

**CITY OF TUMWATER  
SERVICE PROVIDER AGREEMENT  
TRAILS END PARK MASTER PLAN**

THIS AGREEMENT is made and entered into in duplicate this 8th day of March, 2023, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the “CITY”, and ROBERT W. DROLL, LANDSCAPE ARCHITECT, P.S., a Washington professional service corporation, hereinafter referred to as the “SERVICE PROVIDER”.

WITNESSETH:

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

WHEREAS, the SERVICE PROVIDER represents that the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES.

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit “A” Scope of Services attached hereto and incorporated herein (the “Project”).

2. TERM.

The Project shall begin no earlier than March 1, 2023, and shall be completed no later than December 31, 2024. This Agreement may be extended for additional periods of time upon mutual written agreement of the parties.

3. TERMINATION.

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause, by the CITY.

4. COMPENSATION AND METHOD OF PAYMENT.

A. Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.

B. No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

C. The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement a total sum not to exceed **Thirty Eight Thousand One Hundred Four Dollars and 00/100 (\$38,104.00)** as reflected in Exhibit "B" Plan Fee.

D. Upon execution of this Agreement, the SERVICE PROVIDER must submit IRS Form W-9 Request for Taxpayer Identification Number (TIN) and Certification unless a current Form W-9 is already on file with the CITY.

E. The SERVICE PROVIDER shall submit an invoice to the CITY for services rendered during the contract period. The CITY shall initiate authorization for payment after receipt of said invoice and shall make payment to the SERVICE PROVIDER within approximately thirty (30) days thereafter.

F. When subcontracting services or purchasing goods from third parties, as identified and approved in this Agreement, the SERVICE PROVIDER must submit written documentation establishing that the goods and/or services have been provided and the third party has been paid in order to receive payment for such goods and/or services.

G. Invoices may be submitted immediately following performance of services, but in no event shall an invoice be submitted more than twenty (20) business days following the end of the contract term or the end of the calendar year, whichever is earlier.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. The parties intend that an independent contractor relationship will be created by this Agreement. Subject to paragraphs herein, the implementation of services pursuant to this Agreement will lie solely within the

discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

C. As an independent contractor, the SERVICE PROVIDER shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.

D. It is recognized that the SERVICE PROVIDER may or will be performing services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with the SERVICE PROVIDER'S ability to perform the services. The SERVICE PROVIDER agrees to resolve any such conflicts of interest in favor of the CITY.

#### 6. SERVICE PROVIDER EMPLOYEES/AGENTS.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee, agent or servant from employment on this Project. The SERVICE PROVIDER may however employ that individual on other non-CITY related projects.

#### 7. HOLD HARMLESS INDEMNIFICATION.

A. SERVICE PROVIDER Indemnification. The SERVICE PROVIDER agrees to indemnify, defend and hold the CITY, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the SERVICE PROVIDER, its partners, shareholders, agents, employees, or by the SERVICE PROVIDER'S breach of this Agreement. The SERVICE PROVIDER expressly waives any immunity that may be granted to it under the Washington

State Industrial Insurance Act, Title 51 RCW. The SERVICE PROVIDER'S indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefit acts or programs. This waiver has been mutually negotiated by the parties.

B. CITY Indemnification. The CITY agrees to indemnify, defend and hold the SERVICE PROVIDER, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the CITY, its employees or agents. No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

C. Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

## 8. INSURANCE.

A. The SERVICE 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 the work hereunder by the SERVICE PROVIDER, their agents, representatives, employees or subcontractors.

B. The SERVICE PROVIDER shall provide a Certificate of Insurance evidencing:

1. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage.

2. Commercial General Liability insurance written on an occurrence basis with limits no less than \$2,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

3. Professional Liability insurance written on a claims made basis with limits of no less than \$2,000,000 per claim, and \$2,000,000 policy

aggregate limit.

C. The CITY shall be named as an additional insured on the insurance policy, as respect to work performed by or on behalf of the SERVICE PROVIDER and a copy of the endorsement naming the CITY as additional insured shall be attached to the Certificate of Insurance. The CITY reserves the right to request certified copies of any required policies.

D. The SERVICE PROVIDER'S insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

E. Any payment of deductible or self-insured retention shall be the sole responsibility of the SERVICE PROVIDER.

F. The SERVICE PROVIDER'S insurance shall be primary insurance as respect to the CITY and the CITY shall be given written notice of any cancellation, suspension or material change in coverage within two (2) business days of SERVICE PROVIDER'S receipt of such notice.

#### 9. TREATMENT OF ASSETS.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.

#### 10. COMPLIANCE WITH LAWS.

A. The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including being licensed to do business in the City of Tumwater by obtaining a Tumwater business license and any additional regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The SERVICE PROVIDER specifically agrees to pay any applicable CITY business and occupation (B&O) taxes which may be due on account of this Agreement.

