

CONTRACT NO. \_\_\_\_\_

DEPARTMENT: Public Works

FEDERAL TAXPAYER I.D. 91-0890718

CONSULTANT: Gray & Osborne Inc.

SERVICES PROVIDED: Comprehensive Stormwater Management Plan

AMOUNT: \$116,800.00

FUND SOURCE: Storm Drain

DURATION: FROM: April 11, 2019

TO: December 31, 2020

## **AGREEMENT**

THIS AGREEMENT made and entered into on this 11th day of April, 2019, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City"), and **Gray & Osborne**, (hereafter referred to as "Provider").

### **WITNESSETH:**

WHEREAS, the City desires to contract with the Provider for providing of services; and

WHEREAS, the Provider is licensed and/or duly qualified to provide such services; and

WHEREAS, the City has an interest in promoting the health, safety and welfare of the citizens of the City of Burlington; and

WHEREAS, the Scope of Work included in this Agreement is consistent with promoting the interests of the City; and

WHEREAS, the City and the Provider are desirous of entering into an agreement to formalize their relationship.

**NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Provider do mutually agree as follows:**

1. **WORK AND/OR SERVICES TO BE PROVIDED BY THE PARTIES:**
  - a. The Provider shall complete in a satisfactory and proper manner, the management of the Comprehensive Stormwater Management Plan. As determined by the City, and as further described in "**Exhibit A, & B**", Scope of Work and/or Service of Provider, which is attached hereto and incorporated herein by reference.

b. The City will provide such assistance and guidance to the Provider as may be required to support the objectives of this Agreement.

2. TIME OF PERFORMANCE:

All services described under Scope of Work and/or Services shall be conducted on or before December 31, 2020.

3. CONSIDERATION:

The City shall pay to the Provider for work and/or services as follows:  
The sums billed to the City shall not exceed the total sum of \$116,800.00. Provider shall bill the City of Burlington monthly by way of itemized invoices for the services rendered under this Agreement and in accordance with the Schedule of Rates depicted in Exhibit "B". Any deposits paid by the City in advance shall be offset against amounts billed, and shall be reflected in the Provider's invoice.

4. RELATIONSHIP:

The City and Provider intend that an independent contractual relationship be created by this Agreement. Provider is not considered to be an employee of the City for any purpose, and neither the Provider nor any employee of the Provider shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Provider specifically represents and stipulates that the Provider is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that provider is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

5. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Provider fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the suspension or termination of this Agreement.

Further, in the event the Provider has failed to perform any substantial obligation to be performed by the Provider under this Agreement, then the City may, upon written notice to the Provider, withhold all monies due and payable to Provider, without penalty, until such failure to perform is cured or otherwise adjudicated.

6. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes to the Agreement. Any and all agreed modifications shall be in writing and signed by each of the parties.

**7. REPORTS AND INFORMATION:**

The Provider, in such form as the City may require, shall provide reports as to the status of the work or services undertaken pursuant to this Agreement, including the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

**8. AUDITS AND INSPECTIONS:**

The City or its delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as a part of the Agreement by whatever legal and reasonable means are deemed by the City.

**9. DEFENSE & INDEMNITY AGREEMENT:**

Provider shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Provider in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Provider and the City, its officers, officials, employees, and volunteers, the Provider's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Provider's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. This provision of this section shall survive the expiration or termination of this Agreement.

**10. NO THIRD-PARTY BENEFICIARIES:**

Except as specifically provided herein, this Agreement is for the parties hereto only, and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third-party beneficiary or other rights whatsoever hereunder.

**11. PROOF OF INSURANCE:**

The Provider shall provide proof of insurance for general comprehensive liability in the amount of \$1,000,000 per occurrence to cover activities during the term of this Agreement and \$2,000,000 in the aggregate. Proof of insurance shall be in a form acceptable and approved by the City. A certificate of insurance naming the City of Burlington at 833 S. Spruce Street, Burlington, WA 98233, its

elected and/or appointed officials and/or officers, subcontractors, agents and/or employees as additional insureds shall accompany this Agreement for signing.

The Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work hereunder by the Provider, its agents, representatives, or employees.

- a. Provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Provider.
- b. The Provider shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

*Subcontractors:*

The Provider shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

12. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

13. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

14. VENUE AND JURISDICTION:

All parties shall submit and not object to jurisdiction and venue being that of Skagit County, Washington, in connection with any claims arising out of this Agreement.

15. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

16. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this

Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

17. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

18. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

19. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior consent of the other party, which consent shall not be unreasonably delayed or withheld.

20. HEADINGS:

The headings to the paragraphs of this Agreement are solely for the convenience of the parties, and are not an aid in the interpretation of the instrument.

21. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington  
ATTN: City Clerk  
833 S. Spruce Street  
Burlington, WA 98233

With additional copies to:

Burlington Public Works Department  
Burlington City Attorney  
833 S. Spruce Street  
Burlington, WA 98233

Any notices to be sent to Provider shall be sent to the following address:

Gray & Osborne, Inc.  
1130 Rainer Ave. S. Suite 300  
Seattle, WA 98144

22. AUTHORITY:

Each individual executing this Agreement on behalf of the City and the Provider represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Providers.

IN WITNESS WHEREOF, the City and the Provider have executed this Agreement as of the date and year last written below.

**CITY OF BURLINGTON**

**PROVIDER:**

\_\_\_\_\_  
Steve Sexton  
Mayor

By: 

Gray & Osborne, Inc.  
Tax ID Number: 91-0890718

\_\_\_\_\_  
Marv Pulst, P.E.  
Public Works Director

Attest:

\_\_\_\_\_  
Diane Marcotte  
Acting Director of Budget & Accounting

Approved As To Form

\_\_\_\_\_  
Leif Johnson, City Attorney

## **EXHIBIT A**

### **SCOPE OF WORK**

#### **CITY OF BURLINGTON COMPREHENSIVE STORMWATER MANAGEMENT PLAN**

#### **BACKGROUND**

The current City of Burlington Comprehensive Stormwater Plan (Plan) was last updated in 2005, and now the City is seeking professional services to revise and update the Plan and review the City's program for managing storm and surface water (Program). This scope of work identifies the tasks necessary to complete the work and assist the City with the establishment of Program goals and tools, review of operation and maintenance activities, capital project development, and review of rates and connection charges for incorporation into the updated Plan. The organization of the Plan will be as follows:

- Executive Summary
- Chapter 1 – Introduction
- Chapter 2 – Drainage Area Characteristics
- Chapter 3 – Existing Drainage System
- Chapter 4 – Water Quality
- Chapter 5 – Operation and Maintenance
- Chapter 6 – Capital Improvement Plan
- Chapter 7 – Financial Review

The estimated cost to complete this work is based upon the tasks, hours, and hourly rates provided in Exhibit B. The tasks to complete the work are described as follows.

#### **SCOPE OF WORK**

##### **Task 1 – Project Management**

Provide overall project management and oversight services to include:

- Procuring sufficient staff resources to dedicate to the project.
- Managing and controlling project budget and schedule.
- Providing monthly progress reports and invoices.
- Coordinating with City staff.
- Implementing a Quality Assurance/Quality Control (QA/QC) Program.

## **Task 2 – Data Acquisition**

The City has acquired or developed a great amount of background information relating to storm and surface water including maps, studies, reports and planning documents, water quality data, hydrologic and hydraulic modeling, policies, and regulations. The first step will be to gather and review this information in order to establish past efforts and define the current Program. Gray & Osborne will submit a data request and coordinate with the City's staff to gather all available and pertinent information regarding the City's Program.

This information, in addition to interviews with City staff, will be consolidated and used to prepare a background description of the City's stormwater system and its current condition, challenges, and history regarding the operation and management of stormwater runoff. A brief description of the City's current department organization and state and local regulations pertaining to stormwater management will be included.

### Deliverables

- Introduction chapter (Chapter 1)

## **Task 3 – Stormwater System Mapping**

The City has significant GIS data to support the efforts related to updating the Plan. Gray & Osborne will coordinate with the City's GIS Department to update existing GIS information with data collected as part of the Plan. Critical stormwater facilities will be located using mapping-grade GPS equipment. Gray & Osborne will work with City staff to verify invert information and to update any existing GIS data that will be incorporated into the Plan and used for hydraulic modeling of the system. This scope assumes a total of 40 hours of field work, should it be necessary.

