

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
ENGINEERING & PLANNING PROJECT NO. 2022-10011
CITY OF TOMBALL
GAS MASTER PLAN**

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

THIS AGREEMENT is made, entered into, and executed by and between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation of the State of Texas, and Engineered Utility Solutions, Inc. ("Engineer").

WITNESSETH:

WHEREAS, the City desires to complete a Natural Gas Master Plan for the City of Tomball (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to project planning and design, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to professional engineering;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I.
SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional services as outlined and defined in the Proposal attached hereto as Exhibit A, and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Engineer compensation as stated in the Section VII.

**SECTION II.
CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent engineering practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance

of the services agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Exhibit "A" without prior written authorization from the City.

SECTION III. OWNERSHIP OF WORK PRODUCT

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same. It is further understood and agreed that ownership and usage rights associated with the above referenced documents and analyses, hereinafter referred to as instruments, are contingent upon Engineer's completion of the services which will result in the production of such instruments and Engineer's receipt of payment, in full, for said services. Additionally, City understands and agrees that the rights described and provided hereunder shall not preclude or prevent Engineer from continuing to use those processes, analyses and data.

SECTION IV. TIME FOR PERFORMANCE

The time for performance is an estimated 365 calendar day duration beginning from the execution date of this Agreement. Upon written request of the Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

SECTION V. COMPLIANCE AND STANDARDS

Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Engineer's performance.

SECTION VI. INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify,

hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

SECTION VII. ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed \$115,000.00, including reimbursable expenses as identified in Exhibit "A".

SECTION VIII. INSURANCE

Engineer shall procure and maintain insurance in accordance with the terms and conditions set forth in Exhibit "B," for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness, disease, or death, claims or damages because of injury to or destruction of property, including loss of use resulting therefrom, and claims of errors and omissions.

SECTION IX. TERMINATION

The City may terminate this Agreement at any time by giving seven (7) days prior written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed maps, studies, reports, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

SECTION X. ADDRESSES, NOTICES AND COMMUNICATIONS

All notices and communications under this Agreement shall be mailed by certified

mail, return receipt requested, to Consultant at the following address:

Engineered Utility Solutions, Inc.
Attn: Diana Perossa, PE
8603 Crossriver Lane
Houston, Texas 77095

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Tomball
Attn: Project Manager
501 James Street
Tomball, Texas 77375

SECTION XI. LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

SECTION XII. SUCCESSORS AND ASSIGNS

The City and Engineer bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the City nor Engineer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

SECTION XIII. DISCLOSURE OF INFORMATION

Engineer shall under no circumstances release any material or information developed in the performance of its services hereunder without the express written permission of the City.

SECTION XIV. MODIFICATIONS

This instrument, including Exhibits A and B, contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

SECTION XV. ADDITIONAL SERVICES OF ENGINEER

If authorized in writing by the City, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Exhibit "A". These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Exhibit "A," up to the amount authorized in writing by the City.

SECTION XVI. CONFLICTS OF INTEREST

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Consultant shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

SECTION XVII. PAYMENT TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

XVIII. MISCELLANEOUS PROVISIONS

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence or performance by Engineer or of the receipt of or acceptance by the City of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision

of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Engineer further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

E. In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the Engineer covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the Engineer is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.

F. In accordance with Chapter 2274 of the Texas Government Code, Engineer covenants that it: (1) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this contract against a firearm entity or firearm trade associations.

IN WITNESS WHEREOF, the City of Tomball, Texas, has lawfully caused this Agreement to be executed by its Mayor; and Engineer, acting by its duly authorized officer/representative does now sign, execute and deliver this instrument.

EXECUTED on this 10th day of November, 2022.

**Company Name: Engineered Utility
Solutions, Inc.**



Name: Diana Perossa, PE
Title: President & Sr. Project Manager

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Doris Speer, City Secretary

EXHIBIT A



November 4, 2022

VIA EMAIL ONLY

City of Tomball
Meagan Mageo, Project Manager
501 James Street
Tomball, Texas 77375

Re: Services for Natural Gas Baseline Hydraulic Model – Proposal Scope and Fee

Dear Ms. Mageo:

Engineered Utility Solutions, Inc. (EUSI) in partnership with Cornerstone Energy Services, Inc (Cornerstone) is pleased to provide this proposal for providing general natural gas distribution engineering services for the preparation of a Natural Gas Baseline Hydraulic Model to the City of Tomball. Our team is exceptionally qualified to provide engineering and design services to the City of Tomball (City) and render a scope of work that provides value.

This document has been prepared based on our review and understanding of information provided during the recent RFQ process, knowledge of the project scope and location as well as our experience on similar projects for natural gas operators in Texas, throughout the US and eastern Canada.