#### 11. NONDISCRIMINATION.

A. The CITY is an equal opportunity employer.

B. Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, religion, color, national origin, citizenship or immigration status, families with children status, sex, marital status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, sexual orientation, genetic information, age or other basis prohibited by state or federal law; provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the proper performance of the particular worker involved. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists. It is not an unfair practice when a distinction or differential treatment on the basis of citizenship or immigration status is authorized by federal or state law, regulation, rule or government contract.

C. Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, religion, color, national origin, citizenship or immigration status, families with children status, sex, marital status, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a person with a disability, sexual orientation, genetic information, age or other basis prohibited by state or federal law. "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists. It is not an unfair practice when a distinction or differential treatment on the basis of citizenship or immigration status is authorized by federal or state law, regulation, rule or government contract.

D. If any assignment and/or subcontract have been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

## 12. ASSIGNMENT/SUBCONTRACTING.

A. The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.

C. Any technical service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. NON-APPROPRIATION OF FUNDS.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the CITY will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the CITY in the event this provision applies.

14. CHANGES.

Either party may request changes to the Scope of Services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

15. MAINTENANCE AND INSPECTION OF RECORDS.

A. The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.

B. The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized

representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

C. To ensure the CITY'S compliance with the Public Records Act, RCW 42.56, the SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

16. POLITICAL ACTIVITY PROHIBITED.

None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

17. PROHIBITED INTEREST.

No member, officer, or employee of the CITY shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

18. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the signature page of this Agreement.

19. ATTORNEYS FEES AND COSTS.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

20. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the State of Washington. It is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained in the superior court of Thurston County, Washington.

21. SEVERABILITY.

A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

22. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

\*\*\* Signatures on Following Page \*\*\*

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY:

CITY OF TUMWATER  
555 Israel Road SW  
Tumwater, WA 98501

DocuSigned by:  
Chuck Denny  
626BD4D97C8E4C9

CHUCK DENNY  
Parks and Recreation Director

SERVICE PROVIDER:

ROBERT W. DROLL, LANDSCAPE  
ARCHITECT, P.S.  
4405 7<sup>th</sup> Avenue SE, Suite 203  
Lacey, WA 98503-1055  
Tax ID #: 601-424-147  
Phone: 360-292-7230

Heidi Droll

Signature (Notarized – see below)

Printed Name: Heidi Droll

Title: Vice President

APPROVED AS TO FORM:

DocuSigned by:  
Karen Kirkpatrick  
9C2747F30AD6419

Karen Kirkpatrick, City Attorney

STATE OF WASHINGTON

COUNTY OF THURSTON

I certify that I know or have satisfactory evidence that Heidi Droll (name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Vice President (title) of Robert W Droll Landscape (company) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: March 3 2023

[Signature]

Notary Public in and for the State of Washington,

My appointment expires: July 9 2024

## Exhibit A

# Scope of Services

## Trails End Park Master Plan

### Scope of Work

This assignment includes the work to be performed by Robert W. Droll, Landscape Architect, PS, (hereinafter RWD) for the Trails End Park Master Plan (hereinafter Project), for the City of Tumwater (hereinafter Owner). Professional Services include a public engagement plan, Site Analysis, Schematic Master Plans, Decision Matrix, the Preferred Master Plan, and an Estimate of Probable Capital Cost.

It is understood this Master Plan work is the first step towards the Final Design and Construction implementation of Trails End Park Master Plan improvements, however Phase 1 Design will be by amendment to this contract.

### Project Goal

To develop Trails End Park as a Neighborhood Park which are generally designed to focus on informal active and passive recreation needs of all ages within a given neighborhood. They are often a focus of neighborhood identity and gathering places for the neighborhood residents. Facilities might include playgrounds, areas for picnicking/ neighborhood events and/or activities, game fields or courts, parking spaces, shelters, bike racks and trail connections.

### Basis of Proposal

This Scope of Services and Fee Proposal are based upon written and verbal communications with Don Carney, PE, Capital Project Manager, Chuck Denney, Parks and Recreation Director, and previous visits to the Project Site.

### RWD Project Team

Robert W. Droll, ASLA, Project Manager  
Ann Dingthonsai, Landscape Architect  
Paul Miller, Landscape Technician  
Ben Enfield, PE, Project Civil Engineer (KPFF)

### Scope of Services

RWD will provide the Scope of Services as defined herein.

|                           |
|---------------------------|
| <b>Task 1 Master Plan</b> |
|---------------------------|

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|--------------------------------|
| <b>Task 1.01 Site Analysis</b> |
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|                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The Owner has provided a Design Survey to RWD. RWD will visit site with survey in hand to confirm if any additional survey is necessary and to document site features not shown. RWD will visit site with Owner to further understand the site conditions. Additional Design Survey scope and fees, if needed, will be included in a subsequent Design Phase amendment.</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**Task 1.02 Program Element Range Definition**

Owner and RWD will examine the range, type, size, and approximate location of neighborhood park program elements. Owner and RWD will define the program mix that will compose the 3 Master Plan Options. This will occur during an in-person meeting with Mr. Carney and Mr. Denney. RWD will prepare a Program Element list for each Master Plan Option as a result of this meeting.

