

## **Agreement for As-Needed Appraisal Services for Dry Creek Habitat Enhancement Project**

This agreement ("Agreement") is by and between **Sonoma County Water Agency** ("Sonoma Water") and **Gregory Rinehart dba Gregory D. Rinehart & Associates**, a sole proprietorship ("Consultant"). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Paragraph 6.1.

### **RECITALS**

- A. Consultant represents that it is a duly qualified and licensed appraisal firm, experienced in the preparation of real property appraisals and related services.
- B. In September, 2008, the National Marine Fisheries Service (NMFS) issued the Biological Opinion (BO) on the water supply, flood control, and channel maintenance operations conducted by Sonoma Water, the U. S. Army Corps of Engineers (USACE), and the Mendocino County Russian River Flood Control District in the Russian River watershed. The BO is a 15 year recovery plan based on the results of a Section 7 consultation with NMFS under the federal Endangered Species Act.
- C. One of the recommended Reasonable and Prudent Alternatives (RPA) contained in the BO requires habitat enhancement of six miles of Dry Creek to provide near ideal summer rearing conditions for coho and steelhead while maintaining operational steady state discharge for water supply purposes. The proposed Dry Creek Habitat Enhancement Project (Project) is being developed in accordance with the RPA and will be an important component of a larger effort to improve conditions for salmonid species in the Dry Creek and Russian River watersheds. The purpose of the Projects is to continue with development of habitat enhancement projects and to evaluate the effectiveness of these projects prior to implementing other portions of the BO.
- D. Appraisal of the value of the property rights and appraisal reports are needed to facilitate acquisition of the necessary property rights for Projects.
- E. In fall 2018, USACE provided a revised timeline for Phase 6 of the Project, which requires Sonoma Water to make offers to property owners by July 2019.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

### **AGREEMENT**

#### **1. RECITALS**

- 1.1. The above recitals are true and correct.

## 2. **LIST OF EXHIBITS**

2.1. The following exhibits are attached hereto and incorporated herein:

- a. Exhibit A: Agreement Memorandum
- b. Exhibit B: Scope of Work
- c. Exhibit C: Schedule of Costs
- d. Exhibit D: Insurance Requirements

## 3. **SONOMA WATER'S REQUEST FOR SERVICES**

- 3.1. *Initiation Conference:* Sonoma Water's Agreement Administrator, Kevin Campbell, will initiate requests for services through an Initiation Conference, which may be in person, by telephone, or by email. During the Initiation Conference, the Project Manager and Consultant will establish and agree on the project information shown in Exhibit A (Agreement Memorandum).
- 3.2. *Agreement Memorandum:* Sonoma Water will prepare an Agreement Memorandum setting forth the terms for the subject project as established during the Initiation Conference. The Agreement Memorandum will be in the form as set forth in Exhibit A and will be executed by both parties prior to commencement of work.
- 3.3. *Amount of Work:* Sonoma Water does not guarantee a minimum or maximum amount of work.

## 4. **SCOPE OF SERVICES**

- 4.1. *Consultant's Specified Services:* Consultant shall perform the services listed in Exhibit B (Scope of Work) or as requested in the Agreement Memorandum, within the times or by the dates provided in the Agreement Memorandum and pursuant to Article 10 (Prosecution of Work). Consultant shall provide necessary manpower and equipment required to carry out the requested services in a professional and expeditious manner.
- 4.2. *Contact Information:*

<b>Sonoma Water</b>	<b>Consultant</b>
Agreement Administrator: Kevin Campbell 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: 707-547-1921 Email: Kevin. Campbell@scwa.ca.gov	Contact: Gregory D. Rinehart  3182 Old Tunnel Road, Suite E Lafayette, CA 94549 Phone: 925-935-9200 Email: greg@gdrinehart.com
<b>Remit invoices to:</b>	<b>Remit payments to:</b>
Accounts Payable Same address as above or Email: ap_agreements@scwa.ca.gov	Same address as above

- 4.3. *Cooperation with Sonoma Water:* Consultant shall coordinate the work with the Project Manager named in the Agreement Memorandum.
- 4.4. *Performance Standard and Standard of Care:* Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with the standards of a reasonable professional having specialized knowledge and expertise in the services provided under this Agreement and in accordance with all applicable federal, state and local laws, it being understood that acceptance of Consultant's work by Sonoma Water shall not operate as a waiver or release. Sonoma Water has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. If Sonoma Water determines that any of Consultant's work is not in accordance with such level of competency and standard of care, Sonoma Water, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with Sonoma Water to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 7 (Termination); or (d) pursue any and all other remedies at law or in equity.
- 4.5. *Assigned Personnel:*
- a. Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time Sonoma Water, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from Sonoma Water.
  - b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by Sonoma Water to be key personnel whose services were a material inducement to Sonoma Water to enter into this Agreement, and without whose services Sonoma Water would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of Sonoma Water.
  - c. Key personnel shall be as listed in the applicable Agreement Memorandum.
  - d. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness, or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

