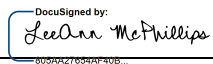
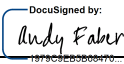
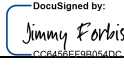



City of Gilroy
Agreement/Contract Tracking

Today's Date:	June 27, 2022	Your Name:	Monica Sendejas
Contract Type:	Services over \$5k - Consultant	Phone Number:	408-846-0266
Contract Effective Date: <i>(Date contract goes into effect)</i>	6/27/2022		
Contract Expiration Date:	12/30/2023		
Contractor / Consultant Name: <i>(if an individual's name, format as last name, first name)</i>	Circlepoint, Inc.		
Contract Subject: <i>(no more than 100 characters)</i>	Prepare an Environmental Impact Report (EIR) for the Gilroy Data Center Project (AWS)		
Contract Amount: <i>(Total Amount of contract. If no amount, leave blank)</i>	\$175,000.00		
By submitting this form, I confirm this information is complete:	<ul style="list-style-type: none"> ➤ Date of Contract ➤ Contractor/Consultant name and complete address ➤ Terms of the agreement (start date, completion date or "until project completion", cap of compensation to be paid) ➤ Scope of Services, Terms of Payment, Milestone Schedule and exhibit(s) attached ➤ Taxpayer ID or Social Security # and Contractors License # if applicable ➤ Contractor/Consultant signer's name and title ➤ City Administrator or Department Head Name, City Clerk (Attest), City Attorney (Approved as to Form) 		
Routing Steps for Electronic Signature			
Risk Manager			
City Attorney Approval As to Form			
City Administrator or Department Head			
City Clerk Attestation			

AGREEMENT FOR SERVICES
(For contracts over \$5,000 - CONSULTANT)

This AGREEMENT made this 27th day of June, 2022, between:

CITY: City of Gilroy, having a principal place of business at
7351 Rosanna Street, Gilroy, California

and CONSULTANT: Circlepoint, Inc., having a principal place of business at 200 Webster Street, Suite 200, Oakland, CA 94607.

ARTICLE 1. TERM OF AGREEMENT

This Agreement will become effective on June 27, 2022 and will continue in effect through December 30, 2023 unless terminated in accordance with the provisions of **Article 7** of this Agreement.

Any lapse in insurance coverage as required by Article 5, Section D of this Agreement shall terminate this Agreement regardless of any other provision stated herein.


Initial

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

It is the express intention of the parties that CONSULTANT is an independent contractor and not an employee, agent, joint venturer or partner of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT or any employee or agent of CONSULTANT. Both parties acknowledge that CONSULTANT is not an employee for state or federal tax purposes. CONSULTANT shall not be entitled to any of the rights or benefits afforded to CITY'S employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement benefits or any other employment benefits. CONSULTANT shall retain the right to perform services for others during the term of this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONSULTANT

A. Specific Services

CONSULTANT agrees to: Perform the services as outlined in **Exhibit "A"** ("Specific Provisions") and **Exhibit "B"** ("Scope of Services"), within the time periods described in **Exhibit "C"** ("Milestone Schedule").

B. Method of Performing Services

CONSULTANT shall determine the method, details and means of performing the above-described services. CITY shall have no right to, and shall not, control the manner or determine the method of accomplishing CONSULTANT'S services.

C. Employment of Assistants

CONSULTANT may, at the CONSULTANT'S own expense, employ such assistants as CONSULTANT deems necessary to perform the services required of CONSULTANT by this Agreement, subject to the prohibition against assignment and subcontracting contained in **Article 5** below. CITY may not control, direct, or supervise CONSULTANT'S assistants in the performance of those services. CONSULTANT assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholding.

D. Place of Work

CONSULTANT shall perform the services required by this Agreement at any place or location and at such times as CONSULTANT shall determine is necessary to properly and timely perform CONSULTANT'S services.

ARTICLE 4. COMPENSATION

A. Consideration

In consideration for the services to be performed by CONSULTANT, CITY agrees to pay CONSULTANT the amounts set forth in **Exhibit "D"** ("Payment Schedule"). In no event however shall the total compensation paid to CONSULTANT exceed \$175,000 including a base budget of \$158,988 and a contingency budget of \$16,012.

B. Invoices

CONSULTANT shall submit invoices for all services rendered.

C. Payment

Payment shall be due according to the payment schedule set forth in **Exhibit "D"**. No payment will be made unless CONSULTANT has first provided City with a written receipt of invoice describing the work performed and any approved direct expenses (as provided for in **Exhibit "A", Section IV**) incurred during the preceding period. If CITY objects to all or any portion of any invoice, CITY shall notify CONSULTANT of the objection within thirty (30) days from receipt of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute. It shall not constitute a default or breach of this Agreement for CITY not to pay any invoiced amounts to which it has objected until the objection has been resolved by mutual agreement of the parties.

D. Expenses

CONSULTANT shall be responsible for all costs and expenses incident to the performance of services for CITY, including but not limited to, all costs of equipment used or provided by CONSULTANT, all fees, fines, licenses, bonds or taxes required of or imposed against CONSULTANT and all other of CONSULTANT'S costs of doing business. CITY shall not be

responsible for any expenses incurred by CONSULTANT in performing services for CITY, except for those expenses constituting “direct expenses” referenced on **Exhibit “A.”**

ARTICLE 5. OBLIGATIONS OF CONSULTANT

A. Tools and Instrumentalities

CONSULTANT shall supply all tools and instrumentalities required to perform the services under this Agreement at its sole cost and expense. CONSULTANT is not required to purchase or rent any tools, equipment or services from CITY.