**Task 1.03 Generate 3 Master Plan Options**

RWD will generate 3 sketch level master plan options for Owner review. Owner will have one week to redline options after which RWD will document the options in ACAD. KPFF will provide utilities connections for each option. The Master Plan Options will be prepared in ACAD and presented over the aerial photo. These Options will not be colored and rendered.

**Task 1.04 Provide Cost Estimates**

RWD will prepare a detailed itemized Estimate of Capital Cost for each of the 3 Master Plan Options, however it is understood the estimates will reflect the design maturity of the Project. Estimates will include construction cost items, taxes, contingency, A/E services, and escalation to the construction year.

**Task 1.05 Park and Recreation Commission Review**

RWD will help the Park and Recreation Commission review and become familiar with the Master Plan Options. RWD will discuss the Public Open Houses' goals, protocol, and intended outcomes with the Commission. Volunteers for Stations will be sought.

**Task 1.06 Public Open House 1: Master Plan Options**

RWD will prepare the materials for Public Open House 1. There will be four stations at the Open House, each will be staffed by a Parks Commissioner. Station 1 is the introductory station whereby the park planning process and schedule will be explained. Stations 2, 3, and 4 will be where the Master Plan Options are explained by the Park Commissioners. For each Master Plan Option Station, 2 boards will be produced. The first board will show the Design Survey, aerial photo, and the Master Plan Option lays out onto the site. The second board will illustrate photo images (Image Board) of some of the major park features. The colored and rendered boards will measure 36" by 48" and mounted on foam core board. The Park Commissioners will describe the advantages and disadvantages of the Master Plan Option at these Stations. Staff and RWD will "roam" and help the Public with understanding the Master Plan Options. Public participants will be given one green dot sticker serving as their one vote for their preferred plan. The Public will be given the opportunity to write down their comments on their preferences and opinions for each Master Plan option and selected Master Plan features. No public presentation is included.

**Task 1.07 Decision Matrix**

RWD will prepare Master Plan Evaluation Criteria and Scoring Definitions for each Evaluation Criteria. All Scoring will range from Poor, Fair, Good & Excellent for each Evaluation Criteria. Each Scoring Definition will be prepared by RWD. RWD will prepare a Decision Matrix that will be used to evaluate how each of the Master Plans fulfill the Project Goal.

**Task 1.08 Park and Recreation Commission Review**

The Commission will discuss and evaluate each option through the lens of the Decision Matrix and select the Preferred Master Plan.

**Task 1.09 Preferred Master Plan Option Refinement, Phased Master Plan & Master Plan Cost per Phase**

Based upon the Owner's written direction, RWD will revise the Preferred Master Plan graphic and capital cost. Owner and RWD will determine the phasing of the Preferred Master Plan. RWD will prepare the Phasing Plan graphic and capital cost per phase. Estimates will include construction cost items, taxes, contingency, A/E services, and escalation to the construction year.

**Task 1.10 Maintenance Costs per Master Plan Phase**

RWD will prepare the maintenance cost for each project phase.

**Task 1.11 Public Open House 2: Preferred Master Plan Refinement & Cost**

RWD will prepare the materials for Public Open House 2. There will be 3 stations at the Open House, each will be staffed by a Parks Commissioner. Station 1 is the introductory station whereby the park planning process and schedule will be explained. Station 2 will focus on the Preferred Master and will be supported by 2 boards. The first board will show the Design Survey, aerial photo, and the Master Plan Option laid out onto the site. The second board will illustrate photo images (Image Board) of some of the major park features in the Preferred Option. The boards will measure 36" by 48". Station 3 will focus on the Phasing Plan. Staff and RWD will "roam" and help the Public with understanding and justifications for the Master Plan. The Public will be given the opportunity to write down their comments.

**Task 1.12 Master Plan Deliverables**

Master Plan deliverables include the following in hardcopy and electronic form; colored and rendered Master Plan (15% Design), Phasing Plan, and Estimate of Probable Costs by Phase.

**Task 1.13 PreSubmission Conference**

RWD will prepare for and attend the PreSubmission Conference.

**Task 1.14 Master Plan Adoption by City Council**

Owner will present Master Plan to Tumwater City Council and to gain Council adoption.