## **5. PAYMENT**

- 5.1. *Total Costs:* Total costs under this Agreement shall not exceed \$385,000.
- 5.2. *Method of Payment:* Consultant shall be paid in accordance with the following terms:

- a. Consultant shall be paid in accordance with Exhibit C (Schedule of Costs). Billed hourly rates shall include all costs for overhead and any other charges, other than expenses specifically identified in Exhibit C.
  - b. Consultant shall not be entitled to reimbursement for expenses incurred in completion of the services.
- 5.3. *Invoices:* Consultant shall submit its bills in arrears on a monthly basis, based on work completed for the period, in a form approved by Sonoma Water. The bills shall show or include:
  - a. Consultant name
  - b. Name of Agreement
  - c. Sonoma Water's Project-Activity Code as listed in the applicable Agreement Memorandum.
  - d. Task performed with an itemized description of services rendered by date
  - e. Time in quarter hours devoted to the task
  - f. Hourly rate or rates of the persons performing the task
  - g. Summary of work performed by subconsultants, as described in Paragraph 15.4
- 5.4. *Timing of Payments:* Unless otherwise noted in this Agreement, payments shall be made within the normal course of Sonoma Water business after presentation of an invoice in a form approved by Sonoma Water for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by Sonoma Water.
- 5.5. *Taxes Withheld by Sonoma Water:*
  - a. Pursuant to California Revenue and Taxation Code (R&TC) section 18662, Sonoma Water shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this Agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
  - b. If Consultant does not qualify, as described in Paragraph 5.5.a, Sonoma Water requires that a completed and signed Form 587 be provided by Consultant in order for payments to be made. If Consultant is qualified, as described in Paragraph 5.5.a, then Sonoma Water requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, Consultant agrees to promptly notify Sonoma Water of any changes in the facts. Forms should be sent to Sonoma Water pursuant to Article 16 (Method and Place of Giving Notice, Submitting Bills, and Making Payments)

of this Agreement. To reduce the amount withheld, Consultant has the option to provide Sonoma Water with either a full or partial waiver from the State of California.

5.6. *Funding:*

a. Funding for this Agreement is as follows:

<i>Current Fiscal Year</i>	<i>Budgeted Appropriation</i>
2018/2019	\$105,000
<i>Subsequent Fiscal Years</i>	<i>Planned Appropriation</i>
2019/2020	\$280,000

b. Availability of Funding in Subsequent Fiscal Years:

- i. Sonoma Water's performance under this Agreement in subsequent years is contingent upon appropriation of funds by Sonoma Water's Board of Directors. Sonoma Water shall have no liability under this Agreement if sufficient funds are not appropriated in subsequent fiscal years by Sonoma Water's Board of Directors for the purpose of this Agreement.
- ii. If funding for this Agreement for any fiscal year is reduced or eliminated by Sonoma Water's Board of Directors, Sonoma Water shall have the option to either terminate this Agreement in accordance with Article 7 (Termination) or offer an amendment to Consultant to reflect the reduced amount.

**6. TERM OF AGREEMENT AND COMMENCEMENT OF WORK**

- 6.1. *Term of Agreement:* This Agreement shall remain in effect until depletion of the not-to-exceed amount listed in Paragraph 5.1, or until March 31, 2022, whichever occurs first, unless terminated earlier in accordance with the provisions of Article 7 (Termination).
- 6.2. *Commencement of Work:* Consultant is authorized to proceed with work upon receipt of each fully executed Agreement Memorandum.

**7. TERMINATION**

- 7.1. *Authority to Terminate:* Sonoma Water's right to terminate may be exercised by Sonoma County Water Agency's General Manager.
- 7.2. *Termination Without Cause:* Notwithstanding any other provision of this Agreement, at any time and without cause, Sonoma Water shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.
- 7.3. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of

this Agreement, Sonoma Water may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

- 7.4. *Delivery of Work Product and Final Payment Upon Termination:* In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to Sonoma Water all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement subject to Paragraph 13.10 and shall submit to Sonoma Water an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
- 7.5. *Payment Upon Termination:* Upon termination of this Agreement by Sonoma Water, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on a per-hour or per-day basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination multiplied by the applicable hourly or daily rate; and further provided, however, that if Sonoma Water terminates the Agreement for cause pursuant to Paragraph 7.3, Sonoma Water shall deduct from such amounts the amount of damage, if any, sustained by Sonoma Water by virtue of the breach of the Agreement by Consultant.