Our team's objectives for providing general natural gas engineering services for the Baseline Natural Gas Hydraulic Model to the City include the following:

- Enhance the City's GIS Database by appending it to include all active natural gas customers, including their geographic location, size of their service line, and the make/model of their gas meter.
- Append the City's GIS Database piping information with piping material and wall thickness, SDR as appropriate, to be used for modeling purposes.
- Develop a baseline hydraulic model the existing natural gas system

It is understood this scope does not include verification of any information contained within the existing GIS database. While we recognize the need to verify all asset information already included in the existing GIS database, it is our understanding the City requires a cost-effective baseline model to improve their understanding of the existing natural gas distribution system and strategically plan system improvements. For this reason, all parties have agreed to rely solely on the existing information the City has on hand; with the understanding that a future phase verifying all assets and updating baseline model is necessary to ensure an accurate understanding of the natural gas distribution system and establish a tool for the City's strategic master planning of the natural gas system.

We intend to collaborate closely with the City throughout the performance of the scope of work (detailed below) to provide a strategic and effective solution for the City's concerns. Based on our analysis of the City's current GIS, our understanding of the City's natural gas system operations, compliance concerns and general need for technical & strategic planning, our

Natural Gas Baseline Model Cont'd

team has developed the following Project Execution Plan that delineates our project approach which follows:

Phase 1 Scope—GIS Database Enhancements

We will start by polishing the existing GIS database as our first step. This requires researching the City's customer records and appending the GIS database with additional critical information not already in the GIS database. This pertinent information can then be imported to the GASWorkS 10.0 hydraulic modeling software. This saves time and costs associated with model development. We intend to collaborate closely with the city and their Gas Operations personnel throughout this initial phase, thus ensuring a more complete database of records that can be used by the city, and by EUSI during subsequent efforts in the overall Gas Master Plan effort.

Tasks

- Cross reference customer location and load information from City service database with current GIS database.
- Gather existing load information regarding residential, industrial, commercial, and agricultural/seasonal max loads.
- Document assumptions for piping and load conditions for all information that is not readily available for use by the EUSI and Cornerstone team.

Deliverables

1. Upgraded GIS Shapefiles for City use.

Assumptions

- Piping found in the current GIS database is comprehensive and complete to date, outside of missing material and wall thickness.
- The city does not have As-built documentation readily available for their piping. To complete the GIS database and get it to a point where it is useful for hydraulic modeling, the city will provide piping specifications to be assigned to each line within the system. This will result in all 2in PE piping having the same SDR, all 4in PE piping having the same SDR, etc.
- The city will provide a master list of all active customers to EUSI, which includes customer type (residential, small commercial, large commercial/industrial, agricultural/seasonal), location (either coordinates or street address), service size (if available) and meter make/model (if available)
- Residential customers identified in the database will have the number of dwelling units the meter serves (if available)

Phase 2 Scope—Hydraulic Model Development

Once completed, the GIS database will be imported into GASWorkS to create the "bones" of the hydraulic model. The model will be screened to address any continuity issues that arise during importing that is typically experienced at branch connections and valves/fittings. To complete the model, gas loading will be applied at the customer locations based on criteria established for the various customer classes. The model can then be run to establish preliminary results.

Tasks

- Pressure Study/Modeling – Generate baseline natural gas system hydraulic model

Natural Gas Baseline Model Cont'd

- Identify strategic locations for field measurements for performance comparison to the model since at this time the City does not monitor any strategic locations other than the City Gates and South Regulator Station.
- Capital Improvement Forecast for FY 2024 – in coordination with the City, we will estimate design and construction costs to resolve top 3 “system weaknesses” based on the hydraulic modeling results from the City’s existing GIS database. Also, we will work with the City to identify growth objectives that are needed in FY 2024.

Deliverables

1. Functioning Baseline Hydraulic Model in GasWorks based solely on existing GIS native database with City approved assumptions
2. Baseline Hydraulic Modeling Report
 - a. Outlines assumptions made for the model based on records found, discussions with operations, and describes the results/performance of the baseline model including weak points.
3. Strategic Check Points for the City to field verify pressures on peak days to validate baseline model results. Note: this is usually an iterative process to calibrate the baseline against real world peak load conditions; however, currently, the City does not have historical performance data for any locations on the system other than stations.
4. Capital Improvement Forecast 2024
 - a. Preliminary based on known data and meeting with City personnel
 - b. Project cost estimate for Engineering, Procurement, and Construction

Assumptions

- Baseline model results after Phase 2 will be sent to the City for review. It is expected that if there is no pressure data or pressure logs to be used to calibrate the model, the City will use these initial modeling results as a comparison to the system performance that operations personnel experience in the real world.
- Schedule and Estimated Costs noted below are based on kick-off of this project no later than 11/11/2022.
- The City will provide or make available all applicable records and data required to support our efforts.
- The following will be supplied by City:
 - Native GIS files for existing database system
 - All customer load and consumption information
 - City planning information for 2024 that could affect the natural gas system such as future developments, zoning changes, growth trends, plans for annexation, etc.
- City records are readily available with discernable information in a format that transfers easily into our processes.
- FY 2024 Capital Improvement Forecast accounts for the development of a list of up to three (3) projects to address weaknesses in the system as it stands today, complete with conceptual designs, cost estimates, and schedules.