**Task 1.15 Project Management**

Manage the project progress & direction, communications with Owner, review items provided by others, provide project administration. It is assumed RWD will have minor interaction with the public works and transportation improvements.

**Additional Services, Excluded Services**

Specific items that are not within the scope of work/services include, but are not limited to, the following. It is understood these professional services, and others, could be added at a future date.

- Written Master Plan Report
- Permitting, SEPA, other than defined herein
- Demand analysis/economic modeling
- Design Development, Construction Documents or Proposed Design of any on or off-site improvements or building improvements. Design, Permitting, and Construction Services will be provided through a Contract Amendment at a later date.
- Any planning, design, and public engagement work other than defined herein
- Legal Descriptions of easements, Rights-of-Ways, etc.
- Involvement with City Council Briefing and Adoption process
- Wildlife and archaeological investigations
- Web-site preparation and hosting, visual impact analysis, photo-simulations, perspective character sketches
- Noise studies, light studies, air quality studies
- Public Meetings, neighborhood meetings, Hearing Examiner meetings, etc. other than stated herein
- Public Survey preparation and hosting, results compilation
- Environmental Assessments
- Traffic Impact Analysis & Parking Generation Analysis

**Professional Fee**

Professional Fees to accomplish the Scope of Services is shown on Exhibit B and the Owner's Service Provider Agreement. RWD will perform the Scope of Services on a Lump Sum, Not-to-Exceed Basis. RWD will invoice monthly for work performed.

**Direct Expenses**

RWD has allocated a budget for Direct Expenses such as plots, copies, mailings, lodging, and typical business-related direct expenses. Direct expenses incurred through outside resources will be directly invoiced plus ten percent.

**Owner's Responsibilities**

Owner shall provide the following information or services as required for performance of the work. RWD assumes no responsibility for the accuracy of such information or services and shall not be liable for errors and omissions therein. Should RWD be required to provide services in obtaining or coordinating compilation of this information, such services shall be charged as Additional Services.

- Owner will provide ACAD files of Owner's parking and transportation improvements to RWD.
- Virtual meetings will be organized, scheduled, and reserved by Owner through a recognized meeting program such as Teams, Zoom, or GoToMeeting. Public notices will be provided by Owner.

- Electronic files in ACAD format of existing conditions (Design Survey)
- Operational and maintenance access requirements of Public Works and the Fire Department
- Existing Geotechnical Reports
- Providing the necessary COVID 19 protocols
- Typed up meeting notes from RWD and the Owner
- Administrative processing and fee payment for all permitting
- Existing as-built site engineering and utility base information.

612 Woodland Square Loop SE, Suite 100 Lacey, WA 98503 360.292.7230 kpff.com



February 8, 2023

Bob Droll, President  
RWD Landscape Architects  
4405 7<sup>th</sup> Avenue SE, Suite 203  
Lacey, WA 98503

Subject: Trails End Park  
Civil Engineering for Master Plan Phase

Dear Bob:

Thank you for the opportunity to present you with this proposal. KPFF is pleased to provide you with the following scope of work, for civil engineering services for the Master Plan Phase of the City of Tumwater Trails End Park project.

### ***PROJECT UNDERSTANDING***

Based on discussions with you, the task list provided on 1-11-2023, and the scope updates provided 2-6-2023, it is KPFF's understanding that the Key Elements of this project that you are asking of KPFF include the following:

- Preparation of site utility improvements for three master plan site improvement options
- Assistance with cost estimating for utility improvements for three master plan site improvement options.

### ***ITEMS PROVIDED BY OTHERS***

The following items may be needed to support this phase of the project. KPFF Assumes these items will be provided by others:

- Geotechnical Engineering
- Topographic Survey
- Traffic Impact Analysis (if needed)

### ***SCOPE OF WORK***

The following scope of work has been prepared for this project:

#### ***TASK 1 – UTILITY DESIGN AND COST ESTIMATING FOR MASTER PLAN PHASE***

KPFF will support this review process by assisting with the following effort:

- 1.1 Review existing utility locations (water, sewer, & electrical) available on the property and in the adjacent rights-of-way.
- 1.2 Prepare conceptual utility exhibits showing onsite water, sewer, and electrical improvements for the three site plan options prepared by RWD.

RWD Landscape Architects  
 February 8, 2023  
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- 1.3 Provide Engineers Estimate of Probable Construction Costs for utility components of the three site plan options.
- 1.4 Refine utility design for the selected preferred option.
- 1.5 Prepare a Utility Memo documenting options for water, sewer, and electrical service for the preferred option.
- 1.6 Provide utility improvement phasing design and phasing cost information for the preferred plan option.