## **8. INDEMNIFICATION**

- 8.1. Consultant agrees to accept all responsibility for loss or damage to any person or entity, including Sonoma County Water Agency, and to indemnify, hold harmless, and release Sonoma County Water Agency, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against Sonoma County Water Agency based upon a claim relating to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Article 8 apply whether or not there is concurrent or contributory negligence on the part of Sonoma County Water Agency, but, to the extent required by law, excluding liability due to conduct of Sonoma County Water Agency. Sonoma County Water Agency shall have the right to select its

legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

**9. INSURANCE**

- 9.1. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit D (Insurance Requirements).

**10. PROSECUTION OF WORK**

- 10.1. Performance of the services hereunder shall be completed within the time required within each Agreement Memorandum, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.
- 10.2. When work is requested of Consultant by Sonoma Water, all due diligence shall be exercised and the work accomplished without undue delay, within the performance time specified in the Agreement Memorandum(s).

**11. EXTRA OR CHANGED WORK**

- 11.1. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes to lengthen time schedules or make minor modifications to the scope of work, which do not increase the amount paid under the Agreement, may be executed by Sonoma County Water Agency's General Manager in a form approved by County Counsel. The parties expressly recognize that Sonoma Water personnel are without authorization to order all other extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of Sonoma Water.

## 12. **CONTENT ONLINE ACCESSIBILITY**

- 12.1. *Accessibility:* Sonoma Water policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.
- 12.2. *Standards:* All consultants responsible for preparing content intended for use or publication on a Sonoma Water/County-managed or Sonoma Water/County-funded web site must comply with applicable federal accessibility standards established by 36 C.F.R. section 1194, pursuant to section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. section 794(d)), and Sonoma Water's Web Site Accessibility Policy located at <http://sonomacounty.ca.gov/Services/Web-Standards-and-Guidelines/>.
- 12.3. *Certification:* With each final receivable intended for public distribution (report, presentations posted to the Internet, public outreach materials), Consultant shall include a descriptive summary describing how all deliverable documents were assessed for accessibility (e.g. Microsoft Word accessibility check; Adobe Acrobat accessibility check, or other commonly accepted compliance check).
- 12.4. *Alternate Format:* When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Consultant shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Consultant agrees to cooperate with Sonoma Water staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s); e.g., embedding the document with alt-tags that describe complex data/tables.
- 12.5. *Noncompliant Materials; Obligation to Cure:* Remediation of any materials that do not comply with Sonoma Water's Web Site Accessibility Policy shall be the responsibility of Consultant. If Sonoma Water, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any Sonoma Water/County-managed or Sonoma Water/County-funded Web site does not comply with Sonoma Water Accessibility Standards, Sonoma Water will promptly inform Consultant in writing. Upon such notice, Consultant shall, without charge to Sonoma Water, repair or replace the non-compliant materials within such period of time as specified by Sonoma Water in writing. If the required repair or replacement is not completed within the time specified, Sonoma Water shall have the right to do any or all of the following, without prejudice to Sonoma Water's right to pursue any and all other remedies at law or in equity:
  - a. Cancel any delivery or task order
  - b. Terminate this Agreement pursuant to the provisions of Article 7 (Termination); and/or
  - c. In the case of custom Electronic and Information Technology (EIT) developed by Consultant for Sonoma Water, Sonoma Water may have any necessary changes or repairs performed by itself or by another contractor. In such



event, Consultant shall be liable for all expenses incurred by Sonoma Water in connection with such changes or repairs.

- 12.6. *Sonoma Water's Rights Reserved:* Notwithstanding the foregoing, Sonoma Water may accept deliverables that are not strictly compliant with Sonoma Water Accessibility Standards if Sonoma Water, in its sole and absolute discretion, determines that acceptance of such products or services is in Sonoma Water's best interest.

### **13. REPRESENTATIONS OF CONSULTANT**

- 13.1. *Status of Consultant:* The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of Sonoma Water and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits Sonoma Water provides its employees. In the event Sonoma Water exercises its right to terminate this Agreement pursuant to Article 7 (Termination), Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
- 13.2. *Communication with Sonoma Water's Contractor:* All communication shall be between Consultant and Sonoma Water. Consultant shall have no authority to act on behalf of Sonoma Water, to stop work, to interpret conditions of the construction contract, or to give direction to Sonoma Water's contractor.
- 13.3. *No Suspension or Debarment:* Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.
- 13.4. *Taxes:* Consultant agrees to file federal and state 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 Sonoma Water harmless from any liability which it may incur to the United States or to the State of California or to any other public entity as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case Sonoma Water is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish Sonoma Water with proof of payment of taxes on these earnings.
- 13.5. *Records Maintenance:* Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that

are compensable under this Agreement and shall make such documents and records available to Sonoma Water for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

- 13.6. *Conflict of Interest:* Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise 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 interests shall be employed. In addition, if required by law or requested to do so by Sonoma Water, Consultant shall submit a completed Fair Political Practices Commission Statement of Economic Interests (Form 700) with Sonoma Water within 30 calendar days after the Effective Date of this Agreement and each year thereafter during the term of this Agreement, or as required by state law.
- 13.7. *Statutory Compliance/Living Wage Ordinance:* Consultant agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
- 13.8. *Nondiscrimination:* Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 13.9. *Assignment of Rights:* Consultant assigns to Sonoma Water all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to Sonoma Water in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Sonoma Water may direct, and refraining from

disclosing any versions of the plans and specifications to any third party without first obtaining written permission of Sonoma Water. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of Sonoma Water.