B. Workers’ Compensation

CONSULTANT agrees to provide workers’ compensation insurance for CONSULTANT’S employees and agents and agrees to hold harmless, defend with counsel acceptable to CITY and indemnify CITY, its officers, representatives, agents and employees from and against any and all claims, suits, damages, costs, fees, demands, causes of action, losses, liabilities and expenses, including without limitation reasonable attorneys’ fees, arising out of any injury, disability, or death of any of CONSULTANT’S employees.

C. Indemnification of Liability, Duty to Defend

1. As to professional liability, to the fullest extent permitted by law, CONSULTANT shall defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys’ fees, to the extent arising or resulting directly or indirectly from any willful or negligent acts, errors or omissions of CONSULTANT or CONSULTANT’S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

2. As to other liability, to the fullest extent permitted by law, CONSULTANT shall defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys’ fees, arising or resulting directly or indirectly from any act or omission of CONSULTANT or CONSULTANT’S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

D. Insurance

In addition to any other obligations under this Agreement, CONSULTANT shall, at no cost to CITY, obtain and maintain throughout the term of this Agreement: (a) Commercial Liability Insurance on a per occurrence basis, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of \$1,000,000 per occurrence for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property,

including the loss of use thereof; and (b) Professional Liability Insurance (Errors & Omissions) with a minimum coverage of \$1,000,000 per occurrence or claim, and \$2,000,000 aggregate; provided however, Professional Liability Insurance written on a claims made basis must comply with the requirements set forth below. Professional Liability Insurance written on a claims made basis (including without limitation the initial policy obtained and all subsequent policies purchased as renewals or replacements) must show the retroactive date, and the retroactive date must be before the earlier of the effective date of the contract or the beginning of the contract work. Claims made Professional Liability Insurance must be maintained, and written evidence of insurance must be provided, for at least five (5) years after the completion of the contract work. If claims made coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the earlier of the effective date of the contract or the beginning of the contract work, CONSULTANT must purchase so called "extended reporting" or "tail" coverage for a minimum of five (5) years after completion of work, which must also show a retroactive date that is before the earlier of the effective date of the contract or the beginning of the contract work. As a condition precedent to CITY'S obligations under this Agreement, CONSULTANT shall furnish written evidence of such coverage (naming CITY, its officers and employees as additional insureds on the Comprehensive Liability insurance policy referred to in (a) immediately above via a specific endorsement) and requiring thirty (30) days written notice of policy lapse or cancellation, or of a material change in policy terms.

E. Assignment

Notwithstanding any other provision of this Agreement, neither this Agreement nor any duties or obligations of CONSULTANT under this Agreement may be assigned or subcontracted by CONSULTANT without the prior written consent of CITY, which CITY may withhold in its sole and absolute discretion.

F. State and Federal Taxes

As CONSULTANT is not CITY'S employee, CONSULTANT shall be responsible for paying all required state and federal taxes. Without limiting the foregoing, CONSULTANT acknowledges and agrees that:

- CITY will not withhold FICA (Social Security) from CONSULTANT'S payments;
- CITY will not make state or federal unemployment insurance contributions on CONSULTANT'S behalf;
- CITY will not withhold state or federal income tax from payment to CONSULTANT;
- CITY will not make disability insurance contributions on behalf of CONSULTANT;
- CITY will not obtain workers' compensation insurance on behalf of CONSULTANT.

ARTICLE 6. OBLIGATIONS OF CITY

A. Cooperation of City

CITY agrees to respond to all reasonable requests of CONSULTANT and provide access, at reasonable times following receipt by CITY of reasonable notice, to all documents reasonably necessary to the performance of CONSULTANT'S duties under this Agreement.

B. Assignment

CITY may assign this Agreement or any duties or obligations thereunder to a successor governmental entity without the consent of CONSULTANT. Such assignment shall not release CONSULTANT from any of CONSULTANT'S duties or obligations under this Agreement.

ARTICLE 7. TERMINATION OF AGREEMENT

A. Sale of Consultant's Business/ Death of Consultant.

CONSULTANT shall notify CITY of the proposed sale of CONSULTANT's business no later than thirty (30) days prior to any such sale. CITY shall have the option of terminating this Agreement within thirty (30) days after receiving such notice of sale. Any such CITY termination pursuant to this **Article 7.A** shall be in writing and sent to the address for notices to CONSULTANT set forth in **Exhibit A, Subsection V.H.**, no later than thirty (30) days after CITY' receipt of such notice of sale.

If CONSULTANT is an individual, this Agreement shall be deemed automatically terminated upon death of CONSULTANT.

B. Termination by City for Default of Consultant

Should CONSULTANT default in the performance of this Agreement or materially breach any of its provisions, CITY, at CITY'S option, may terminate this Agreement by giving written notification to CONSULTANT. For the purposes of this section, material breach of this Agreement shall include, but not be limited to the following:

1. CONSULTANT'S failure to professionally and/or timely perform any of the services contemplated by this Agreement.
2. CONSULTANT'S breach of any of its representations, warranties or covenants contained in this Agreement.

CONSULTANT shall be entitled to payment only for work completed in accordance with the terms of this Agreement through the date of the termination notice, as reasonably determined by CITY, provided that such payment shall not exceed the amounts set forth in this Agreement for the tasks described on Exhibit C" which have been fully, competently and timely rendered by CONSULTANT. Notwithstanding the foregoing, if CITY terminates this Agreement due to CONSULTANT'S default in the performance of this Agreement or material breach by CONSULTANT of any of its provisions, then in addition to any other rights and remedies CITY

may have, CONSULTANT shall reimburse CITY, within ten (10) days after demand, for any and all costs and expenses incurred by CITY in order to complete the tasks constituting the scope of work as described in this Agreement, to the extent such costs and expenses exceed the amounts CITY would have been obligated to pay CONSULTANT for the performance of that task pursuant to this Agreement.

