

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: June 17, 2024
Reviewed by: NA

SUBJECT: Annual Street Rehabilitation Program (CIP No. 21000)
Marin Avenue Pavement and Curb Ramp Rehabilitation Project – Phase 2
Award of Professional Engineering Services Contract No. C24-35

REPORT BY: Allison Carrillo, CIP Program Manager
Devora Zauderer, Program Manager
Mark Hurley, Director/City Engineer

SUMMARY

The issue before Council is approval of a professional services contract for engineering and design services under the Annual Street Rehabilitation Program (CIP No. 21000). The proposed Contract No. C24-35 includes adding traffic signal improvements, intersection safety lighting, and finalizing the bid package for advertisement of the Marin Avenue Pavement and Curb Ramp Improvement Project – Phase 2. The recommended action also includes a budget adjustment for the Annual Street Rehabilitation Program as outlined in the adopted Capital Improvement Plan.

STAFF RECOMMENDATION

That the Council adopts Resolution No. 2024-49:

1. Authorizing the City Manager to award Contract No. C24-35 for professional engineering services to Bellecci and Associates in the not-to-exceed amount of \$233,345.00 to add traffic signal improvements, intersection safety lighting, and finalize bid package for the Marin Avenue Pavement and Curb Ramp Rehabilitation Project – Phase 2; and
2. Appropriating the planned FY2024 program budget for the Annual Street Rehabilitation Program (CIP No. 21000) in the amounts of \$760,000 in Measure BB Local Streets & Roads Direct Local Distributions Funds (1201), \$800,000 from local Measure F Street & Storm Drain Parcel Tax Funds (2006), and \$40,000 from Vehicle Registration Fee Direct Local Distributions Funds (1104) and adjusting the budget for the program accordingly.

BACKGROUND

The City of Albany currently maintains approximately 30 centerline miles of roads representing five million square feet of pavement. The Annual Street Rehabilitation Program (CIP No. 21000) was established as part of the City’s Capital Improvement Plan (CIP) in order

to formalize the City’s annual investment into improving and maintaining pavement conditions throughout the City.

On November 2, 2020, Council awarded Contract No. C21-10 for programmatic pavement and curb rehabilitation design, including for Marin Avenue from Masonic Avenue to the Berkeley city limit (Resolution No. 2020-105). Locations included in the project were selected based on prioritizations in the 2019 Pavement Management Plan, in conjunction with other upcoming projects including EBMUD’s (East Bay Municipal Utility District) planned pipeline replacement. The limits of rehabilitation on Marin Avenue were expanded in January 2021 to add 3 additional blocks of Marin Avenue (Cornell Avenue to Masonic Avenue) and scoped under the Marin Avenue Curb Ramp and Pavement Rehabilitation Project (“Marin Paving Project”).

During design of the Marin Paving Project, EBMUD communicated a need for waterline replacement on Marin Avenue from Key Route Boulevard to Tulare Avenue due to aging conditions and shallow facilities. To accommodate EBMUD pipeline replacement work, staff separated the Marin Avenue Pavement and Curb Ramp Rehabilitation into two phases (Phase 1: Cornell to Key Route and Phase 2: Key Route to City Limits). The planned sequence for construction of Marin Paving Project was to resume with Phase 2 following completion of the EBMUD waterline work. Staff identified significant amounts of work developing in close proximity along the San Pablo Avenue corridor in Spring-Fall 2024 and elected to defer the remainder of the Marin Avenue Paving project to start construction in Spring 2025.

DISCUSSION

Staff have identified several recommended improvements and updates to the Marin Paving Project – Phase 2 limits, including signal improvements and intersection safety lighting as described below. These recommended improvements and updates are included in the proposed scope of design work under Contract No. C24-35.

Signal Improvements

Improvements recommended for addition under this project include replacement of signal heads for improved visibility, upgrade of signal controller at Peralta, addition of battery backups for power outages, video detection equipment, Opticom GPS (Global Positioning System) pre-emption system, and construction of a new conduit system that meets current electrical code requirements, including for burial depth. The existing underground electrical conduit system within the Peralta intersection is shallow (6”-10” cover) and conflicts with planned curb ramps under the Marin Paving project.