- 13.10. *Ownership and Disclosure of Work Product:* All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant or Consultant’s subcontractors, consultants, and other agents in connection with this Agreement shall be the property of Sonoma Water. Sonoma Water shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to Sonoma Water all such documents, which have not already been provided to Sonoma Water in such form or format as Sonoma Water deems appropriate. Such documents shall be and will remain the property of Sonoma Water without restriction or limitation. Consultant may retain copies of the above described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Sonoma Water.

#### **14. DEMAND FOR ASSURANCE**

- 14.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. “Commercially reasonable” includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 14 limits Sonoma Water’s right to terminate this Agreement pursuant to Article 7 (Termination).

#### **15. ASSIGNMENT AND DELEGATION**

- 15.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

- 15.2. *Subcontracts:* Notwithstanding the foregoing, Consultant may enter into subcontracts with the subconsultants specifically identified herein. If no subconsultants are listed, then no subconsultants will be utilized in the performance of the work specified in this Agreement.
- 15.3. *Change of Subcontractors or Subconsultants:* If, after execution of the Agreement, parties agree that subconsultants not listed in Paragraph 15.2 will be utilized, Consultant may enter into subcontracts with subconsultants to perform other specific duties pursuant to the provisions of this Paragraph 15.3. The following provisions apply to any subcontract entered into by Consultant other than those listed in Paragraph 15.2:
- a. Prior to entering into any contract with subconsultant, Consultant shall obtain Sonoma Water approval of subconsultant.
  - b. All agreements with subconsultants shall (a) contain indemnity requirements in favor of Sonoma Water in substantially the same form as that contained in Article 8 (Indemnification), (b) contain language that the subconsultant may be terminated with or without cause upon reasonable written notice, and (c) prohibit the assignment or delegation of work under the agreement to any third party.
- 15.4. *Summary of Subconsultants' Work:* Consultant shall provide Sonoma Water with a summary of work performed by subconsultants with each invoice submitted under Paragraph 5.3. Such summary shall identify the individuals performing work on behalf of subconsultants and the total amount paid to subconsultant, broken down by the tasks listed in the Scope of Work.

**16. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS**

- 16.1. *Method of Delivery:* All notices, bills, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail, courier service, or electronic means. Notices, bills, and payments shall be addressed as specified in Paragraph 4.2.
- 16.2. *Receipt:* When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received on the next business day. When a copy of a notice, bill, or payment is sent by electronic means, the notice, bill, or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill, or payment is deposited in the U.S. mail and postmarked on the date of the electronic transmission (for a payment, on or before the due date), (2) the sender has a written confirmation of the electronic transmission, and (3) the electronic transmission is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Article 16.

## 17. **MISCELLANEOUS PROVISIONS**

- 17.1. *No Bottled Water:* In accordance with Sonoma Water Resolution No. 09-0920, dated September 29, 2009, no Sonoma Water funding shall be used to purchase single-serving, disposable water bottles for use in Sonoma Water facilities or at Sonoma Water-sponsored events. This restriction shall not apply when potable water is not available.
- 17.2. *No Waiver of Breach:* The waiver by Sonoma Water of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 17.3. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and Sonoma Water acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and Sonoma Water acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 17.4. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 17.5. *No Third-Party Beneficiaries:* Except as provided in Article 8 (Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 17.6. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.
- 17.7. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 17.8. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to

Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

17.9. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

17.10. *Time of Essence:* Time is and shall be of the essence of this Agreement and every provision hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

Reviewed as to funds:

TW 18/19-079

By: \_\_\_\_\_  
Sonoma County Water Agency  
Division Manager - Administrative  
Services

Approved as to form:

By: \_\_\_\_\_  
Adam Brand, Deputy County Counsel

Insurance Documentation is on file with  
Sonoma Water

Date/TW Initials: 3/5/19 Imc

**Sonoma County Water Agency**

By: \_\_\_\_\_  
Grant Davis  
General Manager  
Authorized per Sonoma County Water  
Agency's Board of Directors Action on  
April 30, 2019

**Gregory Rinehart dba Gregory D. Rinehart &  
Associates, a sole proprietorship**

By: \_\_\_\_\_  
Gregory Rinehart  
(Please print Owner's name here)

Title: Owner

Date: \_\_\_\_\_

Date: March 21, 2019

## Exhibit A

Agreement Memorandum No. \_\_\_\_\_

TW 18/19-079

Consultant shall perform the services as outlined in Exhibit B (Scope of Work) of the Agreement and as modified below, if applicable, within the times or by the dates provided for herein.