C. Termination for Failure to Make Agreed-Upon Payments

Should CITY fail to pay CONSULTANT all or any part of the compensation set forth in Article 4 of this Agreement on the date due, then if and only if such nonpayment constitutes a default under this Agreement, CONSULTANT, at the CONSULTANT'S option, may terminate this Agreement if such default is not remedied by CITY within thirty (30) days after demand for such payment is given by CONSULTANT to CITY.

D. Transition after Termination

Upon termination, CONSULTANT shall immediately stop work, unless cessation could potentially cause any damage or harm to person or property, in which case CONSULTANT shall cease such work as soon as it is safe to do so. CONSULTANT shall incur no further expenses in connection with this Agreement. CONSULTANT shall promptly deliver to CITY all work done toward completion of the services required hereunder, and shall act in such a manner as to facilitate any the assumption of CONSULTANT's duties by any new consultant hired by the CITY to complete such services.

ARTICLE 8. GENERAL PROVISIONS

A. Amendment & Modification

No amendments, modifications, alterations or changes to the terms of this Agreement shall be effective unless and until made in a writing signed by both parties hereto.

B. Americans with Disabilities Act of 1990

Throughout the term of this Agreement, the CONSULTANT shall comply fully with all applicable provisions of the Americans with Disabilities Act of 1990 ("the Act") in its current form and as it may be amended from time to time. CONSULTANT shall also require such compliance of all subcontractors performing work under this Agreement, subject to the prohibition against assignment and subcontracting contained in Article 5 above. The CONSULTANT shall defend with counsel acceptable to CITY, indemnify and hold harmless the CITY OF GILROY, its officers, employees, agents and representatives from and against all suits, claims, demands, damages, costs, causes of action, losses, liabilities, expenses and fees, including without limitation reasonable attorneys' fees, that may arise out of any violations of the Act by the CONSULTANT, its subcontractors, or the officers, employees, agents or representatives of either.

C. Attorneys' Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

D. Captions

The captions and headings of the various sections, paragraphs and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

E. Compliance with Laws

The CONSULTANT shall keep itself informed of all State and National laws and all municipal ordinances and regulations of the CITY which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Without limiting the foregoing, CONSULTANT agrees to observe the provisions of the Municipal Code of the CITY OF GILROY, obligating every contractor or subcontractor under a contract or subcontract to the CITY OF GILROY for public works or for goods or services to refrain from discriminatory employment or subcontracting practices on the basis of the race, color, sex, religious creed, national origin, ancestry of any employee, applicant for employment, or any potential subcontractor.

F. Conflict of Interest

CONSULTANT certifies that to the best of its knowledge, no CITY employee or officer of any public agency interested in this Agreement has any pecuniary interest in the business of CONSULTANT and that no person associated with CONSULTANT has any interest that would constitute a conflict of interest in any manner or degree as to the execution or performance of this Agreement.

G. Entire Agreement

This Agreement supersedes any and all prior agreements, whether oral or written, between the parties hereto with respect to the rendering of services by CONSULTANT for CITY and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

No other agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Such other agreements or conversations shall be considered as unofficial information and in no way binding upon CITY.

H. Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflict of laws provisions of any jurisdiction. The exclusive jurisdiction and venue with respect to any and all disputes arising hereunder shall be in state and federal courts located in Santa Clara County, California.

I. Notices

Any notice to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in **Exhibit "A", Section V.H.** but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed delivered as of actual receipt; mailed notices will be deemed delivered as of three (3) days after mailing.

J. Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

K. Time of the Essence

All dates and times referred to in this Agreement are of the essence.

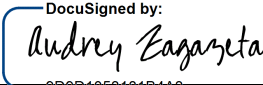
L. Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

Executed at Gilroy, California, on the date and year first above written.

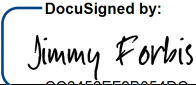
CONSULTANT:

CIRCLEPOINT, INC.

By: 
DocuSigned by: 9D9D1053181B4A3...
 Name: Audrey Zagazeta
 Title: President and CEO


CITY:

CITY OF GILROY

By: 
DocuSigned by: CC0450EF9B054DC...
 Name: Jimmy Forbis
 Title: City Administrator

Social Security or Taxpayer
 Identification Number 94-3171809

Approved as to Form

DocuSigned by:

1979C9EB5B60470...

City Attorney

ATTEST:

DocuSigned by:

1E54AA19B46C4BB...

City Clerk

EXHIBIT "A"

SPECIFIC PROVISIONS

I. PROJECT MANAGER

CONSULTANT shall provide the services indicated on the attached **Exhibit "B"**, Scope of Services ("Services"). (All exhibits referenced are incorporated herein by reference.) To accomplish that end, CONSULTANT agrees to assign Andrew Metzger, who will act in the capacity of Project Manager, and who will personally direct such Services.

Except as may be specified elsewhere in this Agreement, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to complete the Services in accordance with the terms of this Agreement.

II. NOTICE TO PROCEED/COMPLETION OF SERVICE

A. NOTICE TO PROCEED

CONSULTANT shall commence the Services upon delivery to CONSULTANT of a written "Notice to Proceed", which Notice to Proceed shall be in the form of a written communication from designated City contact person(s). Notice to Proceed may be in the form of e-mail, fax or letter authorizing commencement of the Services. For purposes of this Agreement, Cindy McCormick shall be the designated City contact person(s). Notice to Proceed shall be deemed to have been delivered upon actual receipt by CONSULTANT or if otherwise delivered as provided in the **Section V.H.** ("Notices") of this **Exhibit "A"**.