As an added benefit, replacement of the conduits, battery backups, and the addition of video detection equipment for the intersection will minimize the risks of damages to signal operation from future utility work, reduce signal outages during PG&E power outages, and provides more flexibility for improvement projects.

Intersection Safety Lighting

The City of Albany completed a Citywide Streetlight Assessment in early 2024. The assessment identified conflicts along upper Marin Avenue (Key Route Boulevard to Berkeley City Limits) between existing utility pole mounted streetlights and the large tree canopy. On

account of these conflicts and the configuration of a major arterial running through a residential neighborhood, improvements to intersection safety lighting along upper Marin Avenue were included as a high priority comprehensive improvement.

Furthermore, Phase 2 of the Marin Paving Project includes Transportation Commission recommendations for marked crossings at all four legs of the intersection, rather than the current configuration of a single marked crossing at Marin Avenue per intersection. This is expected to change where pedestrians may be crossing the roadway – further supporting a need for intersection safety lighting improvements under this project.

The Citywide Streetlight Assessment also includes discussions around continuous lighting along arterial bikeways. Recognizing a desire for future bikeway improvements along Marin Avenue, the proposed intersection safety lighting design will be sized to accommodate the addition of bikeway lighting under potential future transportation improvement project(s).

The City of Albany does not have a dedicated streetlight improvement fund to supplement the costs to the Annual Street Rehabilitation Program. However, with the changes to pedestrian network for Marin Avenue crossings and identified need for intersection lighting along Upper Marin Avenue, Staff recommend that this high-priority, comprehensive improvement be added to the Marin Avenue Curb Ramp and Pavement Rehabilitation Project – Phase 2.

ANALYSIS

To complete the project design and finalize construction documents, CSG Consultants, the original consultants for the Marin Phase 2 project, provided an initial fee proposal in the amount of \$499,900. Staff reviewed and found the proposal inconsistent with the anticipated level of effort to add streetlighting, add signal improvements, and finalize project designs. Following detailed negotiations for a revised fee proposal from CSG Consultants, CSG returned with an initial revised fee proposal of \$467,400. Staff also reached out to Bellecci and Associates, an on-call transportation and engineering design firm working on other projects within the City of Albany with similar level of experience with City of Albany preferences, and experience with non-pavement, transportation elements (signals and street lights).

Final proposals from Bellecci and Associates, and CSG Consultants, came in at the following:

Consultant	Proposal
Bellecci and Associates	\$233,345.00
CSG Consultants	\$350,000.00

Staff recommend awarding Professional Services Contract No. C24-35 to Bellecci and Associates in the amount of \$233,345. In addition to demonstrating greater experience with traffic signal and streetlight designs projects, Bellecci and Associates demonstrated a greater attention to, and understanding of the need to refining the design of retrofit style ADA (American Disability Act) curb ramps within older corridors for more cost-efficient construction, particularly in non-standard roadway prisms such as exists along Marin Avenue. This experience is expected to reduce costs associated with full-depth reconstruction and *may* further benefit the project by increasing the viability of the use of Cold In-Place Recycling (CIPR) as an alternative paving method. CIPR is a method of paving in which the existing

asphalt surface is removed, blended with an asphalt recycling agent, and replaced in the same location. High level analysis of the project for the CIPR method of pavement rehabilitation will be one of the first scopes of work under the proposed Contract No. C24-35.

SUSTAINABILITY CONSIDERATIONS

The pavement maintenance design contract supports continued maintenance of the City’s roadway network, which will help to avoid the need for more extensive and environmentally impactful street rehabilitation.

SOCIAL EQUITY AND INCLUSIVITY CONSIDERATIONS

The project scope includes attention to the City’s Priority Pedestrian network, including updating crosswalks for improved visibility using the ‘triple four’ type. The updated crosswalk striping presents easier and safer pedestrian crossings, thus promoting non-motorized travel and reducing greenhouse gas emissions.