### Deliverables

- Stormwater base map including existing stormwater facilities in a geodatabase format agreeable to the City of Burlington such that it reconciles with Skagit County GIS maps
- Inventory of existing stormwater facilities

## **Task 4 – Drainage Area Characterization**

Based on available topographic information (LiDAR), rainfall data, tidal data, soils, land use, and other associated GIS-based data, drainage basins within the City will be delineated, their hydrologic characteristics described, and their associated existing stormwater facilities identified and described. Gray & Osborne will review existing studies and reports regarding the physical characteristics of the City that have a bearing



on stormwater management. The information will be incorporated into the Drainage Area Characteristics chapter and include the following:

- Drainage Basins
- Frequently Flooded Areas
- Waterways and Water Bodies
- Water Quality Data
- Critical Areas
- Topography/Geology/Soils/Climate/Precipitation/Tidal Data
- Existing and Future Land Use and Zoning
- Existing Stormwater Conveyance System

#### Deliverables

- Drainage Area Characteristics chapter (Chapter 2)

#### **Task 5 – Existing Drainage System**

Gray & Osborne will conduct an analysis on selected portions of the existing drainage collection and conveyance facilities within the City as discussed and approved by City staff. It is assumed this work would be limited to major conveyances with existing or potential future flooding concerns. An event-based hydrologic/hydraulic model of the selected major storm drainage conveyance systems will be constructed to analyze system capacity. Using results from the model and information from field surveys and staff interviews, Gray & Osborne will identify portions of the drainage network (as previously selected and approved by City staff) that are not capable of conveying the selected design storm or where collection facilities are inadequate.

- Using inventory information from the GIS data and past stormwater models, construct a hydrologic/hydraulic model of specifically selected (and staff-approved) stormwater components. Perform a conveyance analysis for the 25- and 100-year storms.
- Evaluate the impact of runoff to the selected portions of the existing conveyance systems under both current and future land use conditions.

- Using the model results as well as pipe age information available from GIS and/or City staff, broadly evaluate the overall condition of the system, and create a map showing aging and deficient stormwater facilities.

This scope assumes 48 hours toward modeling selected existing stormwater components of concern as approved by City staff.

### Deliverables

- Hydrologic/hydraulic modeling files
- List of identified and known conveyance/collection problems
- Identify potential solutions to improve conveyance
- Existing Drainage System chapter (Chapter 3)

### **Task 6 – Water Quality**

Gray & Osborne will review past studies and water quality data and work with staff to identify known water quality problems within the City. We will identify and describe known impaired water bodies and describe current actions being taken by the City and other agencies to improve these impaired waters. We will also identify areas that are potential sources of pollution including construction sites, residential areas, businesses, industry, roadways, and agricultural areas, distinguishing between point and non-point sources of pollution, and prepare:

- A discussion of broadly known adverse impacts related to stormwater runoff pollution, including water quality degradation, stream channel destabilization, and fish habitat modification.
- A discussion of structural measures to mitigate identified impacts, including capital facilities to collect, convey, treat, detain, discharge, and infiltrate stormwater runoff, including retrofits. Identify projects with overlapping water quality, wetland restoration, and flood (or stormwater conveyance) and storage benefits.
- A discussion of non-structural measures to avoid or mitigate identified impacts, including land use and zoning policies and regulations and stormwater management program activities, regulations, and policies such as facility inspection, maintenance, repair, program administration, data management, and development review.

### Deliverables

- List of water quality problems and pollutant sources
- List of structural and non-structural measures to avoid or mitigate impacts
- Identify capital projects to improve water quality
- Water Quality chapter (Chapter 4)

### **Task 7 – NPDES Phase II Program**

Gray & Osborne will review the City's NPDES Phase II Permit Program for compliance with the current permit requirements and time lines. Elements needing to be addressed will be identified and an estimated effort to complete these elements discussed. Many of these will also be addressed throughout the appropriate chapters within the Plan.

Gray & Osborne will also list the potential upcoming new elements of the NPDES Phase II permit to be implemented in August 2019. In addition, Gray & Osborne will specifically provide strategy recommendations for implementing the Stormwater Management Action Plan (SMAP) – a requirement of the upcoming NPDES permit.

### Deliverables

- Summary of NPDES Phase II Program elements (current and projected)
- Recommendations for the SMAP

### **Task 8 – Operation and Maintenance Program**

Gray & Osborne will review the City's current operation and maintenance activities and provide recommendations as necessary. Consideration will be given to current NPDES Phase II permit requirements and upcoming potential Ecology audits. The following topic discussions will be included:

- Identification of the current level of maintenance of publicly and privately owned systems through discussions with maintenance personnel.
- Development of recommendations regarding public facility maintenance and private facility inspection.
- Brief discussion regarding the City's responsibilities and interactions with adjacent agencies.

- Brief discussion regarding the long-term management of the stormwater utility's assets.