### **ASSUMPTIONS/EXCLUSIONS**

In addition to any assumptions previously made in this proposal, the following assumptions have been made in preparation of this scope of work:

1. Any scope of work requested or required that is not specifically identified in one of the tasks above may be considered an additional service. Prior to completing any such work, KPFF will discuss with you the need and impact on the scope and fee.
2. KPFF will be allowed access to the site during the course of the project.
3. All submittal, application fees, mitigation fees, etc. are of the responsibility of others.
4. No site grading or earthwork quantity calculations are included in this scope of work.
5. No septic design is anticipated with this scope. It is assumed that park improvements will be connected to city sewer.
6. No stormwater design or stormwater mitigation analysis is included in this scope of work. A stormwater report will not be needed or prepared for the Master Plan phase.
7. Electrical information will be conceptual in regard to service location and improvements served. No detailed electrical design is proposed.
8. KPFF will provide CAD exhibits, linework, or PDF markups to RWD for final drafting. RWD will prepare the submittal plan sheets.
9. KPFF will not attend any public meetings or Park meetings.

### **SCHEDULE**

KPFF to work with RWD to meet all project deliverables within the preliminary schedule provided by RWD.

### **FEES**

We propose to provide the above services for a lump-sum fee in accordance with the attached Terms and Conditions.

|                                                                  |                       |
|------------------------------------------------------------------|-----------------------|
| Task 1 –Utility Design and Cost Estimating for Master Plan Phase | \$6,640               |
| <b>Total</b>                                                     | <b><u>\$6,640</u></b> |

See attached Exhibit B with a breakdown of fee per provided task numbers.

RWD Landscape Architects  
February 8, 2023  
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We look forward to supporting you and your team on a successful and rewarding project. If this proposal meets with your approval, please sign below, and return one copy for our records. If you have any questions or comments, please call me at (360) 292-7230 or email me at [ben.enfield@kpff.com](mailto:ben.enfield@kpff.com)

Sincerely,

A handwritten signature in blue ink, appearing to read "Ben Enfield".

Ben Enfield, PE  
Associate, Civil Engineer

BEE

Enclosure

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
RWD Landscape Architects

## Exhibit B - Trails End Park Master Plan Fee

| City of Tumwater |                                                                                          |              | Bob Droll, ASLA |              | Ann Dinthongsai |              | Clerical |           | KPFF*       |
|------------------|------------------------------------------------------------------------------------------|--------------|-----------------|--------------|-----------------|--------------|----------|-----------|-------------|
| #                | Task                                                                                     | Task Total   | hrs.            | subtotal     | hrs.            | subtotal     | hrs.     | subtotal  |             |
| 1.00             | Master Plan                                                                              |              |                 |              |                 |              |          |           |             |
| 1.01             | Site Analysis                                                                            | \$ 2,506.00  | 4               | \$ 680.00    | 4               | \$ 440.00    |          | \$ -      | \$ 1,386.00 |
| 1.02             | Program Element Range Definition                                                         | \$ 1,560.00  | 4               | \$ 680.00    | 8               | \$ 880.00    |          | \$ -      | \$ -        |
| 1.03             | Generate 3 Site Plan Options                                                             | \$ 12,374.00 | 24              | \$ 4,080.00  | 48              | \$ 5,280.00  |          | \$ -      | \$ 3,014.00 |
| 1.04             | Provide Cost Estimates                                                                   | \$ 2,770.00  | 4               | \$ 680.00    | 8               | \$ 880.00    |          | \$ -      | \$ 1,210.00 |
| 1.05             | Park and Recreation Commission Review                                                    | \$ 680.00    | 4               | \$ 680.00    |                 | \$ -         |          | \$ -      | \$ -        |
| 1.06             | Public Open House 1: Master Plan Options                                                 | \$ 2,374.00  | 4               | \$ 680.00    | 8               | \$ 880.00    |          | \$ -      | \$ 814.00   |
| 1.07             | Decision Matrix                                                                          | \$ 680.00    | 4               | \$ 680.00    |                 | \$ -         |          | \$ -      | \$ -        |
| 1.08             | Park and Recreation Commission Review                                                    | \$ 680.00    | 4               | \$ 680.00    |                 | \$ -         |          | \$ -      | \$ -        |
| 1.09             | Preferred Master Plan Option Refinement, Phased Master Plan & Master Plan Cost per Phase | \$ 4,880.00  | 8               | \$ 1,360.00  | 24              | \$ 2,640.00  |          | \$ -      | \$ 880.00   |
| 1.10             | Maintenance Costs per Master Plan Phase                                                  | \$ 1,460.00  | 6               | \$ 1,020.00  | 4               | \$ 440.00    |          | \$ -      | \$ -        |
| 1.11             | Public Open House 2: Preferred Master Plan Refinement & Cost                             | \$ 1,560.00  | 4               | \$ 680.00    | 8               | \$ 880.00    |          | \$ -      | \$ -        |
| 1.12             | Master Plan Deliverables                                                                 | \$ 1,120.00  | 4               | \$ 680.00    | 4               | \$ 440.00    |          | \$ -      | \$ -        |
| 1.13             | PreSubmission Conference                                                                 | \$ 1,340.00  | 4               | \$ 680.00    | 6               | \$ 660.00    |          | \$ -      | \$ -        |
| 1.14             | Master Plan Adoption by City Council                                                     | \$ -         |                 | \$ -         |                 | \$ -         |          | \$ -      | \$ -        |
| 1.15             | Project Management                                                                       | \$ 3,820.00  | 16              | \$ 2,720.00  | 8               | \$ 880.00    | 4        | \$ 220.00 | \$ -        |
|                  | Master Plan Subtotal                                                                     | \$ 37,804.00 |                 | \$ 15,980.00 |                 | \$ 14,300.00 |          | \$ 220.00 | \$ 7,304.00 |
|                  | Direct Expenses                                                                          | \$ 300.00    |                 |              |                 |              |          |           |             |
|                  | Professional Master Plan Services Total                                                  | \$ 38,104.00 |                 |              |                 |              |          |           |             |