EQUAL OPPORTUNITY AND NON-DISCRIMINATION

The City of Albany promotes equal opportunity and non-discrimination on the basis of race, religion, creed, color, national origin, ancestry, sex, age, physical handicap, medical condition, marital status or other interests protected by state and federal law. The City strongly values contract participation by minority owned and women owned businesses. However, the City is unfortunately restricted in its ability to implement any form of preference program associated with those groups on City contracts based on limitations imposed under the California Constitution, which do not permit any public agency in the state to grant preferential treatment to any entity “on the basis of race, sex, color, ethnicity or national origin” in public contracting (Cal. Const., art. I, § 31.). This constitutional restriction, which is commonly referred to as Proposition 209, was approved by voters in 1996. An effort to overturn this restriction placed on the November 2020 ballot (Proposition 16) was not approved by voters. The only exception to the bar under Proposition 209 is for federally funded projects where the City has historically and will continue to fully and actively promote participation by minority owned and women owned businesses.

FINANCIAL CONSIDERATIONS

The budget for the first three years of the City’s Annual Street Rehabilitation Program (CIP No. 21000) was appropriated by Council as part of the City’s Capital Improvement Plan as adopted on November 16, 2020 (Resolution No. 2020-108). This budget reflects the City’s commitment to investing annually in maintaining and improving the City’s public right-of-way. This budget has been updated since with additional appropriations, including for Direct Local Distributions (DLD) sources for FY22-23 and for SB1/RMRA (Road Maintenance and Rehabilitation Account) annually.

The following table details the appropriated budget and funding sources for the Annual Street Rehabilitation Program:

Funding Sources	Current Appropriations
1101 – Meas B LSR	\$1,570,000
1104 – VRF	\$180,000
1201 – Meas BB LSR (ACTC)	\$2,700,000
2006 – Meas F Street & Storm	\$5,400,000
2009 – State SB1/RMRA	\$1,953,543
1405 – CDBG	\$96,574
Total Appropriated Budget:	\$11,900,117

As of June 7, 2024, the City has either spent or encumbered approximately \$10.8 million of the total appropriated program budget for the noted fiscal years. The majority of the remaining program budget appropriations are from State SB1/RMRA funds, which are restricted for construction of the Marin Phase 2 project.

At this time, staff recommend appropriation of the following funds from the projected Annual Street Rehabilitation Program budget outlined in the CIP for fiscal year 2023-2024, as outlined below.

Funding Sources	FY23-24 Budget to Appropriate
1104 – VRF (ACTC)	\$40,000
1201 – Meas BB LSR (ACTC)	\$760,000
2006 – Meas F Street & Storm	\$800,000
Total Budget Adjustment:	\$1,600,000

Appropriation of these funds at this time will enable staff to continue with additional pre-construction activities, as well as continuing design efforts for future years of the program. This action was planned as part of the CIP process.

The contract recommended for funding in this report is within remaining appropriations, as augmented by the additional funding recommendation. Staff will recommend any further adjustments needed to support construction at the time of construction contract award.

Attachments

1. Resolution No. 2024-49
2. Contract No. C24-35

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RESOLUTION NO. 2024-49

**A RESOLUTION OF THE ALBANY CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO AWARD PROFESSIONAL SERVICES
CONTRACT NO. C24-35 TO BELLECCI AND ASSOCIATES AS PART OF
THE ANNUAL STREET REHABILITATION PROGRAM (CIP NO. 21000)**

WHEREAS, the City of Albany owns and maintains approximately 30 centerline miles of streets and roadways; and

WHEREAS, on November 16, 2020, the City Council adopted Resolution No. 2020-108 adopting the FY2019/20 – FY2023/24 Capital Improvement Plan (CIP) and appropriating funding for the first three years of the plan, including budget for the Annual Street Rehabilitation Program (CIP No. 21000); and

WHEREAS, the Annual Street Rehabilitation Program (CIP No. 21000) is included in the CIP, and reflects the City’s commitment to ongoing investment into improving and maintaining City street conditions; and

