the Declarations.

#### SECTION XVII - ASSISTANCE AND COOPERATION OF THE INSURED

The **Insured** shall cooperate with the Underwriters in all investigations. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters. The **Insured** agrees not to take any action which in any way increases the Underwriters' exposure under the Policy.

Upon the Underwriters' request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of acts, errors or omissions or **Pollution Conditions** with respect to which insurance is afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the written consent of the Underwriters.

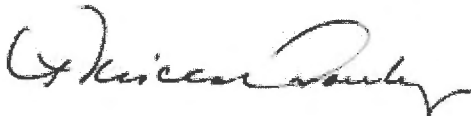
#### SECTION XVIII - SEVERABILITY

- A. In granting coverage under this Policy, the Underwriters have relied only upon the statements and representations in the Application, or in documents actually attached to the Application. The Director of Risk Management, Treasurer, Chief Financial Officer, or General Counsel of the Insured Firm represent that all such statements and representations are, to the best of his or her belief, true and shall be deemed material to the acceptance of the risk of the hazard assumed by the Underwriters under this Policy.
- B. In the event that any such statements and representations are untrue, this Policy shall not afford any coverage, and may be rescinded, but only with respect to any Insured who knew as of the effective date of such coverage that facts were not truthfully disclosed in the Application;

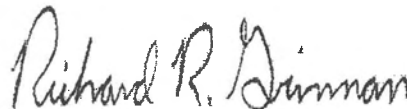
#### SECTION XIX - SUBROGATION

In the event of any payment under this Insurance, the Underwriters shall be subrogated to all the **Insureds'** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. The Underwriters agree to waive their rights of recovery against any client of the **Insured Organization** for a **Claim** which is covered pursuant to Insuring Agreements A and/or B of this Policy to the extent the **Insured Organization** had, prior to such **Claim**, a written agreement to waive such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages** and **Claims Expenses** paid by the Underwriters, and third to the Each **Claim** Deductible. Any additional amounts recovered shall be paid to the Named Insured. No right of Subrogation shall accrue hereunder against any Insured unless the said Insured shall have committed criminal acts with active or deliberate criminal intent, in relation to matters that are the subject of a **Claim** hereunder.

In Witness Whereof, this Company has executed and attested these presents, but this Policy shall not be valid unless signed by duly authorized representatives of this Company.



President



Secretary



## **EVANSTON INSURANCE COMPANY**

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

### **SERVICE OF SUIT – CALIFORNIA**

It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Named Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Valarie Jonas, Markel, 201 California Street, Suite 1450, San Francisco, CA 94111 and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, or Director of Insurance or other official specified for that purpose in the statute, or his/her successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Named Insured or any beneficiary hereunder arising out of this policy, and hereby designates the above-named as to whom the said officer is authorized to mail such process or a true copy thereof.

Pursuant to Section 1772, et seq., of the California Insurance Code, a surplus line insurer may be sued upon any cause of action arising in this state under any surplus line insurance contract made by it, or any evidence of insurance issued or delivered by the surplus line broker, pursuant to the procedures set forth in Sections 1610 to 1620, inclusive.



## **EVANSTON INSURANCE COMPANY**

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

### **TRADE OR ECONOMIC SANCTIONS**

The following is added to this policy:

#### **Trade Or Economic Sanctions**

This insurance does not provide any coverage, and we (the Company) shall not make payment of any claim or provide any benefit hereunder, to the extent that the provision of such coverage, payment of such claim or provision of such benefit would expose us (the Company) to a violation of any applicable trade or economic sanctions, laws or regulations, including but not limited to, those administered and enforced by the United States Treasury Department's Office of Foreign Assets Control (OFAC).

All other terms and conditions remain unchanged.