B. COMPLETION OF SERVICES

When CITY determines that CONSULTANT has completed all of the Services in accordance with the terms of this Agreement, CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has completed all of the Services as required by the terms of this Agreement and, if so requested, CITY shall make this determination within two (2) weeks of such request, or if CITY determines that CONSULTANT has not completed all of such Services as required by this Agreement, CITY shall so inform CONSULTANT within this two (2) week period.

III. PROGRESS SCHEDULE

The schedule for performance and completion of the Services will be as set forth in the attached **Exhibit "C"**.

IV. PAYMENT OF FEES AND DIRECT EXPENSES

Payments shall be made to CONSULTANT as provided for in **Article 4** of this Agreement.

Direct expenses are charges and fees not included in **Exhibit "B"**. CITY shall be obligated to pay only for those direct expenses which have been previously approved in writing by CITY. CONSULTANT shall obtain written approval from CITY prior to incurring or billing of direct expenses.

Copies of pertinent financial records, including invoices, will be included with the submission of billing(s) for all direct expenses.

V. OTHER PROVISIONS

A. STANDARD OF WORKMANSHIP

CONSULTANT represents and warrants that it has the qualifications, skills and licenses necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT'S representations and warranties regarding its skills, qualifications and licenses. CONSULTANT shall perform such Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

Any plans, designs, specifications, estimates, calculations, reports and other documents furnished under this Agreement shall be of a quality acceptable to CITY. The minimum criteria for acceptance shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar purposes.

B. RESPONSIBILITY OF CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of the Services furnished by it under this Agreement. CONSULTANT shall not be responsible for the accuracy of any project or technical information provided by the CITY. The CITY'S review, acceptance or payment for any of the Services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT'S negligent performance of any of the services furnished under this Agreement.

C. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

CITY, through its authorized employees, representatives or agents, shall have the right, at any and all reasonable times, to audit the books and records (including, but not limited to, invoices, vouchers, canceled checks, time cards, etc.) of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years (from the date of final payment to CONSULTANT), or for any longer period required by law, sufficient books and records in accordance with standard California accounting practices to establish the correctness of all charges submitted to CITY by CONSULTANT, all of which shall be made available to CITY at the CITY's offices within five (5) business days after CITY's request.

D. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data (including, but not limited to, computer data and source code), drawings, descriptions, documents, discussions or other information developed or received by or for CONSULTANT and all other written and oral information developed or received by or for CONSULTANT and all other written and oral information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY, be used for any purposes other than the performance of the Services, nor be disclosed to an entity not connected with the performance of the such Services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry (other than that which becomes generally known as the result of CONSULTANT'S disclosure thereof) shall be deemed confidential. CONSULTANT shall not use CITY'S name or insignia, or distribute publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

E. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

F. OWNERSHIP OF MATERIAL.

All material including, but not limited to, computer information, data and source code, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared (or caused to be prepared) under this Agreement shall be the property of CITY, but CONSULTANT may retain and use copies thereof subject to **Section V.D** of this **Exhibit "A"**.

CITY shall not be limited in any way in its use of said material at any time for any work, whether or not associated with the City project for which the Services are performed. However, CONSULTANT shall not be responsible for, and City shall indemnify CONSULTANT from, damages resulting from the use of said material for work other than PROJECT, including, but not limited to, the release of this material to third parties for work other than on PROJECT.

G. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

H. NOTICES.

Notices are to be sent as follows:

CITY:	<u>Cindy McCormick</u> City of Gilroy 7351 Rosanna Street Gilroy, CA 95020
CONSULTANT:	<u>Andrew Metzger</u> <u>Circlepoint, Inc.</u> <u>42 South First Street, Suite D</u> <u>San Jose, CA 95113</u>

I. FEDERAL FUNDING REQUIREMENTS.

- ☐ If the box to the left of this sentence is checked, this Agreement involves federal funding and the requirements of this **Section V.I.** apply.
- ☐ If the box to the left of this sentence is checked, this Agreement does not involve federal funding and the requirements of this **Section V.I.** do not apply.

1. DBE Program

CONSULTANT shall comply with the requirements of Title 49, Part 26, Code of Federal Regulations (49 CFR 26) and the City-adopted Disadvantaged Business Enterprise programs.

2. Cost Principles

Federal Acquisition Regulations in Title 48, CFR 31, shall be used to determine the allowable cost for individual items.

3. Covenant against Contingent Fees

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Local Agency shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

EXHIBIT “B”
SCOPE OF SERVICES

Attached

EXHIBIT B—SCOPE OF WORK

Thank you for this exciting opportunity to work with the City of Gilroy (City). We are pleased to provide this proposal, which outlines Circlepoint's approach to preparing an Environmental Impact Report (EIR) for the Gilroy Data Center (project) proposed by Amazon Data Services (the Applicant).

PROJECT UNDERSTANDING

Circlepoint understands that the project will consist of the following components to be constructed in two phases:

- Two data center buildings and one security building totaling approximately 438,500 square feet;
- Backup generating facilities to provide electricity to critical data center operations in the event of a loss of utility power;
- Two battery energy storage systems;
- A new substation/switchyard and a double circuit transmission upgrade;
- A new recycled water pipeline;
- Ancillary utility infrastructure for connection to existing stormwater and potable water pipelines;
- Security fencing;
- General Site Grading, Stormwater and Landscaping.

Phase I will be a traditional data center set up, requiring the use of diesel-powered backup generators. Circlepoint understands that the Applicant is committed to Tier-4 compliant backup generators, as required by the Bay Area Air Quality Management District (BAAQMD). Phase II will utilize an emerging technology to provide backup energy in the event of a power failure. Given that Phase I will have a maximum electrical demand of 49 MW and Phase II would leverage an alternative energy supply instead of diesel generators, the California Energy Commission (CEC) would not have jurisdiction over the project. Therefore, the project is not required to seek a Small Power Plant Exemption (SPPE) from CEC's jurisdiction, and the project can follow the normal CEQA clearance process at the local level.