WHEREAS, the City completed a Citywide Streetlight Assessment in 2024 which identified a high priority comprehensive improvement to intersection safety lighting was needed along upper Marin Avenue (Key Route Boulevard to Berkeley City Limits); and

WHEREAS, Staff identified a need for improvements to existing signal infrastructure at intersections within the Marin Avenue Pavement and Curb Ramp Rehabilitation Project; and

WHEREAS, Staff requested and received fee proposals from CSG Consultants and Bellecci and Associates to incorporate intersection streetlighting, signal improvements, and finalize construction documents for the Marin Avenue Pavement and Curb Ramp Rehabilitation Project; and

1 **WHEREAS**, Staff reviewed both fee proposals and found the proposal and scope of
2 services by Bellecci and Associates to provide a more cost efficient package for adding
3 streetlighting and signal transportation elements, along with Bellecci and Associates
4 demonstrating a better understanding of the high-level needs of the overall project, including
5 refining design of ADA (American Disability Act) curb ramps to reduce grading costs and
6 increase feasibility for the use of alternative paving methods.
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8 **NOW, THEREFORE, BE IT RESOLVED**, that the Albany City Council hereby
9 authorizes the City Manager to execute Contract No. C24-35 for professional engineering
10 services to Bellecci and Associates in the not-to-exceed amount of \$233,345.00 to add traffic
11 signal improvements, intersection safety lighting, and finalize bid package for the Marin
12 Avenue Pavement Rehabilitation Project – Phase 2; and
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14 **BE IT FURTHER RESOLVED**, that the Albany City Council does hereby appropriate
15 the planned FY2024 CIP program budget for the Annual Street Rehabilitation Program (CIP
16 No. 21000) in the amounts of \$760,000 in Measure BB Local Streets & Roads Direct Local
17 Distributions Funds (1201), \$800,000 from local Measure F Street & Storm Drain Parcel Tax
18 Funds (2006), and \$40,000 from Vehicle Registration Fee Direct Local Distributions Funds
19 (1104) and adjusts the budget for the program accordingly.
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23 _____
24 JOHN MIKI, MAYOR
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**CONTRACT #C24-35
AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF ALBANY
AND
BELLECCI & ASSOCIATES**

**FOR PROJECT: MARIN PAVING PROJECT – PHASE 2 (FINALIZE PS&E,
ADD SIGNAL AND SAFETY LIGHTING WORK)**

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this _____ day of June, 2024 by and among the City of Albany a California charter city ("CITY") and Bellecci & Associates ("CONSULTANT").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of SECTION 19 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period of 2 years from the date of execution of this AGREEMENT, as first shown above. Such term may be reduced or extended upon written agreement of both parties to this AGREEMENT.

SECTION 2. SCOPE OF SERVICES.

CONSULTANT agrees to perform the services set forth in EXHIBIT "A" "SCOPE OF SERVICES" and made a part of this AGREEMENT.

SECTION 3. ADDITIONAL SERVICES.

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" "SCOPE OF SERVICES", unless such additional services are authorized in advance and in writing by the City Council or City Manager of CITY. CONSULTANT shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

Subject to any limitations set forth in this AGREEMENT, CITY agrees to pay CONSULTANT the amounts specified in EXHIBIT "B" "COMPENSATION" and made a part of this AGREEMENT. The total compensation, including reimbursement for actual expenses, shall not exceed \$233,345.00 unless additional compensation is approved in writing by the City Council or City Manager.

Each month CONSULTANT shall furnish to CITY an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, sub-consultant contracts and miscellaneous expenses. CITY shall independently review each invoice submitted by the CONSULTANT to determine whether the work performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth below. In the event any charges or expenses are disputed by CITY, the original invoice shall be returned by CITY to CONSULTANT for correction and resubmission.

Except as to any charges for work performed or expenses incurred by CONSULTANT which are disputed by CITY, CITY will use its best efforts to cause CONSULTANT to be paid within thirty (30) days of receipt of CONSULTANT's invoice.