# SCHEDULE A

## SCHEDULE OF FORMS

Policy Number: MKLV7PL0004694

### FORMS AND ENDORSEMENTS THAT APPLY TO THIS POLICY:

FORM NUMBER	TITLE & EDITION DATE
MJIL 1000 08 10	POLICY JACKET
MPIL 1007 01 20	PRIVACY NOTICE
MPIL 1039-CA 01 20	IMPORTANT NOTICE - CALIFORNIA SURPLUS LINES NOTICE (D-2)
MPIL 1042-CA 03 12	CALIFORNIA SHORT RATE CANCELLATION PENALTY DISCLOSURE
MPIL 1083 04 15	U.S. TREASURY DEPT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NO
AM0101	ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY DECLARATIONS {10-10}
AM0102_0313	ARCHITECTS AND ENGINEERS INS POLICY {03-13}
MEIL 1200-CA 01 20	SERVICE OF SUIT - CALIFORNIA
MIL 1214 09 17	TRADE OR ECONOMIC SANCTIONS
AM0005	SCHEDULE A - SCHEDULE OF FORMS {10-10}
MANU-1	TRANSPORTATION COVERAGE ENDORSEMENT
MANU-2	REDUCED RETENTION ENDORSEMENT
MANU-3	FORMAL MEDIATION DEDUCTIBLE CREDIT ENDORSEMENT
MANU-4	PROJECT SPECIFIC SUPPLEMENTAL COVERAGE ENDORSEMENT
MANU-5	PRIMARY AND NON-CONTRIBUTORY WORDING ENDORSEMENT
MANU-6	TRANSPORTATION MATERIALS ENDORSEMENT
MANU-7	30 DAY NOTICE OF CANCELLATION ENDORSEMENT
MANU-8	ADDITIONAL INSURED ENDORSEMENT
MANU-9	WAIVER OF SUBROGATION ENDORSEMENT
MANU-10	FORGIVENESS OF CHARGES ENDORSEMENT
AM0007	ADDITIONAL NAMED INSURED ENDORSEMENT {10-10}
AM0030	ANNUAL AGGREGATE DEDUCTIBLE {10-10}
MANU-12	SETTLEMENT OF PROVISIONS ENDORSEMENT
MANU-11	AMENDED DEFINITION OF DAMAGES ENDORSEMENT
MANU-13	SINGLE REINSTATED LIMIT OF LIABILITY ENDORSEMENT
MANU-14	SPECIFIC PROJECT EXCESS ENDORSEMENT
MANU-15	INSTALLMENT AGREEMENT ENDORSEMENT
MANU-16	PRIMARY AND NON-CONTRIBUTORY WORDING ENDORSEMENT
MANU-17	30 DAY NOTICE OF CANCELLATION ENDORSEMENT
MANU-18	AMENDED EXCLUSION ENDORSEMENT
AM0002	TERRORISM EXCLUSION {10-10}
AM0003	MINIMUM POLICY PREMIUM {10-10}
AM0055	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT {10-10}

**EXHIBIT B**

March 11, 2026  
Project No. 211743000

Mr. Andrew Luna  
City of La Habra  
110 East La Habra Boulevard  
La Habra, California 92631

Subject: Agreement for Services - Extension Request  
On-Call Geotechnical Investigation and Materials Testing Services  
La Habra, California

Reference: City of La Habra, 2021, Agreement for Services - On-Call Geotechnical  
Investigation and Materials Testing Services, dated July 1.

Dear Mr. Luna:

In accordance with the referenced Agreement for Services, Ninyo & Moore, A Socotec Company, has been providing geotechnical and materials testing services on various projects with the City of La Habra. Per our correspondence with Ms. Allie Walsten and our understanding of the referenced agreement for services, our contract term is set to expire on June 30, 2026. Therefore, we request a one-year extension ending June 30, 2027, to include our revised schedule of fees attached with all other terms and conditions of the referenced agreement for services to remain the same.

Ninyo & Moore, A Socotec Company appreciates the opportunity to be of continued service.

Sincerely,  
**NINYO & MOORE**



Randy L. Reichert  
Project Manager



Garreth Saiki, PE, GE  
Principal Engineer

RAR/GMS/co

Attachments: Schedule of Fees

## Schedule of Fees

### Hourly Charges for Personnel

#### Professional Staff

Principal Engineer/Geologist/Environmental Scientist/Certified Industrial Hygienist .....	\$ 250
Senior Engineer/Geologist/Environmental Scientist .....	\$ 235
Senior Project Engineer/Geologist/Environmental Scientist .....	\$ 220
Project Engineer/Geologist/Environmental Scientist .....	\$ 210
Senior Staff Engineer/Geologist/Environmental Scientist .....	\$ 200
Staff Engineer/Geologist/Environmental Scientist .....	\$ 180
GIS Analyst .....	\$ 160
Technical Illustrator/CAD Operator .....	\$ 140

#### Field Staff

Certified Asbestos/Lead Technician .....	\$ 220
Field Operations Manager .....	\$ 150
Nondestructive Examination Technician (UT, MT, LP) .....	\$ 145
Supervisory Technician .....	\$ 140
Special Inspector (Concrete, Masonry, Structural Steel, Welding, and Fireproofing) .....	\$ 135
Senior Technician .....	\$ 135
Technician .....	\$ 130

#### Administrative Staff

Information Specialist .....	\$ 120
Geotechnical/Environmental/Laboratory Assistant .....	\$ 120
Data Processor .....	\$ 95