#### Deliverables

- Recommendations to improve program operation and maintenance
- Operations and Maintenance chapter (Chapter 5)

#### **Task 9 – Establish Program Goals and Recommendations**

Having identified and described aspects of the existing stormwater system and program activities, Gray & Osborne will work with City staff to establish goals and metrics to evaluate the Program's performance. The goals should consider improving regulatory compliance, customer service, water quality, habitat, and storm runoff conveyance under current and future conditions.

In addition, Gray & Osborne will work with City staff to develop recommendations for programmatic changes aimed at meeting the goals and improving regulatory compliance, customer service, operation and maintenance, and capital project implementation.

#### Deliverables

- List of program goals and metrics
- Recommended programmatic changes

#### **Task 10 – Capital Improvement Plan**

In coordination with City staff and based on drainage system and water quality-related problems identified in previous tasks, Gray & Osborne will develop a list of capital improvements, including cost estimates and potential funding opportunities and strategies. The list will reflect separate 6- and 20-year planning horizons. Projects necessitated by future growth and development will be identified separately from those required to address existing system deficiencies.

#### Deliverables

- List of recommended capital projects with estimated costs and priority ratings – the list will identify projects needed to support future growth and development separately from those needed to remedy existing system deficiencies
- List of funding opportunities and strategies

- Capital Improvement Plan chapter (Chapter 6) – the capital improvement plan will include separate 6- and 20-year planning horizons and be coordinated and consistent with the City’s comprehensive plan

### **Task 11 – Financial Review**

Gray & Osborne will review the current and future stormwater utility’s revenues and expenses to assist the City with developing short- and long-term plans for funding operation and maintenance activities and capital projects, including system depreciation. Gray & Osborne will build a financial model (spreadsheet), based upon city-provided information, to include residential, commercial, and industrial customer ERUs; current fund balances; rates; charges; non-rate revenues; expenses; debt; and other data as required. The review will include:

- Identify costs for additional staff and equipment.
- Develop rate model policies such as ERU growth factors, operations cost increases, construction cost escalation, minimum reserve fund balances, funding options, etc.
- Development of a 6- and 20-year cash-based rate model for the stormwater utility based on the Capital Improvement Plan and operation and maintenance costs.
- Identify the impact to existing rates for financing the Capital Improvement Plan.
- Rate comparison to similar jurisdictions.
- Provide recommendations for a rate adjustment to adequately fund the utility.

Gray & Osborne will provide a discussion of alternatives available for financing the projects identified in the Capital Improvement Plan.

As an **optional task**, Gray & Osborne will review the current facilities charges/connection fees to further assist the City with developing a plan for funding capital projects. Calculating a facilities charge requires a significant amount of data including identifying the size, material, cost, and year of installation of all public stormwater facilities. Project costs include associated construction, engineering, and construction management costs. It is assumed that the City would provide this information and that Gray & Osborne can rely on the accuracy of this information for the stated purposes. Facility charge review will include:

- Review basis for existing capital facilities charges, based on available information.
- Conduct a brief presentation of the methods for calculating a facilities charge.
- Calculate an updated capital facilities charge.

#### Deliverables

- Rate model
- Financial Plan chapter (Chapter 7)

#### **Task 12 – Compile Draft Plan**

Gray & Osborne will compile the work performed under Tasks 1 through 11 as well as a SEPA Checklist in order to develop a draft Comprehensive Stormwater Management Plan for review by City staff. This work will include preparation of an executive summary of findings, conclusions, and recommendations.

#### Deliverables

- Executive Summary
- SEPA Checklist
- Two hard copies of the draft Comprehensive Stormwater Management Plan
- One electronic copy (PDF and Word formats) – all electronic copies including but not limited to PDF, Word, Excel, GIS, AutoCAD, and other files and formats utilized in development of the Plan

#### **Task 13 – Finalize Plan**

Gray & Osborne will assist the City with presenting the draft Plan to City Council, the Planning Commission, and the public. This work assumes one meeting each for the public and Planning Commission, and two meetings for the City Council.

Gray & Osborne will discuss comments received from the public with staff and prepare a response. Following receipt of comments from the City, Gray & Osborne will prepare a final Plan for Council consideration for adoption.

**Deliverables**

- Two copies of the final Comprehensive Stormwater Management Plan
- All portions of the Plan and plan chapters will be delivered in PDF and Word formats
- One complete PDF of the final Comprehensive Stormwater Management Plan – all electronic copies including but not limited to PDF, Word, Excel, GIS, AutoCAD, and other files and formats utilized in development of the Plan

**Task 14 – Quality Assurance/Quality Control**

Gray & Osborne will provide in-house QA/QC meetings during the course of the project. The meetings will include senior project staff and selected design team members. Meetings are to take place at the 5, 50, and 90 percent completion levels.