Payment to CONSULTANT for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONSULTANT.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

CITY may inspect and accept or reject any of CONSULTANT's work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONSULTANT's work within sixty (60) days after submitted to CITY. CITY shall reject work by a timely written explanation, otherwise CONSULTANT's work shall be deemed to have been accepted. CITY's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONSULTANT's work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, SECTIONS 15 and 16, pertaining to indemnification and insurance, respectively.

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this AGREEMENT shall become the sole property of CITY and may be used, reused or

otherwise disposed of by CITY without the permission of the CONSULTANT, provided, however, that City agrees to indemnify, defend and hold the Consultant harmless from and against any claims or damages that may result from the subsequent negligent use, reuse, transfer or modification of Consultant's drawings and specifications, except on projects where the Consultant has been retained to provide services . Upon completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

SECTION 7. CONSULTANT'S BOOKS AND RECORDS.

CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY or its designated representative. Copies of such documents or records shall be provided directly to the CITY for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its successors-in-interest and authorized representatives.

SECTION 8. STATUS OF CONSULTANT.

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly

conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY'S employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

CONSULTANT represents that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT. CONSULTANT shall perform its services consistent with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances (hereinafter the "Standard of Care").

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS, PERMITS, AND LICENSES.

CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all professional licenses permits, authorizations, and any other licenses necessary to perform the services set forth in this AGREEMENT. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, to the extent caused by any failure of CONSULTANT to comply with this section. Consultant shall assist City, as appropriate, in City's application for permits and approvals typically required of an owner.

CONSULTANT shall obtain and maintain in full force and effect during the term of this AGREEMENT a Business License from the CITY's Finance Department. Provide City of Albany Business License number and Expiration Date on Page 11 of this contract.

SECTION 11. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this AGREEMENT.

SECTION 12. UNAUTHORIZED ALIENS.

CONSULTANT hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et M., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should any liability or sanctions be imposed against CITY for such use of unauthorized aliens, CONSULTANT hereby agrees to and shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by CITY.

SECTION 13. CONFLICTS OF INTEREST.

(a) CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder CONSULTANT's performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. CONSULTANT agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) CITY understands and acknowledges that CONSULTANT is, or may be, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 14. CONFIDENTIAL INFORMATION AND RELEASE OF INFORMATION.

(a) All information gained or work product produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work product to persons or entities other than CITY without prior written authorization from the City Administrator, except as may be required by law, government regulation, rule, ethical obligation, subpoena or court order.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then CITY shall have the right to reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including reasonable attorneys fees caused by or incurred as a result of CONSULTANT's conduct.

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

SECTION 15. INDEMNIFICATION

(a) CITY and its elected and appointed boards, officials, officers, and employees (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, defend, (but for claims alleging professional liability, shall not defend) and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur as a result of third-party tort claims to the extent caused by the willful misconduct or negligent act, error or omission, of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this agreement.

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from CITY, shall defend INDEMNITEES at CONSULTANT's expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONSULTANT under SECTION 16 shall ensure CONSULTANT's obligations under this section, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions

of this section shall survive the expiration or earlier termination of this AGREEMENT.

(c) The provisions of this section do not apply to CLAIMS to the extent caused by the CITY's negligence or *willful* acts or omissions.

SECTION 16. INSURANCE.

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Administrator. CONSULTANT agrees to provide CITY with copies of required policies upon request.

SECTION 17. ASSIGNMENT.

The skill and experience of CONSULTANT are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this AGREEMENT or any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of the CITY. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

SECTION 18. CONTINUITY OF PERSONNEL.

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify CITY of any changes in CONSULTANT's staff assigned to perform the services required under this AGREEMENT, prior to any such performance.

SECTION 19. TERMINATION OF AGREEMENT.

(a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(b) CONSULTANT may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to CITY. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(c) If either CONSULTANT or CITY fail to perform any material obligation

under this AGREEMENT, then, in addition to any other remedies, either CONSULTANT, or CITY may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY which is in CONSULTANT's possession shall be returned to CITY. CONSULTANT shall furnish to CITY a final invoice for work performed and expenses incurred by CONSULTANT, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

SECTION 20. DEFAULT.