### Other Charges

Concrete Coring Equipment (includes technician) .....	\$ 190/hr
Anchor Load Test Equipment (includes technician) .....	\$ 190/hr
GPR Equipment .....	\$ 180/hr
Inclinometer .....	\$ 100/hr
Hand Auger Equipment .....	\$ 80/hr
Rebar Locator (Pachometer) .....	\$ 25/hr
Vapor Emission Kit .....	\$ 65/kit
Nuclear Density Gauge .....	\$ 15/hr
X-Ray Fluorescence .....	\$ 70/hr
PID/FID .....	\$ 25/hr
Air Sampling Pump .....	\$ 10/hr
Field Vehicle .....	\$ 15/hr
Equipment .....	\$ 15/hr
Expert Witness Testimony .....	\$ 450/hr
Direct Expenses .....	Cost plus 15 %
Special equipment charges will be provided upon request.	

### Notes

Technicians and special inspectors, are charged at a 4-hour minimum, and 8-hour minimum for hours exceeding 4 hours. Overtime rates at 1.5 times the regular rates will be charged for work performed in excess of 8 hours in one day Monday through Friday and all day on Saturday. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day, all day Sunday and on holidays.

Our rates will be adjusted in conjunction with the increase in the Prevailing Wage Determination during the life of the project, as applicable.

The terms and conditions are included in Ninyo & Moore's Work Authorization and Agreement form.

## Schedule of Fees for Laboratory Testing

### SOILS

Atterberg Limits, D 4318, CT 204	\$ 170
California Bearing Ratio (CBR), D 1883	\$ 550
Chloride and Sulfate Content, CT 417 & CT 422	\$ 175
Consolidation, D 2435, CT 219	\$ 300
Consolidation, Hydro-Collapse only, D 2435	\$ 150
Consolidation – Time Rate, D 2435, CT 219	\$ 200
Direct Shear – Remolded, D 3080	\$ 350
Direct Shear – Undisturbed, D 3080	\$ 300
Durability Index, CT 229	\$ 175
Expansion Index, D 4829, IBC 18-3	\$ 190
Expansion Potential (Method A), D 4546	\$ 170
Geofabric Tensile and Elongation Test, D 4632	\$ 200
Hydraulic Conductivity, D 5084	\$ 350
Hydrometer Analysis, D 6913, CT 203	\$ 220
Moisture, Ash, & Organic Matter of Peat/Organic Soils	\$ 120
Moisture Only, D 2216, CT 226	\$ 35
Moisture and Density, D 2937	\$ 45
Permeability, CH, D 2434, CT 220	\$ 300
pH and Resistivity, CT 643	\$ 175
Proctor Density D1557, D 698, CT 216, AASHTO T-180	\$ 220
Proctor Density with Rock Correction D 1557	\$ 340
R-value, D 2844, CT 301	\$ 375
Sand Equivalent, D 2419, CT 217	\$ 125
Sieve Analysis, D 6913, CT 202	\$ 145
Sieve Analysis, 200 Wash, D 1140, CT 202	\$ 100
Specific Gravity, D 854	\$ 125
Thermal Resistivity (ASTM 5334, IEEE 442)	\$ 925
Triaxial Shear, C.D, D 4767, T 297	\$ 550
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt	\$ 450
Triaxial Shear, C.U., w/o pore pressure, D 4767, T 2297 per pt	\$ 350
Triaxial Shear, U.U., D 2850	\$ 250
Unconfined Compression, D 2166, T 208	\$ 180

### MASONRY

Brick Absorption, 24-hour submersion, 5-hr boiling, 7-day, C 67	\$ 70
Brick Compression Test, C 67	\$ 55
Brick Efflorescence, C 67	\$ 55
Brick Modulus of Rupture, C 67	\$ 50
Brick Moisture as received, C 67	\$ 45
Brick Saturation Coefficient, C 67	\$ 60
Concrete Block Compression Test, 8x8x16, C 140	\$ 70
Concrete Block Conformance Package, C 90	\$ 500
Concrete Block Linear Shrinkage, C 426	\$ 200
Concrete Block Unit Weight and Absorption, C 140	\$ 70
Cores, Compression or Shear Bond, CA Code	\$ 70
Masonry Grout, 3x3x6 prism compression, C 39	\$ 45
Masonry Mortar, 2x2 cube compression, C 109	\$ 35
Masonry Prism, half size, compression, C 1019	\$ 120
Masonry Prism, Full size, compression, C 1019	\$ 200