**SCHEDULE**

We anticipate the following time frame for completion of the tasks:

Scope of Work Approval .....	April 11, 2019
Introduction (Ch. 1) .....	May 30, 2019
Drainage Area Characteristics (Ch. 2) .....	July 18, 2019
Stormwater System Analysis (Ch. 3).....	August 15, 2019
Water Quality (Ch. 4) and Operation & Maintenance (Ch. 5) ..	September 19, 2019
Establish Program Goals and Recommendations .....	December 5, 2019
Capital Improvement Plan (Ch. 6).....	February 6, 2020
Financial Review (Ch. 7) .....	March 12, 2020
Final Draft Plan (Executive Summary).....	April 9, 2020
Plan Adoption .....	May 28, 2020

**EXHIBIT B**

**ENGINEERING SERVICES  
SCOPE AND ESTIMATED COST**

*City of Burlington - Comprehensive Stormwater Management Plan*

<b>Tasks</b>	<b>Principal Hours</b>	<b>Project Manager Hours</b>	<b>Project Engineer Hours</b>	<b>Environmental Tech./ Specialist Hours</b>	<b>AutoCAD/ GIS Tech./ Eng. Intern Hours</b>	<b>Professional Land Surveyor Hours</b>	<b>Field Survey (2 person) Hours</b>
1 Project Management	12	24					
2 Data Acquisition	1	6	12		4		
3 Stormwater System Mapping	1	2	16		8	8	40
4 Drainage Area Characterization	2	6	24		8		
5 Existing Drainage System	1	20	100		16		
6 Water Quality	1	28	48	8	4		
7 NPDES Phase II Program	2	16	40				
8 Operation and Maintenance Program	1	10	24				
9 Establish Program Goals and Recommendations	1	4	12				
10 Capital Improvement Plan	2	16	32		24		
11 Financial Review	2	16	24				
Facilities Charge Option	2	16	24		4		
12 Compile Draft Plan	2	8	24	8			
13 Finalize Plan	4	16	32				
14 Quality Assurance/Quality Control	8	16	16	2	8		
<b>Hour Estimate:</b>	<b>42</b>	<b>204</b>	<b>428</b>	<b>18</b>	<b>76</b>	<b>8</b>	<b>40</b>
<b>Fully Burdened Billing Rate Range:*</b>	<b>\$129 to \$190</b>	<b>\$119 to \$190</b>	<b>\$113 to \$145</b>	<b>\$81 to \$116</b>	<b>\$48 to \$126</b>	<b>\$113 to \$145</b>	<b>\$166 to \$213</b>
<b>Estimated Fully Burdened Billing Rate:*</b>	<b>\$155</b>	<b>\$152</b>	<b>\$135</b>	<b>\$112</b>	<b>\$117</b>	<b>\$140</b>	<b>\$195</b>
<b>Fully Burdened Labor Cost:</b>	<b>\$6,510</b>	<b>\$31,008</b>	<b>\$57,780</b>	<b>\$2,016</b>	<b>\$8,892</b>	<b>\$1,120</b>	<b>\$7,800</b>

**Total Fully Burdened Labor Cost:** \$ 115,126

**Direct Non-Salary Cost:**

    Mileage & Expenses (mileage @ current IRS rate) \$ 1,200

    Printing \$ 474

**TOTAL ESTIMATED COST:** \$ 116,800

\* Actual labor cost will be based on each employee's actual rate. Estimated rates are for determining total estimated cost only. Fully burdened billing rates include direct salary cost, overhead, and profit.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/1/2019

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> Hall & Company 19660 10th Ave NE Poulsbo WA 98370	<b>CONTACT NAME:</b> Allison Barga	
	<b>PHONE (A/C, No. Ext):</b> 360-626-2007	<b>FAX (A/C, No):</b> 360-626-2007
<b>E-MAIL ADDRESS:</b> abarga@hallandcompany.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> Hartford Casualty Insurance Company		29424
<b>INSURER B:</b> Travelers Casualty and Surety Company		19038
<b>INSURER C:</b>		
<b>INSURER D:</b>		
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**INSURED** 4  
 Gray & Osborne Inc  
 1130 Rainier Avenue South, Suite 300  
 Seattle WA 98144