In the event that CONSULTANT is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the CONSULTANT.

SECTION 21. EXCUSABLE DELAYS.

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of CITY, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

SECTION 22. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to CONSULTANT in every reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

SECTION 23. NOTICES.

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To CITY: City of Albany
1000 San Pablo Avenue
Albany, CA 94706
Attn: Anne Hsu, City Clerk

To CONSULTANT: Bellecci & Associates
2290 Diamond Blvd., Suite 100
Concord, CA 94520
Attn: Daniel Leary, Principal

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 24. AUTHORITY TO EXECUTE.

The person or persons executing this AGREEMENT on behalf of CONSULTANT represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONSULTANT to the performance of its obligations hereunder.

SECTION 25. BINDING EFFECT.

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 26. MODIFICATION OF AGREEMENT.

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONSULTANT and by the CITY. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 27. WAIVER

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not

constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

SECTION 28. LAW TO GOVERN; VENUE.

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in Alameda County. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 29. CLAIMS.

All claims arising out of or related to this agreement must be presented not later than six (6) months after the accrual of the cause of action. Such claims shall be governed by the provisions of the Albany Municipal Code and such claims shall further be governed by the provisions of section 930.4 of the Government Code for the purposes of filing leave to present a later claim. It is further provided that subdivision (b) of section 911.4 sections 911.6 to 912.2, inclusive and section 946.6 are applicable to all such claims, and the time specified in this agreement shall be deemed the "time specified" in section 911.2 within the meaning of sections 911.6 and 946.6.

SECTION 30. W-9 FORM

Complete the attached EXHIBIT "D W-9 FORM" that will be removed from this contract and forwarded to our Finance Department for use during invoice processing.

SECTION 31. ENTIRE AGREEMENT.

This AGREEMENT, including the attached EXHIBITS "A" through "D", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 32. SEVERABILITY.

If any term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

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

CITY OF ALBANY:

By _____
Nicole Almaguer, City Manager

Date _____

CONSULTANT:

By *[Signature]*
(Authorized Officer) *PRINCIPAL*
Name: *Daniel Leary* *A.F.*
Title: Principal

By *[Signature]*
(Authorized Officer)
Name: *Anoop Admal*
Title: *Principal*

APPROVED AS TO FORM:

Malathy Subramanian, City Attorney

Date _____

City of Albany Business License

BL # _____
Expiration Date: _____

ATTEST:

Anne Hsu, City Clerk

Date _____

June 5, 2024

Ms. Allison Carrillo, PE
CIP Program Manager
City of Albany Public Works

Re: City of Albany Marin Avenue Phase 2 Pavement Rehabilitation

Dear Ms. Carrillo,

We are writing to you regarding the City of Albany Marin Avenue Phase 2 Pavement Rehabilitation Project. Please see below for the proposed scope of work and fee, per our discussions.

Scope of Work:

The work includes finalizing the Marin Avenue Phase 2 plans, technical specifications, and estimate. We anticipate 3 submittals – 90%, 100%, and Bid. The plans were previously prepared by another local consultant. Additionally, we anticipate the following tasks:

- Performing one and a half days of supplemental surveying
- Preparing minor base mapping modifications
- Creating storm drain profiles for the proposed storm drain modifications. There is not potholing data to inform of the exact depths in the basic services, but we will use record drawings and industry standard utility depths to create the storm drain profiles.
- Revising the grading at the curb ramps to reduce the amount of roadway pavement section removal depth at the intersections
- Adding to the plans subdrains and duct bank cap notes and details to due to the instances of groundwater and stormwater runoff ponding at the street level. Based on discussions with the City, the exact cause of the groundwater upsurge is not known, but the proposed remedy is to install a subdrain on the edge of the roadway at select locations. The subdrains would extend along the edge of the gutter for 15' to 25', from one of the existing or proposed drainage inlets.
- Participating and presenting at 2 public and/or committee meetings.

As a first order of work, we will prepare cost estimates for two alternatives: 1.) separating the project into two phases at Curtis Street, and 2.) a single project assuming cold-in-place recycling as the pavement rehabilitation treatment alternative. We will coordinate with City to review the cost alternatives and proceed with the project based on City feedback.