\*Includes 10% Administration Fee

### Future Design Tasks

|              |                             |                  |  |      |  |      |  |      |  |
|--------------|-----------------------------|------------------|--|------|--|------|--|------|--|
| Design       | 30% Design Submittal        | To be determined |  | \$ - |  | \$ - |  | \$ - |  |
|              | 60% Design Submittal        | To be determined |  | \$ - |  | \$ - |  | \$ - |  |
|              | 95% Design Submittal        | To be determined |  | \$ - |  | \$ - |  | \$ - |  |
|              | Permitting                  | To be determined |  | \$ - |  | \$ - |  | \$ - |  |
|              | 100% Bid Documents          | To be determined |  | \$ - |  | \$ - |  | \$ - |  |
| Construction | Bidding Services            | To be determined |  | \$ - |  | \$ - |  | \$ - |  |
|              | Construction Observation    | To be determined |  | \$ - |  | \$ - |  | \$ - |  |
|              | Warranty                    | To be determined |  | \$ - |  | \$ - |  | \$ - |  |
|              | Project Management          | To be determined |  | \$ - |  | \$ - |  | \$ - |  |
|              | Subtotal                    |                  |  |      |  |      |  |      |  |
|              | Direct Expenses             |                  |  |      |  |      |  |      |  |
|              | Professional Services Total | \$ -             |  |      |  |      |  |      |  |



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/6/2023

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><br>AssuredPartners Design Professionals Insurance Services, LLC<br>19689 7th Ave NE, Ste 183, PMB #369<br>Poulsbo WA 98370 | <b>CONTACT</b><br>NAME: Julia Ardon<br>PHONE (A/C, No, Ext): 360-626-2956<br>E-MAIL ADDRESS: julia.ardon@assuredpartners.com<br>FAX (A/C, No): 360-626-2956                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                               |        |                                       |       |                                                    |       |                                     |       |            |  |            |  |            |  |
|--------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|--------|---------------------------------------|-------|----------------------------------------------------|-------|-------------------------------------|-------|------------|--|------------|--|------------|--|
| <b>INSURED</b><br>Robert W Droll Landscape Architect PS<br>4405 7th Ave SE, Ste 203<br>Lacey WA 98503                                      | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: Sentinel Insurance Company</td> <td style="text-align: center;">11000</td> </tr> <tr> <td>INSURER B: Hartford Accident and Indemnity Company</td> <td style="text-align: center;">22357</td> </tr> <tr> <td>INSURER C: Hudson Insurance Company</td> <td style="text-align: center;">25054</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table> | INSURER(S) AFFORDING COVERAGE | NAIC # | INSURER A: Sentinel Insurance Company | 11000 | INSURER B: Hartford Accident and Indemnity Company | 22357 | INSURER C: Hudson Insurance Company | 25054 | INSURER D: |  | INSURER E: |  | INSURER F: |  |
| INSURER(S) AFFORDING COVERAGE                                                                                                              | NAIC #                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                               |        |                                       |       |                                                    |       |                                     |       |            |  |            |  |            |  |
| INSURER A: Sentinel Insurance Company                                                                                                      | 11000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                               |        |                                       |       |                                                    |       |                                     |       |            |  |            |  |            |  |
| INSURER B: Hartford Accident and Indemnity Company                                                                                         | 22357                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                               |        |                                       |       |                                                    |       |                                     |       |            |  |            |  |            |  |
| INSURER C: Hudson Insurance Company                                                                                                        | 25054                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                               |        |                                       |       |                                                    |       |                                     |       |            |  |            |  |            |  |
| INSURER D:                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                               |        |                                       |       |                                                    |       |                                     |       |            |  |            |  |            |  |
| INSURER E:                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                               |        |                                       |       |                                                    |       |                                     |       |            |  |            |  |            |  |
| INSURER F:                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                               |        |                                       |       |                                                    |       |                                     |       |            |  |            |  |            |  |