The project will require water for cooling when outside air temperatures exceed 83 degrees F. The data center will be designed to use recycled water provided by the City of Gilroy, once available, and a potable water connection will serve as a back-up source to the recycled water supply. Given the level of water demand required for the project, both potable and recycled, it is critical that the availability of water resources to meet project demand is adequately analyzed.

The project site's former use for agricultural production indicates that vehicle miles traveled (VMT) generated from construction and operations of the project would be considered net new to the project site. The project is expected to include 25 employees to operate the data center and 37 employees to assemble the data equipment. Circlepoint will use the peer-reviewed VMT analysis to carefully consider impacts.

APPROACH

Our approach focuses on working collaboratively with City staff, the Applicant, and other stakeholders. This collaborative approach can streamline the environmental process by ensuring an efficient response to changes in the project and allowing us to address significant issues early. We also focus on making the environmental review process and environmental document as clear and straightforward as possible, so the general public and agencies understand the process, analysis, and issues being addressed.

Based on the Request for Proposal (RFP) Letter provided by the City, Circlepoint understands that the City envisions preparing an Environmental Impact Report (EIR) that conservatively assesses the potential impacts of the project. While other less robust environmental document options (such as an Initial Study/Mitigated Negative Declaration) may also be feasible, Circlepoint agrees with the City’s preferred approach because an EIR will allow maximum public and agency involvement and be more legally defensible in the event of a challenge. Circlepoint anticipates that the project will face the greatest scrutiny surrounding impacts associated with water supply and demand, air quality and greenhouse gas emissions, fire hazard from battery systems, increased VMT from project operation, and noise introduced to the project site. Strong project management will be required to execute the preparation of a timely and meticulous document that will withstand legal and public scrutiny with regards to these topics. This requires experience and the right skills which Circlepoint possesses based on our extensive history working on data centers in Santa Clara, San José, and Los Angeles.

For resource topics where impacts that are not considered potentially significant, Circlepoint would identify opportunities for environmental streamlining. The EIR could address topics such as Mineral Resources, Recreation, and Population/Housing by briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR, pursuant to the CEQA Guidelines Section 15128.

Circlepoint understands the Applicant has submitted a detailed project description that includes a “mitigation incorporated into the project design” approach. This approach is common within the CEC’s SPPE process, but presents legal concerns from a local agency CEQA perspective (such as Lotus v. Department of Transportation (223 Cal. App. 4th 645)). Circlepoint will work closely with the City to review the applicable standard conditions of approval along with existing local, regional, state, and federal policies and best practices that could support the use of some Applicant-provided measures as “project features.” Circlepoint will apply our robust understanding of managing legal risk and applying current case law to ensure the EIR appropriately identifies environmental impacts and discloses necessary mitigation.

QUALITY ASSURANCE/QUALITY CONTROL PROCESS

Circlepoint’s quality assurance/quality control (QA/QC) process ensures the continuing integrity and quality of all services and deliverables. Our QA/QC process includes senior review responsibilities for both the Project Manager and the Principal-in-Charge. The Project Manager directs and reviews project team work on deliverables and work products. The Principal-in-Charge then reviews and approves interim and final work products. Finally, a proofreader completes a final review, following specific directives to verify and assure quality printed work products before a work product is delivered to a client or printer. The following table summarizes the management structure that Circlepoint uses to ensure the quality of every document we produce.

ROLE	RESPONSIBILITIES
Principal-in-Charge	<ul style="list-style-type: none">• Overall quality control and quality assurance of all work products
Project Manager	<ul style="list-style-type: none">• Primary client contact• Oversees document preparation and coordination with technical subconsultants• Provides intermediate QA review and technical editing prior to PIC review
Senior Associate	<ul style="list-style-type: none">• Secondary client contact, often acting in a Deputy Project Manager capacity• Coordinates information requests, delivery schedules, and day-to-day communication with technical consultant• Lead reviewer and proofreader for most documents

ROLE	RESPONSIBILITIES
Associate / Assistant	<ul style="list-style-type: none"> • Authorship of individual document sections • Research for document sections not covered by a technical report • Technical editing / formatting / production of all work products
Coordinator / Graphics	<ul style="list-style-type: none"> • Preparation of graphics and maps

WORK PLAN

TASK 1: KICKOFF AND MEETINGS

Circlepoint will participate in one (1) kickoff meeting with the City to introduce team members, discuss initial data requests, and develop the project schedule. Circlepoint will confirm the scope of environmental analysis and methodologies with the City at the kickoff meeting and submit a comprehensive data request. Circlepoint anticipates attendance at the following meetings:

- Kickoff meeting
- Twenty four (24) Bi-weekly Check In Meetings with City (Based on anticipated project schedule)
- Up to five (5) Planning Commission/City Council Meetings

TASK 2: SCOPING MEETING AND NOTICE OF PREPARATION

Circlepoint will prepare a Notice of Preparation (NOP) to inform the public and applicable stakeholders that environmental documentation is being prepared for the project. Consistent with Section 15082 of the CEQA Guidelines, the NOP materials shall include a description of the project, the location of the project, and probable environmental effects of the project. The NOP is anticipated to screen out some environmental topics where no impacts are anticipated, such as mineral and forestry resources. Following distribution of the NOP, Circlepoint will work closely with the City to facilitate a Public Scoping Meeting and provide recommendations in meeting materials and presentation and in developing meeting notifications. Circlepoint will record comments received in response to the Public Scoping Meeting and the NOP and strategize with the City on incorporating these “known issues” into the EIR.