The work also includes street lighting plans per the recommendations provided by Clanton & Associates. Also, traffic signal plans for any push button and traffic signal modifications that may be necessary to finalize the drawings, to be provided by Parametrix.

City of Albany, CA
Marin Avenue xx Project

Optional Services:

Our budget spreadsheet includes the following optional services:

- Allowance for potholing and utility locating (GPR)
- Allowance for geotechnical investigations
- Additional printing and other expenses

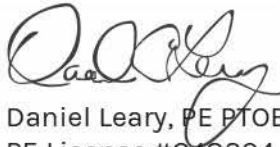
We do not anticipate more than two submittals + one back check submittal, due to the current plans appearing to be nearly 100% design level.

Fee Proposal:

Our budget for this work is \$233,345, please see attached Exhibit A for the fee breakdown.

We greatly appreciate your time in considering the budget request for this project. Please feel free to contact me at 925.685.4569 with any questions or comments on our proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Leary". The signature is stylized and cursive.

Daniel Leary, PE PTOE QSD
PE License #C48394

City of Albany CA

Proposal for: Marin Avenue Plans Specifications & Estimate



Task	Task Description	Principal Engineer II	Principal Engineer I	Professional Eng III	Professional Eng II	Prof. Eng I /Traffic Eng	Engineer III	Engineer II	Engineer I	Assistant Eng II	Assistant Eng I	Engineering Tech	Professional Land Surv
		\$272	\$256	\$232	\$220	\$212	\$196	\$176	\$160	\$156	\$132	\$92	\$228
1	Project Management	4	8		12								
2	Public Outreach (assume 2 public meetings)	4	6				10			18			
3	Supplemental Survey												2
4	Base Mapping and sheet setup										24		
5	Cost Estimate for Two Alternatives	2	4				8			12			
6	Storm Drain profiles (not previously prepared)		4			8	24			32	32		
7	Subdrains and capping duct banks - trench plugs		5				17			28	6		
8	Marin Avenue 90% Plans, Technical Specifications, & Estimate		8			20	58			60	52		
9	Marin Avenue 100% Plans, Technical Specifications, & Estimate		8			16	36			50	40		
10	Back-Check Bid Plans, Technical Specifications, & Estimate		4			6	8			10	10		
11	Electrical Engineering - Lighting Design												
12	Traffic Engineering - Signal Design												
13	Allowance for additional engineering hours, not anticipated in the above budget		8			20	30			40	40		
		10	55	0	12	70	191	0	0	250	204	0	2

OPTIONAL SERVICES

14	Allowance for Potholing & Utility Locating						1			4			
15	Allowance for Geotechnical Investigations						4			8			
16	Additional Printing & Expenses												

Notes:

Distribution of Hours may vary during the performance of the services

Billing rates will have 3.5% escalation at each calendar year



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/15/2024

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).

Table with 2 main columns: PRODUCER (Billings Office, Marsh McLennan Agency LLC) and CONTACT NAME (406) 238-1900. Includes INSURED information (Sanderson Bellecci, Inc.) and a table of INSURER(S) AFFORDING COVERAGE with NAIC # (Charter Oak Fire Insurance Company, Phoenix Insurance Company, etc.).

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.

Main table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liab, Workers Compensation, Professional/E & O, and Pollution.

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

Table with 2 columns: CERTIFICATE HOLDER (CITY OF ALBANY, 1000 SAN PABLO AVENUE) and CANCELLATION (SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: Cindy Thelen).