A. Date of Initiation Conference:	
B. Project Manager Name:	
C. Project Manager Phone:	
D. Project Manager E-mail:	
E. Project Name:	
F. AP Number:	
G. Project-Activity Code:	
H. Schedule for receipt of deliverables: Draft Report Due: Final Report Due:	
I. Not-to-exceed amount for this Agreement Memorandum:	
J. List of key personnel or authorized subcontractors, if applicable:	
K. Modifications to Exhibit B (Scope of Work), additional requirements, or attach additional sheet:	



**Gregory Rinehart dba Gregory D. Rinehart &  
Associates**

**Sonoma County Water Agency**

By: \_\_\_\_\_

Reviewed by Project Manager:

Title: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Kevin Campbell, Agreement Administrator

Sonoma Water copies to:  
Accounting and Records  
Joan Hultberg  
Jake Spaulding

Date: \_\_\_\_\_

## **Exhibit B**

### **Scope of Work**

#### **1. TASKS**

- 1.1. General: Requested services may include, but are not limited to, the following:
- 1.2. Task 1: Appraisals
  - a. Conduct an appraisal of the property specified in each Agreement Memorandum, in accordance with generally accepted and applicable appraisal techniques and practices including, but not limited to, the following:
    - i. Make appraisal in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) as defined by the Appraisal Standards Board of the Appraisal Foundation and the appraisal guidelines implemented by the Office of Thrift Supervision as a result of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
    - ii. Appraise as though the parcel is vacant and available for development to its highest and best use.
    - iii. The appraisal shall include an appraisal report with appropriate data and analysis presented in compliance with USPAP Standards Rule 2-2(a).
- 1.3. Task 2: Progress Meetings
  - a. Attend at least one meeting for each Agreement Memorandum, in person or by telephone, with Sonoma Water to discuss the work in progress.
- 1.4. Task 3: Appraisal Reports
  - a. Contents: Prepare an appraisal report for each APN that includes the following:
    - i. Table of Contents
    - ii. Summary of Salient Facts and Conclusions
    - iii. Description of the Nature of the Appraisal Assignment
    - iv. Assumptions and Limiting Conditions
    - v. Appraiser's Certification
    - vi. Regional and Area Descriptions
    - vii. Description of APN
    - viii. Description of Market and Analysis of Current Economic Conditions
    - ix. Comparable sales analysis in chart format with accompanying analysis in narrative form
    - x. A drawing of the subject parcel, including any improvements thereon
    - xi. Appraisal Methodology

- xii. Discussion of each individual property right (parcel) to be acquired by individual owner to include property identification, site description, easements and encumbrances, utilities, zoning/land use regulations, highest and best use of property, property right required for Projects, before condition land valuation to include comparable land sales, after condition land valuation to include comparable land sales, Acquisition Land Valuation, Damages/Benefits to property from construction of Projects, Just Compensation owed to property owner for needed property rights, Appraisal Summary Statement, copy of Preliminary Title Report, and copy letter informing property owner of intent to appraise property
- b. First Draft: Prepare the appraisal report in draft form and submit to Sonoma Water for review and approval in accordance with the date listed in the appropriate Agreement Memorandum. Sonoma Water will return 1 copy of the draft report to Consultant with comments or approval in writing within 7 calendar days.
- c. Subsequent Draft(s): If Sonoma Water requests revisions, revise the draft report and resubmit 2 copies of the report for Sonoma Water approval.
- d. Final: Following Sonoma Water approval and prior to Sonoma Water's acceptance of work under this Agreement, submit the final approved report to Sonoma Water in accordance with the date listed in the appropriate Agreement Memorandum.

## **2. DELIVERABLES**

- 2.1. Submit one electronic copy in PDF format (emailed, on CD, or via internet), and three hard copies, of each final deliverable to Sonoma Water.
- 2.2. Comply with requirements of Paragraph 12 (Content Online Accessibility).

## **Exhibit C**

### **Schedule of Costs**

<b>Item</b>	<b>Rate</b>
Principal	\$350 per hour
Associate	\$200 per hour

## **Exhibit D**

### **Insurance Requirements**

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

Sonoma Water reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

#### **1. INSURANCE**

##### **1.1. Workers Compensation and Employers Liability Insurance**

- a. Required if Consultant has employees.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.
- e. If Consultant currently has no employees, Consultant agrees to obtain the above-specified Workers Compensation and Employers' Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

##### **1.2. General Liability Insurance**

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, Sonoma Water requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Sonoma Water. Consultant is responsible

for any deductible or self-insured retention and shall fund it upon Sonoma Water's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving Sonoma Water.