TASK 3: PROJECT DESCRIPTION

Circlepoint will prepare and submit a project description for City review and approval. Circlepoint will build upon the project description prepared by the Applicant and ensure it meets the requirements of CEQA Guidelines Section 15124. Circlepoint anticipates that the existing project description contains the majority of information needed for CEQA analysis. Circlepoint will revise the project description in response to one round of comments from the City. Circlepoint will utilize the following background materials (to be provided by the City/Applicant) to complete the project description:

- Preliminary geotechnical feasibility report
- Technical specifications for backup generators (including exhaust details), rooftop equipment, and cooling systems
- Commissioning test details (duration, number of generators) and maintenance testing plan
- Average rack power rating and power usage efficiency

- Utility “will-serve” letters for electrical and water utilities and/or supply assessments if required by the City or utility provider
- Total anticipated power consumption (average, daily or annual)
- Total daily water demand ; can be prorated from annual demand
- Sanitary sewer capacity study, if required by City
- Arborist report, if required by City
- Construction assumptions, including duration, phasing, construction start and end months, and review of construction equipment list

Key Deliverable: Project Description

TASK 4: PROJECT MANAGEMENT

Circlepoint will provide ongoing project management throughout the environmental review process including coordination with subconsultants, City staff, and outside regulatory agencies as applicable. Circlepoint will maintain a project schedule and provide regular updates to the City. Circlepoint will also prepare monthly progress reports to accompany monthly invoices containing the following information: the beginning and ending dates of the billing period; budget summary including budget spent to date and budget remaining; and a Task Summary for each work task, containing the name of the person doing the work, the hours spent by each person, and a brief description of the work.

TASK 5: TECHNICAL STUDIES

Based on the background materials provided with the City's RFP, Circlepoint understands that the Applicant has provided several background documents for consideration including aesthetics, biological resources, cultural resources, geology and soils, land use, mineral resources, public services, recreation, hazardous materials, transportation, tribal resources, utilities, and wildfire. Additionally, the following technical studies have been prepared by the Applicant and/or City:

- Air Quality Impact Assessment
- Natural Resources Memorandum
- Archaeological Literature Search
- Geotechnical Desktop Review
- Geotechnical Considerations Report
- Phase I Environmental Site Assessment
- Phase II Environmental Site Assessment
- Environmental Noise & Vibration Assessment
- Environmental Noise & Vibration Assessment Addendum
- Transportation Attachments, VMT Analysis, including Peer Review of VMT Assessment
- California Energy Commission Tribal Outreach Letters
- City of Gilroy Assessment of Water Supply
- Arborist Report

Circlepoint will conduct a gap analysis to ensure each of these technical studies provides the information necessary to support and complete the EIR per CEQA guidelines. If additional technical analysis is required, Circlepoint will coordinate with the City to strategize on the best course of action. Additional studies would require an amendment to this scope and fee. We assume all reports listed above will be provided to Circlepoint in a format acceptable for use in supporting a CEQA document and can be publicly circulated.

TASK 6: DRAFT EIR

Circlepoint will prepare a Draft EIR consistent with CEQA Guidelines Article 9. The Draft EIR will meet all City standards for content and formatting.

Task 6.1: Administrative Draft EIR

The background materials provided with the City's RFP Letter included CEQA-related documents which assess and analyze project impacts for a number of resources. Circlepoint will rely upon the analysis already prepared to the maximum extent feasible, expanding only where required for the purposes of CEQA sufficiency. Circlepoint will prepare the setting, impacts, and mitigation discussions for each environmental topic area set forth in Appendix G of the CEQA Guidelines. Circlepoint will prepare a summary of existing conditions, pertinent regulations, and a description of the regional setting, placing special emphasis on any rare or unique environmental resources in the project area. Circlepoint will review and reference relevant policies and regulations from the City's General Plan and Zoning Code, and other documents required for the analysis as applicable. The EIR will also include an analysis of alternatives to the project, an assessment of cumulative impacts associated with the project, and a description of comments received during the scoping period. Circlepoint assumes that up to three alternatives will be evaluated in the EIR, including (for example) a reduced development alternative, a reduced backup electric generation alternative, and/or a backup electric generation technology alternative. For the cumulative impacts analysis, Circlepoint will use the City's General Plan as a guide for reasonably foreseeable projects in the surrounding area.

Circlepoint will prepare a draft mitigation monitoring and reporting program (MMRP) to be submitted with the Administrative Draft EIR for City review. The draft MMRP will develop and present feasible mitigation for significant impacts identified in the Administrative EIR, identify the responsible party for implementing and monitoring each mitigation measure, and identify monitoring triggers and reporting frequency for each measure.

The Administrative Draft and MMRP will be provided in electronic formats to the City.

Key Deliverables: Administrative Draft EIR, draft MMRP

Task 6.2: Screencheck Draft EIR

Circlepoint will amend the Administrative Draft EIR based on up to two (2) rounds of review by City staff. Circlepoint will then provide clean, compiled PDF and MS Word versions of the screencheck draft EIR to verify that all requested changes have been made and all appendix materials, references and final graphics are acceptable.

Key Deliverables: Second Administrative Draft EIR, Screencheck Draft EIR.

Task 6.3: Public Draft EIR

Circlepoint will make final amendments to the Screencheck Draft EIR based on a single set of consolidated comments and submit web-ready versions of the EIR and all associated appendices. Hardcopies of the EIR can be provided on a time and materials basis, if requested by the City. Circlepoint will also prepare the combined Notice of Availability/Release and a Notice of Completion in accordance with Section 15087 of the CEQA Guidelines, and provide advice as needed to the City regarding distribution of the Draft EIR pursuant to CEQA and City review procedures. Consistent with Section 15087, notice availability of the Draft EIR will be published in a newspaper of general circulation in the affected area, posted on and off the site in the area where the

project is to be located, and mailed to the owners and occupants of property contiguous to the parcel or parcels on which the project is located.