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR ARCHITECTS, ENGINEERS AND SURVEYORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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 this 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. 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"> A. Non-Owned Watercraft – 75 Feet Long Or Less B. Who Is An Insured – Unnamed Subsidiaries C. Who Is An Insured – Retired Partners, Members, Directors And Employees D. Who Is An Insured – Employees And Volunteer Workers – Bodily Injury To Co-Employees, Co-Volunteer Workers And Retired Partners, Members, Directors And Employees E. Who Is An Insured – Newly Acquired Or Formed Limited Liability Companies F. Blanket Additional Insured – Controlling Interest G. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers | <ul style="list-style-type: none"> H. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Premises I. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations J. Incidental Medical Malpractice K. Medical Payments – Increased Limit L. Amendment Of Excess Insurance Condition – Professional Liability M. Blanket Waiver Of Subrogation – When Required By Written Contract Or Agreement N. Contractual Liability – Railroads |
|---|---|

PROVISIONS

A. NON-OWNED WATERCRAFT – 75 FEET LONG OR LESS

1. The following replaces Paragraph (2) of Exclusion **g.**, **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:
 - (2) A watercraft you do not own that is:
 - (a) 75 feet long or less; and
 - (b) Not being used to carry any person or property for a charge;
2. The following replaces Paragraph 2.e. of **SECTION II – WHO IS AN INSURED**:
 - e. Any person or organization that, with your express or implied consent, either

uses or is responsible for the use of a watercraft that you do not own that is:

- (1) 75 feet long or less; and
- (2) Not being used to carry any person or property for a charge;

B. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and

COMMERCIAL GENERAL LIABILITY

- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a. A limited liability company;
- b. An organization other than a partnership, joint venture or limited liability company; or
- c. A trust;

as indicated in its name or the documents that govern its structure.

C. WHO IS AN INSURED – RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph 2. of SECTION II – WHO IS AN INSURED:

Any person who is your retired partner, member, director or "employee" that is performing services for you under your direct supervision, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no such retired partner, member, director or "employee" is an insured for:

(1) "Bodily injury":

- (a) To you, to your current partners or members (if you are a partnership or joint venture), to your current members (if you are a limited liability company) or to your current directors;
- (b) To the spouse, child, parent, brother or sister of that current partner, member or director as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your retired partners, members, directors or "employees", other than a doctor. Any such retired partners, members, directors or "employees" 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.

(2) "Personal injury":

- (a) To you, to your current or retired partners or members (if you are a partnership or joint venture), to your current or retired members (if you are a limited liability company), to your other current or retired directors or "employees" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that current or retired partner, member, director, "employee" or "volunteer worker" as a consequence of Paragraph (2)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (2)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(3) "Property damage" to property:

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

D. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – BODILY INJURY TO CO-EMPLOYEES, CO-VOLUNTEER WORKERS AND RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED**:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" to a current or retired co-"employee" while in the course of the co-"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to your other "volunteer workers" or retired partners, members or directors while performing duties related to the conduct of your business.

E. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

The following replaces Paragraph 3. of **SECTION II – WHO IS AN INSURED**:

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

For the purposes of Paragraph 1. of Section II – Who Is An Insured, each such

organization will be deemed to be designated in the Declarations as:

- a. A limited liability company;
 - b. An organization other than a partnership, joint venture or limited liability company; or
 - c. A trust;
- as indicated in its name or the documents that govern its structure.

F. BLANKET ADDITIONAL INSURED – CONTROLLING INTEREST

1. The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:

- a. Such financial control; or
- b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

The insurance provided to such person or organization does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

2. The following is added to Paragraph 4. of **SECTION II – WHO IS AN INSURED**:

This paragraph does not apply to any premises owner, manager or lessor that has financial control of you.

G. BLANKET ADDITIONAL INSURED – MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a mortgagee, assignee, successor or receiver and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to its liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage" or "personal and advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed,

COMMERCIAL GENERAL LIABILITY

subsequent to the signing of that contract or agreement; and

- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

- a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such person or organization does not apply to:
 - (1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or
 - (2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

H. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to premises owned or occupied by, or rented or loaned to, you and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of any of the following for which that governmental entity has issued such permit or authorization: advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away

openings, sidewalk vaults, elevators, street banners or decorations.

I. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

J. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

- b. An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a)**, **(b)**, **(c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide:

- (a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician, paramedic, athletic trainer, audiologist, dietician, nutritionist,

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.

N. CONTRACTUAL LIABILITY – RAILROADS

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:
 - c. Any easement or license agreement;
2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.