- d. Sonoma County Water Agency, its officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in Insurance Services Office form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a "separation of insureds" or "severability" clause which treats each insured separately.
- h. Required Evidence of Insurance:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
  - ii. Certificate of Insurance.

1.3. Automobile Liability Insurance

- a. Minimum Limit: \$300,000 Combined Single Limit per Accident; or Bodily Injury: \$100,000 per person/\$300,000 per accident and Property Damage: \$50,000 per accident.
- b. Required Evidence of Insurance:
  - i. Copy of Auto Policy Declarations Page; or
  - ii. Certificate of Insurance.

1.4. Standards for Insurance Companies

- a. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

1.5. Documentation

- a. The Certificate of Insurance must include the following reference: TW 18/19-079.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with Sonoma Water for the entire term of this Agreement and any additional periods if specified in Sections 1.1, 1.2, or 1.3 above.

- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Sonoma County Water Agency, c/o Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019.
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

1.6. Policy Obligations

- a. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

1.7. Material Breach

- a. If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. Sonoma Water, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, Sonoma Water may purchase the required insurance, and without further notice to Consultant, Sonoma Water may deduct from sums due to Consultant any premium costs advanced by Sonoma Water for such insurance. These remedies shall be in addition to any other remedies available to Sonoma Water.



BURCH-1

OP ID: ER

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/05/2019

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

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

<b>PRODUCER</b> Schroder Insurance Services Lic# 0E97553 653 Main Street Martinez, CA 94553 Schroder Insurance Services		<b>925-934-6789</b>		<b>CONTACT NAME:</b> Schroder Insurance Services <b>PHONE (A/C, No, Ext):</b> 925-934-6789 <b>FAX (A/C, No):</b> 925-934-0189 <b>E-MAIL ADDRESS:</b>	
<b>INSURED</b> GREGORY D. RINEHART & ASSOCIATES BURCHARD & RINEHART Burchard & Rinehart 3182 Old Tunnel Road, Suite E Lafayette, CA 94549-4152		<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>	
		<b>INSURER A : FIREMAN'S FUND INSURANCE CO.</b>		<b>21873</b>	
		<b>INSURER B :</b>			
		<b>INSURER C :</b>			
		<b>INSURER D :</b>			
		<b>INSURER E :</b>			
		<b>INSURER F :</b>			

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	AZC80919726	02/01/2019	02/01/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			AZC80919726	02/01/2019	02/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

Sonoma County Water Agency, its officers, agents and employees are named Additional Insured. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them. Endorsement AB

## CERTIFICATE HOLDER

## CANCELLATION

<b>SONWATE</b>  SONOMA COUNTY WATER AGENCY 404 AVIATION BLVD. SANTA ROSA, CA 95403	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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## ABC MultiCover - AB 91 89 08 07

This endorsement modifies insurance provided under the following:

### American Business Coverage

Your policy is broadened and clarified as follows:

#### 1. Non Employment Discrimination Liability

Unless **Personal Injury** or **Advertising Injury** is excluded from this policy:

A. **Section III - Definitions**, Item 17. Personal Injury is amended to include:

f. **Discrimination**

B. **Section III - Definitions**, Item 2. Advertising Injury is amended to include:

e. **Discrimination**

C. **Section III - Definitions** is amended to include:

30. **Discrimination** means the unlawful treatment of individuals based on race, color, ethnic origin, gender, religion, age, or sexual preference.

D. **Section II - Liability Coverage, Part H. Exclusions**, Item 1.p **Personal Injury** or **Advertising Injury** is amended to include:

(11) Arising out of **discrimination** directly or indirectly related to the past employment, employment or prospective employment of any person or class of persons by any insured; or

(12) Arising out of **discrimination** directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any dwelling,

permanent lodging, or premises by or at the direction of any insured; or

(13) Arising out of **discrimination**, if insurance thereof is prohibited by law; or

(14) Fines, penalties, specific performance, or injunctions levied or imposed by a governmental entity, or governmental code, law, or statute because of **discrimination**.

#### 2. Blanket Additional Insured

**Section II - Liability Coverage, Part I. Who Is An Insured**, Item 2. is amended to include:

f. Any person or organization that you are required by a written **insured contract** to include as an insured, subject to all of the following provisions:

(1) Coverage is limited to their liability arising out of:

(a) the ownership, maintenance or use of that part of the premises, or land owned by, rented to, or leased to you; or

(b) your ongoing operations performed for that insured; or

(c) that insured's financial control of you; or

(d) the maintenance, operation or use by you of equipment leased to you by such person(s) or organization(s); or

This Form must be attached to Change Endorsement when issued after the policy is written.  
One of the **Fireman's Fund Insurance Companies** as named in the policy



Secretary



President

- (e) a state or political subdivision permit issued to you.
- (2) Coverage does not apply to any **occurrence** or offense:
  - (a) which took place before the execution of, or subsequent to the completion or expiration of, the written **insured contract**, or
  - (b) which takes place after you cease to be a tenant in that premises.
- (3) With respect to architects, engineers, or surveyors, coverage does not apply to **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** arising out of the rendering or the failure to render any professional services by or for you including:
  - (a) The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; and
  - (b) Supervisory, inspection, or engineering services.