The Draft EIR will be circulated for a minimum of 45 days. While public hearings are not required as an element of the CEQA process, they are encouraged to facilitate the public commenting process and address known issues of the project. Circlepoint recommends that the City hold a public hearing during the circulation period given the anticipated public controversy surrounding the project. This scope includes a public hearing as an optional task.

OPTIONAL TASK: Public Hearing

Key Deliverables: Draft EIR, NOA, NOC

TASK 7: FINAL EIR

Task 7.1: Response to Public Comments

Circlepoint will prepare written responses to comments on the Draft EIR following the public review period. Circlepoint assumes the City will provide copies of all written comments. Should the City decide to advance with the public hearing, which is included in this scope as an optional task, Circlepoint will assist the City in recording written and verbal comments at the hearing. Circlepoint will compile all comments with alpha-numeric codings and develop a list of major issues/concerns. Circlepoint will attend one (1) meeting with City staff following the close of the comment period to discuss the best approach, which may include the use of master responses to facilitate the response to similar or repeated comments. Comment responses will be incorporated to the Final EIR for the City's review.

Circlepoint hours listed in the proposed budget for responses to comments are an allowance. If an unusually large volume of comments are received (over 15 distinct comment letters), Circlepoint will confer with the City to determine an appropriate path forward. The scope and budget also assumes responses do not require substantial additional research, analysis, or meetings with commenters.

Task 7.2: Final EIR

Circlepoint will prepare a Final EIR which includes responses to all public comments received during the circulation period. Consistent with Section 15132 of the CEQA Guidelines, the Final EIR will comprise the following elements:

- Project Description
- A Summary of the Environmental Process
- Identification of the Preferred Alternative
- Responses to Comments, including a list of persons, organizations, and public agencies commenting on the draft EIR; the comments received, and the City's responses to each comment
- An Erratum to address any necessary changes to the Draft EIR that may result from public comments
- Appendices (as needed)

Based on up to two (2) sets of consolidated comments from the City, Circlepoint will revise the responses to comments document and will provide electronic copies of the final EIR to the City.

Key Deliverables: Response to Public Comments, Final EIR.

ASSUMPTIONS

The following assumptions apply to this project:

- » Circlepoint anticipates responding to three (3) rounds of revisions from the City on the EIR including two (2) administrative drafts and one (1) screencheck draft prior to publication.
- » Comments on draft documents will be provided to Circlepoint electronically using Microsoft Word's Track Change feature and will be compiled into a single file. Any conflicting comments between City reviewing staff will be resolved prior to forwarding to the consultants.
- » All submittals will be conducted electronically (PDF and Microsoft Word versions). Electronic versions will be provided in both word and pdf format. Additional hard copies and electronic versions can be provided upon request by the City.
- » Circlepoint assumes that all edits and revisions between the Draft and Final EIR would be minor in nature, would not require any new technical studies, and would not introduce any new significant environmental effects or substantial changes to previously identified mitigation. Should any such revisions be necessary, the Draft EIR may need to be recirculated pursuant to CEQA Guidelines Section 15088.5.
- » Circlepoint assumes the City will lead scheduling, securing the venue, and notification development and distribution for the Public Scoping Meeting. Should the City request additional support in this task, this can be addressed in coordination with the City and the preparation of a scope addendum.

EXHIBIT “C”
MLESTONE SCHEDULE

Attached

EXHIBIT C—MILESTONE SCHEDULE

The Circlepoint team will initiate work on this project upon contract execution. Background research, site visits, and reporting will commence immediately. The completion of the EIR process typically takes 10 to 12 months, depending on the City's review time.

MILESTONE	ESTIMATED COMPLETION DATE
Kick Off Meeting and Submittal of Data Request	Mid-to-Late June, 2022
Receipt of Requested Data	Early July, 2022
Submittal of Draft Project Description	Late July, 2022
City Comments on Draft Project Description	Mid-to-Late August, 2022
Finalization of Project Description	August/September, 2022
Technical Reports Gap Analysis	September, 2022
NOP Preparation	September/October, 2022
City Reviews NOP materials	Early-To-Mid October, 2022
Scoping Meeting	Early November, 2022
Compilation of NOP Comments to be included in EIR	Late November, 2022
Submittal of Administrative Draft EIR	December, 2022
City Provides Comments on Administrative Draft EIR (4 weeks for first review)	January 2023
Submittal of Second Administrative Draft EIR	January/February, 2023
City Provides Comments on Second Administrative Draft EIR (3 week review)	February, 2023
Submittal of Screencheck Draft EIR	March, 2023
Public Circulation of Draft EIR	March, 2023
Public Meetings (Optional)	April, 2023
Meeting with City to discuss Public Comments received	May, 2023
Submittal of First Draft of Final EIR	May, 2023
City Review Provides Comments on First Draft of Final EIR (3 week review)	June, 2023
Submittal of Final EIR	June/July, 2023

EXHIBIT “D”
PAYMENT SCHEDULE

Attached

EXHIBIT D—PAYMENT SCHEDULE

Circlepoint would complete the tasks described above for a not-to-exceed fee of **\$158,988**.