 License#: 6003745  
 ROBEWDR-01

## COVERAGES

CERTIFICATE NUMBER: 1422807260

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"/> <b>COMMERCIAL GENERAL LIABILITY</b><br><div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> CLAIMS-MADE<br/> <input checked="" type="checkbox"/> OCCUR<br/>           GEN'L AGGREGATE LIMIT APPLIES PER:<br/> <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br/> <input type="checkbox"/> OTHER:         </div> <div> <input type="checkbox"/> SCHEDULED AUTOS<br/> <input type="checkbox"/> NON-OWNED AUTOS ONLY         </div> </div> | Y         | Y        | 52SBAAD0291   | 4/20/2022               | 4/20/2023               | EACH OCCURRENCE \$2,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000<br>MED EXP (Any one person) \$10,000<br>PERSONAL & ADV INJURY \$2,000,000<br>GENERAL AGGREGATE \$4,000,000<br>PRODUCTS - COMP/OP AGG \$4,000,000<br>\$ |
| B        | <input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b><br><div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> ANY AUTO<br/> <input type="checkbox"/> OWNED AUTOS ONLY<br/> <input type="checkbox"/> HIRED AUTOS ONLY         </div> <div> <input type="checkbox"/> SCHEDULED AUTOS<br/> <input type="checkbox"/> NON-OWNED AUTOS ONLY         </div> </div>                                                                                                                                                        | Y         | Y        | 52UECHD3615   | 4/20/2022               | 4/20/2023               | COMBINED SINGLE LIMIT (Ea accident) \$1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$                                                                              |
| A        | <input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b><br><input checked="" type="checkbox"/> EXCESS LIAB<br><input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000                                                                                                                                                                                                                                                                                                                                                                            | Y         | Y        | 52SBAAD0291   | 4/20/2022               | 4/20/2023               | EACH OCCURRENCE \$1,000,000<br>AGGREGATE \$1,000,000<br>\$                                                                                                                                                                                  |
| A        | <input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                                                                                                                                                                                                                                                                                              | Y/N       | N/A      | 52SBAAD0291   | 4/20/2022               | 4/20/2023               | <input type="checkbox"/> PER STATUTE <input checked="" type="checkbox"/> OTH-ER<br>WA STOP GAP<br>E.L. EACH ACCIDENT \$1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$1,000,000<br>E.L. DISEASE - POLICY LIMIT \$1,000,000                       |
| C        | Professional Liab: Claims Made                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |           |          | PRB0619113769 | 4/20/2022               | 4/20/2023               | Per Claim \$2,000,000<br>Aggregate \$2,000,000                                                                                                                                                                                              |

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

 The certificate holder is an additional insured per the attached.  
 RE: Trails End Park Master Plan

Additional Insured Includes: City of Tumwater

## CERTIFICATE HOLDER

## CANCELLATION

 City of Tumwater Transportation & Engineering  
 Department  
 Attn: Mallory Coleman | Department Assistant II  
 555 Israel Road SW  
 Tumwater WA 98501

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

## **COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

#### **1. BROAD FORM INSURED**

**Paragraph .1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add the following:**

##### **d. Subsidiaries and Newly Acquired or Formed Organizations**

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
  - (a) That is a partnership or joint venture,
  - (b) That is an "insured" under any other policy,
  - (c) That has exhausted its Limit of Insurance under any other policy, or
  - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

##### **e. Employees as Insureds**

- (1). Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

##### **f. Lessors as Insureds**

- (1). The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
  - (a) The agreement requires you to provide direct primary insurance for the lessor and
  - (b) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

##### **g. Additional Insured if Required by Contract**

- (1) When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."
- The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:
- (a) During the policy period, and
  - (b) Subsequent to the execution of such written contract, and

- (c) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

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

(3) Additional Insureds 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 or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS – OF SECTION IV – BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

**2. Primary and Non-Contributory if Required by Contract**

Only with respect to insurance provided to an additional insured in A.1.g. - Additional Insured If Required by Contract, the following provisions apply:

(1) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(2) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement 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 (1) and (2) 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 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, by the method described in SECTION IV- Business Auto Conditions, B. General Conditions, Other Insurance 5.d.