If an Additional Insured endorsement is attached to this policy that specifically names a person or organization as an insured, then this coverage does not apply to that person or organization.

### 3. Blanket Additional Insured for Vendors

Unless the **Products-Completed Operations Hazard** is excluded from this policy, **Section II - Liability Coverage, Part I. Who Is an Insured**, Item 2. is amended to include:

- g. Any vendor but only with respect to **Bodily Injury or Property Damage** arising out of **your products** which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
  - 1. The insurance afforded the vendor does not apply to:
    - a. **Bodily Injury or Property Damage** for which the vendor is obligated to pay damages by reason of the

assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

- b. Any express warranty unauthorized by you;
  - c. Any physical or chemical change in the product made intentionally by the vendor;
  - d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container.
  - e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
  - f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
  - g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
- 2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

If an Additional Insured - Vendors endorsement is attached to this policy that specifically names a person or organization as an insured, then this coverage does not apply to that person or organization.

4. Blanket Waiver of Subrogation

**Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions**, is amended to include:

6. Transfer of Rights of Recovery Against Others to us and Blanket Waiver of Subrogation
- 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 those rights. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.
  - If required by a written insured contract, we waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your operations or your work for that person or organization.

5. Broadened Named Insured

**Section II - Liability Coverage, Part I. Who Is An Insured**, Item 4. is replaced with:

4. All of your subsidiaries, companies, corporations, firms, or organizations, as now or hereafter constituted, qualify as Named Insured under this policy if:
- you have the responsibility of placing insurance for each such entity; and
  - coverage for the entity is not otherwise more specifically provided; and
  - the entity is incorporated or organized under the laws of the United States of America.

But each entity is insured only while you own, during the policy period, a controlling interest in such entity of greater than 50% of the stock or assets. However:

- Coverage under this provision is afforded only until the end of the policy period, or the 12 month anniversary of the policy inception date, whichever is earlier;
- Coverage C does not apply to **bodily injury or property damage** that occurred

before you acquired or formed the organization;

- Coverage C does not apply to **personal injury or advertising injury** arising out of an offense committed before you acquired or formed the organization.

6. Medical Payments

Unless **Coverage D. Medical Payments** is excluded from this policy:

- A. **Section II - Liability Coverage, Part H. Exclusions**, Item 2.f. is replaced with:

- Included within the **products-completed operations hazard**. However, this exclusion does not apply to expenses for dental services.

- B. **Section II - Liability Coverage, Part G. Coverage**, Item 2., is amended to include:

- Coverage D. Medical Payments** is primary and not contributing with any other insurance, even if that other insurance is primary also.

7. Tenant's Legal Liability

- A. **Section III - Liability Coverage, Part J. Liability and Medical Payments Limits of Insurance**, Item 3. is replaced with:

3. The most we will pay under Coverage C - Liability for damages because of **property damage** to premises while rented to you, temporarily occupied by you with the permission of the owner, or managed by you under a written agreement with the owner:
- arising out of any Covered Cause of Loss shall be the greater of:
    - \$1,000,000; or
    - The Tenant's Legal Liability limit shown in the Declarations.

8. Chartered Aircraft

**Section II - Liability Coverage, Coverage C, Part H. Exclusions**, Item 1.g. is amended to include:

- An aircraft in which you have no ownership interest and that you have chartered with crew.

9. Coverage Territory Broadened

**Section III - Definitions**, Item 5.a. is replaced with:

- a. The United States of America (including its territories and possessions), Puerto Rico, Canada, Bermuda, the Bahamas, the Cayman Islands and the British Virgin Islands.

10. Broadened Advertising Injury

Unless **Advertising Injury** is excluded from this policy:

A. **Section III - Definitions**, Item 2. is replaced with:

2. **Advertising Injury** means injury arising out of one or more of the following offenses:
  - a. Oral, written, televised or videotaped publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - b. Oral, written, televised or videotaped publication of material that violates a person's right of privacy;
  - c. Misappropriation of advertising ideas or style of doing business; or
  - d. Infringement of trademark, copyright, title or slogan.