Circlepoint Budget

M5528 Gilroy AWS Data Center

Tasks	Principal	Comms Sr. PM	PM	Sr. Assoc	Associate	Assistant / Coordinator	Sr. Web/ Graphics	Total Hours	Total Dollars
	Rates \$ 252	\$ 197	\$ 173	\$ 138	\$ 118	\$ 103	\$ 144		
Task 1 Kickoff, Project Description, and other Meetings									
1.1 Kick Off Meeting	1	-	4	3	-	-	-	8	\$ 1,244.00
1.2 Bi-Weekly Check In Meetings	-	-	24	24	-	-	-	48	\$ 7,464.00
1.3 Planning Comissions/City Council Meetings	4	-	27	6	-	-	-	37	\$ 6,570.00
Subtotal Task 1 Kickoff, Project Description, and other Meetings	5	-	55	33	-	-	-	93	\$ 15,278.00
Task 2 Public Scoping and NOP									
2.1 Public Scoping Meeting	1	4	2	-	2	8	2	19	\$ 2,608.00
2.2 NOP materials	1	-	6	7	8	-	-	20	\$ 2,912.00
Subtotal Task 2 Public Scoping and NOP	1	-	6	7	8	-	-	39	\$ 5,520.00
Task 3 Project Description									
3.1 Project Description	2	-	10	8	8	6	-	34	\$ 4,878.00
Subtotal Task 3 Project Description	2	-	10	8	8	6	-	34	\$ 4,878.00
Task 4 Project Management									
4.1 Project Management and Coordination	8	18	72	18	-	-	-	116	\$ 20,540.00
Subtotal Task 4 Project Management	8	18	72	18	-	-	-	116	\$ 20,540.00
Task 5 Technical Studies									
5.1 Gap Analysis	4	-	20	18	15	-	-	57	\$ 8,580.00
Subtotal Task 5 Technical Studies	4	-	20	18	15	-	-	57	\$ 8,580.00
Task 6 Admin Draft EIR									
6.1 Admin Draft EIR	10	-	40	85	92	100	-	327	\$ 42,270.00
6.2 Screencheck Draft EIR	4	-	20	30	40	50	-	144	\$ 18,500.00
6.3 Public Draft EIR	4	-	20	28	38	38	-	126	\$ 16,440.00
Subtotal Task 6 Admin Draft EIR	18	-	80	142	170	188	-	597	\$ 77,210.00
Task 7 Final EIR									
7.1 Response to Public Comments and Final EIR	2	-	20	20	22	22	-	85	\$ 11,386.00
7.2 Final EIR	4	-	10	12	12	14	-	52	\$ 7,126.00
Subtotal Task 7 Final EIR	2	-	20	20	22	22	-	137	\$ 18,512.00
Labor Subtotal	37	18	257	240	215	216	-	1,072	\$ 150,518.00
Labor Contingency									\$ -
Total Labor									\$ 150,518.00

ODCs

Travel	\$ 500.00
Scoping Meeting (Printing, Materials, Misc)	\$ 1,000.00
Notification Mailer (NOA)	\$ 5,000.00
Display Ad Placement	\$ 1,200.00
	\$ -
	\$ -
	\$ -
	\$ -

Subtotal ODCs	\$ 7,700.00
10.0% Mark-Up on ODCs	\$ 770.00
Total ODCs	\$ 8,470.00
TOTAL	\$ 158,988.00

Assumptions

Rates are effective through December 31, 2022 and are subject to annual escalation
Please see scope of work for detailed assumptions



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/13/2022

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

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

PRODUCER Risk Strategies Company 700 Airport Boulevard, Suite 300 Burlingame, CA 94010	CONTACT NAME: Emily Elsbree PHONE (A/C, No. Ext): (650) 762-0425 E-MAIL ADDRESS: eelsbree@risk-strategies.com	FAX (A/C, No): (650) 762-0490
	INSURER(S) AFFORDING COVERAGE	
INSURED Circlepoint 200 Webster Street, Suite 200 Oakland CA 94607	INSURER A: Sentinel Ins. Co.	
	INSURER B: Hartford Accident and Indemnity Company	
	INSURER C: AXIS Insurance Company	
	INSURER D: Berkley Assurance Company	
	INSURER E:	
INSURER F:		NAIC # 11000 22357 37273 39462

COVERAGES

CERTIFICATE NUMBER: 68221062

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>		57SBARI3554	10/1/2021	10/1/2022	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			57SBARI3554	10/1/2021	10/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			57SBARI3554	10/1/2021	10/1/2022	EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	57WECGH2835	10/1/2021	10/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liability Retroactive Date 1: 11/01/1987 Retroactive Date 2: 05/14/2015			DP004180032021	10/1/2021	10/1/2022	Per Claim \$2,000,000 Annual Aggregate \$2,000,000 Pollution Liability Included Per Claim \$2,000,000
D	Cyber Liability			BCRS1RS40009500	7/16/2021	7/16/2022	Per Claim \$2,000,000

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

City of Gilroy, its officers and employees are included as additional insured/s per form SS00080405.

CERTIFICATE HOLDER

 City of Gilroy
 7351 Rosanna Street
 Gilroy CA 95020-6197

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

RSC Insurance Brokerage

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ACORD 25 (2016/03)

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BUSINESS LIABILITY COVERAGE FORMCirclepoint
57SBARI3554**2. Applicable To Medical Expenses Coverage**

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED**1. If you are designated in the Declarations as:**

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:**a. Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a)** Owned, occupied or used by,

BUSINESS LIABILITY COVERAGE FORM

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

b. Real Estate Manager

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

c. Temporary Custodians Of Your Property

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

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

d. Legal Representative If You Die

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

e. Unnamed Subsidiary

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

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

3. Newly Acquired Or Formed Organization

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

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

- b. Coverage under this provision does not apply to:

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

4. Operator Of Mobile Equipment

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

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

5. Operator of Nonowned Watercraft

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

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

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

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

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

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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.

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- (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:

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- (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.

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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.

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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.