### REINFORCING AND STRUCTURAL STEEL

Chemical Analysis, A 36, A 615	\$ 135
Fireproofing Density Test, UBC 7-6	\$ 90
Hardness Test, Rockwell, A 370	\$ 80
High Strength Bolt, Nut & Washer Conformance, per assembly, A 325	\$ 150
Mechanically Spliced Reinforcing Tensile Test, ACI	\$ 175
Pre-Stress Strand (7 wire), A 416	\$ 170
Reinforcing Tensile or Bend up to No. 11, A 615 & A 706	\$ 75
Structural Steel Tensile Test: Up to 200,000 lbs., A 370	\$ 90
Welded Reinforcing Tensile Test: Up to No. 11 bars, ACI	\$ 80

### CONCRETE

Compression Tests, 6x12 Cylinder, C 39	\$ 35
Concrete Mix Design Review, Job Spec	\$ 300
Concrete Mix Design, per Trial Batch, 6 cylinder, ACI	\$ 850
Concrete Cores, Compression (excludes sampling), C 42	\$ 120
Drying Shrinkage, C 157	\$ 400
Flexural Test, C 78	\$ 85
Flexural Test, C 293	\$ 85
Flexural Test, CT 523	\$ 95
Gunite/Shotcrete, Panels, 3 cut cores per panel and test, ACI	\$ 275
Lightweight Concrete Fill, Compression, C 495	\$ 80
Petrographic Analysis, C 856	\$ 2,000
Restrained Expansion of Shrinkage Compensation	\$ 450
Splitting Tensile Strength, C 496	\$ 100
3x6 Grout, (CLSM), C 39	\$ 55
2x2x2 Non-Shrink Grout, C 109	\$ 55

### ASPHALT

Air Voids, T 269	\$ 85
Asphalt Mix Design, Caltrans (incl. Aggregate Quality)	\$ 4,500
Asphalt Mix Design Review, Job Spec	\$ 180
Dust Proportioning, CT LP-4	\$ 85
Extraction, % Asphalt, including Gradation, D 2172, CT 382	\$ 250
Extraction, % Asphalt without Gradation, D 2172, CT 382	\$ 150
Film Stripping, CT 302	\$ 120
Hveem Stability and Unit Weight D 1560, T 246, CT 366	\$ 225
Marshall Stability, Flow and Unit Weight, T 245	\$ 240
Maximum Theoretical Unit Weight, D 2041, CT 309	\$ 150
Moisture Content, CT 370	\$ 95
Moisture Susceptibility and Tensile Stress Ratio, T 238, CT 371	\$ 1,000
Slurry Wet Track Abrasion, D 3910	\$ 150
Superpave, Asphalt Mix Verification (incl. Aggregate Quality)	\$ 4,900
Superpave, Gyrotory Unit Wt., T 312	\$ 100
Superpave, Hamburg Wheel, 20,000 passes, T 324	\$ 1,000
Unit Weight sample or core, D 2726, CT 308	\$ 100
Voids in Mineral Aggregate, (VMA) CT LP-2	\$ 90
Voids filled with Asphalt, (VFA) CT LP-3	\$ 90
Wax Density, D 1188	\$ 140

### AGGREGATES

Clay Lumps and Friable Particles, C 142	\$ 180
Cleaness Value, CT 227	\$ 180
Crushed Particles, CT 205	\$ 175
Durability, Coarse or Fine, CT 229	\$ 205
Fine Aggregate Angularity, ASTM C 1252, T 304, CT 234	\$ 180
Flat and Elongated Particle, D 4791	\$ 220
Lightweight Particles, C 123	\$ 180
Los Angeles Abrasion, C 131 or C 535	\$ 200
Material Finer than No. 200 Sieve by Washing, C 117	\$ 90
Organic Impurities, C 40	\$ 90
Potential Alkali Reactivity, Mortar Bar Method, Coarse, C 1260	\$ 1,250
Potential Alkali Reactivity, Mortar Bar Method, Fine, C 1260	\$ 950
Potential Reactivity of Aggregate (Chemical Method), C 289	\$ 475
Sand Equivalent, T 176, CT 217	\$ 125
Sieve Analysis, Coarse Aggregate, T 27, C 136	\$ 120
Sieve Analysis, Fine Aggregate (including wash), T 27, C 136	\$ 145
Sodium Sulfate Soundness, C 88	\$ 450
Specific Gravity and Absorption, Coarse, C 127, CT 206	\$ 115
Specific Gravity and Absorption, Fine, C 128, CT 207	\$ 175

### ROOFING

Roofing Tile Absorption, (set of 5), C 67	\$ 250
Roofing Tile Strength Test, (set of 5), C 67	\$ 250

Special preparation of standard test specimens will be charged at the technician's hourly rate.  
Ninyo & Moore is accredited to perform the AASHTO equivalent of many ASTM test procedures.