B. **Section II - Liability Coverage, Coverage C, Part H. Exclusions**, Items 1.p.(1) and (2) are replaced with:

- (1) Arising out of oral, written, televised or videotaped publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written, televised or videotaped publication of material whose first publication took place before the beginning of the policy period;

11. Broadened Personal Injury

Unless **Personal Injury** is excluded from this policy, **Section III - Property, Liability and Medical**

**Payments Definitions**, Items 17.b., d. and e. are replaced with:

- b. Malicious prosecution or abuse of process;
- d. Oral, written, televised or videotaped publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral, written, televised or videotaped publication of material that violates a person's right of privacy;

12. Broadened Personal or Advertising Injury

Unless **Personal Injury** or **Advertising Injury** is excluded from this policy, **Section II - Liability Coverage, Coverage C, Part H. Exclusions, Item 1.p.(4) Exclusions** is deleted in its entirety.

13. Fellow Employees Coverage

**Section II - Liability Coverage, Part I. Who Is an Insured**, Item 2.a.(1) is amended as follows:

- (1) **Personal Injury** to you or to a co-employee while in the course of his or her employment, or the spouse, child, fetus, embryo, parent, brother, sister or any member of the household of that employee or co-employee as a consequence of such **Personal Injury**, or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or

14. Mental Anguish Is Included in Bodily Injury

**Section III - Definitions**, Item 4. is replaced with:

4. **Bodily injury** means **bodily injury**, sickness or disease sustained by a person. It includes death or mental anguish which result at any time from such physical harm, physical sickness or physical disease. Mental anguish means any type of mental or emotional illness or disease.

15. Unintentional Failure to Disclose Hazards

**Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions**, is amended to include:

6. Unintentional Failure to Disclose Hazards

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

16. Supplementary Payments, Increase Limits

**Section II - Liability Coverage, Part G. Coverage,** Items 1.e. (2) and (4) are replaced with:

- (2) The cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or suit including substantiated loss of earnings up to \$500 a day because of time off work.

17. Per Location Aggregate

A. **Section II - Liability Coverage, Part J. Limits of Insurance,** Item 4. is amended to include:

The Aggregate Limit of Insurance applies separately to each **location** owned by you, rented to you, or occupied by you with the permission of the owner.

B. **Section III - Property, Liability and Medical Payments Definitions,** is amended to include:

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

18. Amended Duties in the Event of an Occurrence, Offense Claim or Suit

**Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions,** Items 2.a. and b. are replaced with:

- a. In the event of an **occurrence**, offense, claim, or **suit**, you must promptly notify us. Your duty to promptly notify us is effective when your executive officers, partners, members, or

legal representatives are aware of the General Liability **occurrence**, offense, claim, or **suit**. Knowledge of an **occurrence**, offense, claim, or **suit** by other employee(s) does not imply you also have such knowledge.

- b. To the extent possible, notice to us should include:

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

19. **Common Policy Conditions (AB 00 09 A 01 87), Part H. Other Insurance,** Item 2. is replaced with:

2. Coverage C - Liability

If other valid and collectible insurance is available to **any** insured for a loss we cover under Coverage C of this Coverage Part our obligations are limited as follows:

- a. The insurance provided under this policy is primary if you are required by a written **insured contract** to include any person or organization as an insured, but only with respect to that insured's liability arising out of the ownership, maintenance, or use of that part of the premises owned by or rented to **you**, or **your work** for that insured by or for you. Any other insurance available to that person or organization is excess and noncontributory with this insurance, or;
- b. Except for the circumstance described in 2.a., above, the insurance provided under this policy is excess over any other liability insurance available to any insured whether such other insurance is written as primary, excess, contingent or any other basis. An exception applies when any insured specifically has purchased excess insurance to apply in excess of the limits of insurance shown in the Declarations of this Coverage Part for Coverage C.

20. Damage to Invitees' Automobiles from Falling Trees or Tree Limbs - Limited Coverage

The policy applies to direct physical damage to automobiles owned by invitees subject to all of the following:

1. Provided such damage originates from premises owned, managed, leased or rented by an insured;
2. Coverage applies only to invitees of an insured or an insured's tenant;
3. Such damage is directly caused by wind-driven falling trees or tree limbs;
4. The most we will pay for any one loss is the lesser of the actual cash value of the damaged automobile as of the time of the loss; or the cost of repairing or replacing the damaged automobile with another automobile of like

kind and quality; subject to a limit of \$25,000 in any one policy period; and

5. This coverage is not subject to the General Liability General Aggregate Limit.

21. Expected or Intended Injury - Amendment to Exclusion

SECTION I. - 2. EXCLUSIONS a. Expected or Intended Injury, is replaced by the following:

- a. Expected or Intended Injury

**Bodily injury or property damage** expected or intended from the standpoint of the insured. This exclusion does not apply to **bodily injury or property damage** resulting from the use of reasonable force to protect persons or property.

All other terms and conditions of the policy apply.