Estimated Costs - \$115,000.00

Schedule – Efforts described above will within 12 weeks from notice to proceed.

It is our intent to conduct recurring status meetings with the City PM and designated Gas Department Personnel. Additionally, our PM & Deputy PM will participate in routine project management meetings and report formal progress updates. Urgent requests for same day in-person meetings do not pose an issue considering our PM's base of operations is in the Cypress region of Houston. We anticipate working closely with the City to complete this scope of work. The above noted fees account for our status meetings, progress updates, project management meetings and the anticipated close collaboration that will require both on-line meetings and in-person interactions on a routine basis.

It should be noted that our team has made every effort to account for the City's needs while balancing the scope and fee so as to render cost-effective, affordable deliverables. While our scope has a finite duration, the tools we develop can continue to serve the City as their new resources for the planning and operation of their natural gas system. For example, maintaining the GIS mapping current by incorporating all changes to the natural gas system and updating the hydraulic model on a regular basis would enable the City to respond quicker to any new customer request for large loads.

Our team painstakingly determined what scope elements were essential to meet the objective of this scope and fee. Any additional scope elements that should be treated as secondary have not been included in this proposal. We recognize the City is placing considerable trust in our team and we want to make sure the City receives every possible benefit of our industry expertise as we help the City meet their goals while stretching their dollars as effectively as possible.

We appreciate the opportunity to propose this scope and fee to the City of Tomball. Every effort has been made to detail this scope and fee to ensure a full understanding of our planned approach and deliverables. We recognize this is a detailed proposal and are available meet to discuss any information contained herein should you have any questions.

Sincerely,



Diana Perossa, PE

EUSI President & Sr. Project Manager

Tel: (832) 674-4667

dperossa@eutilsolutions.com

c: Drew Huffman
Steve Sawyer
Travis Cushman, PE
Jeff Rogers, PE

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/25/2022

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Southwest 9811 Katy Freeway, Suite 500 Houston, TX 77024 713 490-4600	CONTACT NAME: Michelle Weweh PHONE (A/C, No, Ext): 972 737-6261 FAX (A/C, No): E-MAIL ADDRESS: usi.certrequest@usi.com																					
INSURED Engineered Utility Solutions Inc. 8603 Crossriver Ln Houston, TX 77095	<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr> </thead> <tbody> <tr> <td colspan="2">INSURER A : Twin City Fire Insurance Company</td><td>29459</td></tr> <tr> <td colspan="2">INSURER B : Trumbull Insurance Company</td><td>27120</td></tr> <tr> <td colspan="2">INSURER C : XL Specialty Insurance Company</td><td>37885</td></tr> <tr> <td colspan="2">INSURER D :</td><td></td></tr> <tr> <td colspan="2">INSURER E :</td><td></td></tr> <tr> <td colspan="2">INSURER F :</td><td></td></tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A : Twin City Fire Insurance Company		29459	INSURER B : Trumbull Insurance Company		27120	INSURER C : XL Specialty Insurance Company		37885	INSURER D :			INSURER E :			INSURER F :		
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COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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


INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			61SBABE4415	03/19/2022	03/19/2023	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 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	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			61SBABE4415	03/19/2022	03/19/2023	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 EXCESS LIAB <input checked="" type="checkbox"/> RETENTION \$10000			61SBABE4415	03/19/2022	03/19/2023	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	61WBCAC9SKL	03/19/2022	03/19/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liability			DPS9979200	06/03/2022	06/03/2023	\$2,000,000 per claim \$2,000,000 annl aggr.

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

All policies except Professional Liability and Workers Compensation, include an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate holder, only when there is a written contract or written agreement between the named insured and the certificate holder that requires such status, and only with regard to work performed on behalf of the named insured. All policies provide a Blanket Waiver of Subrogation when required by written contract, except as prohibited by law. The General (See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

City of Tomball Attn: Meagan Mageo 501 James Street Tomball, TX 77375	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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DESCRIPTIONS (Continued from Page 1)

Liability policy contains "Primary and Noncontributory" wording with respects to the sole negligence of the named insured, as required by written contract