**COVERAGES**

CERTIFICATE NUMBER: 2003315620

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 <input checked="" type="checkbox"/> OCP/XCU/BFPD <input checked="" type="checkbox"/> Separation Instds GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			52SBADU7303	9/10/2018	9/10/2019	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			52UECJS3276	9/10/2018	9/10/2019	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			52SBADU7303	9/10/2018	9/10/2019	EACH OCCURRENCE	\$ 1,000,000
							AGGREGATE	\$ 1,000,000
								\$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	52SBADU7303	9/10/2018	9/10/2019	PER STATUTE <input checked="" type="checkbox"/> OTH-ER	WA Stop Gap
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
B	Professional Liab: Claims Made Pollution Liab: Occurrence Form			105339819	9/10/2018	9/10/2019	\$1,000,000 Per Claim \$1,000,000 Aggregate	

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

Re: Comprehensive Stormwater Management Plan

City of Burlington, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees are an additional insured per the attached.

**CERTIFICATE HOLDER**

City of Burlington  
 833 S. Spruce Street  
 Burlington WA 98233

**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

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**BUSINESS LIABILITY COVERAGE FORM**

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

**b. Real Estate Manager**

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

**c. Temporary Custodians Of Your Property**

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

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

**d. Legal Representative If You Die**

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

**e. Unnamed Subsidiary**

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

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

**3. Newly Acquired Or Formed Organization**

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

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. Operator Of Mobile Equipment**

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

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

**5. Operator of Nonowned Watercraft**

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

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

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



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

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written



**BUSINESS LIABILITY COVERAGE FORM**

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

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

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

**a. Vendors**

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

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

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

**b. Lessors Of Equipment**

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

**BUSINESS LIABILITY COVERAGE FORM**

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

**c. Lessors Of Land Or Premises**

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**d. Architects, Engineers Or Surveyors**

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In connection with your premises; or
- (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

**e. Permits Issued By State Or Political Subdivisions**

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

**f. Any Other Party**

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
- (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
- (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

**BUSINESS LIABILITY COVERAGE FORM**

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

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

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

## **D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**

### **1. The Most We Will Pay**

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

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

### **2. Aggregate Limits**

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

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

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

### **3. Each Occurrence Limit**

Subject to 2.a. or 2.b above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

### **4. Personal And Advertising Injury Limit**

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

### **5. Damage To Premises Rented To You Limit**

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

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

### **6. How Limits Apply To Additional Insureds**

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

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

**BUSINESS LIABILITY COVERAGE FORM**

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

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

## **E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS**

### **1. Bankruptcy**

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

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

#### **a. Notice Of Occurrence Or Offense**

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

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

#### **b. Notice Of Claim**

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

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

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

#### **c. Assistance And Cooperation Of The Insured**

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

#### **d. Obligations At The Insured's Own Cost**

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

#### **e. Additional Insured's Other Insurance**

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

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

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

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

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

**BUSINESS LIABILITY COVERAGE FORM**

This Paragraph f. applies separately to you and any additional insured.

**3. Financial Responsibility Laws**

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

**4. Legal Action Against Us**

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

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

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

**5. Separation Of Insureds**

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

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

**6. Representations****a. When You Accept This Policy**

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

**b. Unintentional Failure To Disclose Hazards**

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

**7. Other Insurance**

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

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

**b. Excess Insurance**

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

**(1) Your Work**

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

**(2) Premises Rented To You**

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

**(3) Tenant Liability**

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

**(4) Aircraft, Auto Or Watercraft**

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. – Coverages.

**(5) Property Damage To Borrowed Equipment Or Use Of Elevators**

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

**BUSINESS LIABILITY COVERAGE FORM****(6) When You Are Added As An Additional Insured To Other Insurance**

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

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

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

**(a) Primary Insurance When Required By Contract**

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

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

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

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

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

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

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

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

**c. Method Of Sharing**

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

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

**8. Transfer Of Rights Of Recovery Against Others To Us****a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

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

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





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

## **ADDITIONAL INSURED AND RIGHTS OF RECOVERY AGAINST OTHERS**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

- A. Any person or organization whom you are required by contract to name as additional insured is an "insured" for LIABILITY COVERAGE but only to the extent that person or organization qualifies as an "insured" under the WHO IS AN INSURED provision of Section II - LIABILITY COVERAGE.
- B. For any person or organization for whom you are required by contract to provide a waiver of subrogation, the Loss Condition - TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US is applicable.