**3. AUTOS RENTED BY EMPLOYEES**

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The SECTION IV- Business Auto Conditions, B. General Conditions, 5. OTHER INSURANCE Condition is amended by adding the following:

- e. If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

**4. AMENDED FELLOW EMPLOYEE EXCLUSION**

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

**5. HIRED AUTO PHYSICAL DAMAGE COVERAGE**

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

**6. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE**

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

**7. LOAN/LEASE GAP COVERAGE**

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal

obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

**8. AIRBAG COVERAGE**

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

**9. ELECTRONIC EQUIPMENT - BROADENED COVERAGE**

- a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions **4.c.** and **4.d.** do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or
- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

- b. Section III, Physical Damage Coverage, Limit of Insurance, Paragraph C.2. is amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

(1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;

(2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or

(3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

#### **10. EXTRA EXPENSE - BROADENED COVERAGE**

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

#### **11. GLASS REPAIR - WAIVER OF DEDUCTIBLE**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

#### **12. TWO OR MORE DEDUCTIBLES**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

(1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;

(2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

#### **13. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership;

(3) A member, if you are a limited liability company; or

(4) An executive officer or insurance manager, if you are a corporation.

#### **14. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

#### **15. HIRED AUTO - COVERAGE TERRITORY**

SECTION IV, BUSINESS AUTO CONDITIONS, PARAGRAPH B. GENERAL CONDITIONS, 7. - POLICY PERIOD, COVERAGE TERRITORY - is added to include the following:

(6) For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

#### **16. WAIVER OF SUBROGATION**

Paragraph 5. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS A. Loss Conditions is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

#### **17. RESULTANT MENTAL ANGUISH COVERAGE**

The definition of "bodily injury" in SECTION V-DEFINITIONS, C. is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

#### **18. EXTENDED CANCELLATION CONDITION**

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

## **19. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE**

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"
- c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.

- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

## **20. VEHICLE WRAP COVERAGE**

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

- (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.

- (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.

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.

**Certificate Of Completion**

Envelope Id: B489357154734014815258D30A26A6B8

Status: Completed

Subject: Trails End Park Master Plan SPA signed.pdf

Source Envelope:

Document Pages: 32

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 0

Cathy Nielsen

AutoNav: Enabled

CNIelsen@ci.tumwater.wa.us

Envelopeld Stamping: Enabled

IP Address: 216.243.3.222

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

**Record Tracking**

Status: Original

Holder: Cathy Nielsen

Location: DocuSign

3/8/2023 12:09:23 PM

CNIelsen@ci.tumwater.wa.us

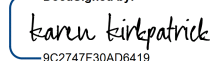
**Signer Events**

Karen Kirkpatrick

kkirkpatrick@ci.tumwater.wa.us

Security Level: Email, Account Authentication  
(None)**Signature**

DocuSigned by:

  
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Sent: 3/8/2023 12:16:40 PM

Viewed: 3/8/2023 1:15:08 PM

Signed: 3/8/2023 1:15:18 PM

Signature Adoption: Pre-selected Style

Using IP Address: 24.17.197.72

**Electronic Record and Signature Disclosure:**

Accepted: 3/8/2023 1:15:08 PM

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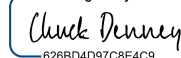
Chuck Denney

cdenney@ci.tumwater.wa.us

Parks and Recreation Director

Security Level: Email, Account Authentication  
(None)

DocuSigned by:

  
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**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Stephanie Klein

sklein@ci.tumwater.wa.us

Administrative Assistant

City of Tumwater

Security Level: Email, Account Authentication  
(None)**COPIED**

Sent: 3/8/2023 3:27:31 PM

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

| Carbon Copy Events                                                                                    | Status            | Timestamp                                                |
|-------------------------------------------------------------------------------------------------------|-------------------|----------------------------------------------------------|
| Mallory Coleman<br>mcoleman@ci.tumwater.wa.us<br>Security Level: Email, Account Authentication (None) | <div>COPIED</div> | Sent: 3/8/2023 3:27:31 PM<br>Viewed: 3/8/2023 3:27:59 PM |
| Electronic Record and Signature Disclosure:<br>Not Offered via DocuSign                               |                   |                                                          |

| Witness Events | Signature | Timestamp |
|----------------|-----------|-----------|
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| Notary Events | Signature | Timestamp |
|---------------|-----------|-----------|
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| Envelope Summary Events | Status           | Timestamps           |
|-------------------------|------------------|----------------------|
| Envelope Sent           | Hashed/Encrypted | 3/8/2023 12:16:40 PM |
| Certified Delivered     | Security Checked | 3/8/2023 3:26:36 PM  |
| Signing Complete        | Security Checked | 3/8/2023 3:27:28 PM  |
| Completed               | Security Checked | 3/8/2023 3:27:31 PM  |

| Payment Events | Status | Timestamps |
|----------------|--------|------------|
|----------------|--------|------------|

| Electronic Record and Signature Disclosure |  |  |
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## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

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