RESOLUTION - ACTION REQUESTED 2017-456

MEETING: July 11, 2017

TO: The Board of Supervisors

FROM: Mike Healy, Public Works Director

RE: Approve an Agreement with Thunder Ridge for Fish Camp Snow Removal

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Thunder Ridge to Provide Snow Removal in Fish Camp and the Fish Camp Fire Station in the Not-To-Exceed Amount of $44,000; and upon approval by County Counsel Authorize the Board of Supervisors Chair to Sign the Agreement.

The cost for the 2017-18 snow season is $95 per hour for snow blading and $140 for snow blowing and sanding.

Through a Contract for Services Thunder Ridge has been providing snow removal services in the Fish Camp area for the past several years. They have reliable equipment and have been very conscientious in their efforts to remove snow in a timely manner and thereby avoiding citizen complaints.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board has previously approved contracts with this vendor for snow removal services in the Fish Camp area.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
None approval of this agreement would require the Public Works Department to find an alternative source for snow removal in the Fish Camp area.

FINANCIAL IMPACT:
Funding is allocated in the Road Fund -- 300-0301-581-0437 (Snow Plowing) $40,000; and in the County Fire budget- 001-0228-542-0413, (Maintenance of Buildings and Grounds) $4,000.

ATTACHMENTS:
Thunder Ridge 17-029 (PDF)

CAO RECOMMENDATION
Requested Action Recommended
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Kevin Cann, District IV Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
AGREEMENT FOR SNOW REMOVAL SERVICES ON THE FISH CAMP AREA

THIS AGREEMENT ("Agreement") is made and entered into this 20th day of June, 2017, by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and Thunder Ridge ("Contractor"), pursuant to the following terms and conditions.

WITNESSETH:

1. TERM

The term of this Agreement shall commence on July 1, 2017 and terminate on June 30, 2018 unless extended as provided by this Agreement.

2. SERVICES

Contractor shall perform snow removal services in the Fish Camp area as described in Exhibit A, "Scope of Work," which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

3. COMPENSATION

Contractor shall be compensated for services performed in an amount not to exceed $44,000. The Contractor’s hourly rates are listed in Exhibit B, "Cost Proposal." The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

4. INSURANCE

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

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO)Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

(3) Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $2,000,000 per accident for bodily injury or disease.

B. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provision:

(1) Additional Insured Status: The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

(2) Primary Coverage: For any claims related to this Agreement, the Contractor’s insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

(4) Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the County.
(7) Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(8) Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

(9) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify County its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney’s fees, arising from all acts or omissions to act of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from County’s sole negligence or willful acts.

6. INDEPENDENT CONTRACTOR

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

7. PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.
8. **STATE AND FEDERAL TAXES**

As Contractor is not County’s employee, Contractor is responsible for paying all required state and federal taxes. In particular:

a. County will not withhold FICA (Social Security) from Contractor’s payments;
b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
c. County will not withhold state or federal income tax from payment to Contractor;
d. County will not make disability insurance contributions on behalf of Contractor;
e. County will not obtain workers’ compensation insurance on behalf of Contractor.

9. **ASSIGNMENT**

It is understood and agreed that this Contract contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Contract will be permitted only with the express written consent of the County.

10. **NOTICE**

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

**CONTRACTOR:**
Thunder Ridge
P.O. Box 160
Fish Camp, CA. 93623-0160
559-683-2521

**COUNTY:**
Public Works
4639 Ben Hur Rd.
Mariposa, CA. 95338
209-966-5356

11. **COMPLIANCE**

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor’s performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person’s race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

12. **PUBLIC RECORDS ACT**

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the
extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

13. ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the Mike Healy, Public Works Director. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

14. ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

15. TERMINATION AND RIGHTS UPON TERMINATION

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon 30 calendar days’ written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

16. NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

17. DISPUTES

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney’s fees.
It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

18. CAPTIONS

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

19. NUMBER AND GENDER

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word “person” includes corporations, partnerships, firms or associations, wherever the context so requires.

20. MANDATORY AND PERMISSIVE

“Shall” is mandatory. “May” is permissive.

21. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

22. COUNTERPARTS

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

23. OTHER DOCUMENTS

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

24. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

25. AUTHORITY

Each party and each party’s signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.
26. **NEGOTIATED AGREEMENT**

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

27. **NO RELIANCE ON REPRESENTATIONS**

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

28. **WARRANTY**

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release.

29. **FUNDING AVAILABILITY**

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this Agreement, this Agreement shall be of no further force and effect. In this event, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, or offer an Agreement amendment to Contractor to reflect the reduced amount.

**Funding Source: 300-0301-581-0437 & 001-0228-542-0413**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.
COUNTY OF MARIPOSA

Marshall Hong, Chair
Board of Supervisors

ATTEST:

Rene LaRoche
Clerk of the Board

CONTRACTOR

Donn Harter

APPROVED AS TO FORM:

Steven W. Dahlem
County Counsel
June 9, 2017

Attn: Jean Dordan  
Department of Public Works  
4639 Ben Hur Rd.  
Mariposa, CA 95338

Re: 2017-2018 Snow Removal

**Exhibit A, Scope of Work:**

This includes the following during the snow season from October through April on County roads:
- Snow removal by blade and blower
- Downed tree removal from roadways
- Removal of any rock or mudslides
- Sanding when necessary

Respectfully Submitted,

[Signature]

Donn Harter  
Thunder Ridge Co.
April 24, 2017

Attn: Jean Dordan  
Department of Public Works  
4639 Ben Hur Rd.  
Mariposa, CA 95338

Re: 2017-2018 Snow Removal

**Exhibit B, Cost Proposal:**

- Blading and back hoe @ $95 per hour  
- Blowing @ $140 per hour

The total for all equipment use shall not exceed $40,000 for the snow season. In addition there is a not to exceed $4000 for snow removal at the Fire Station.

It is impossible determine the amount for the season (except “no to exceed”) since the cost depends on the amount of snowfall during the season.

In the 26 years of maintaining the County roads, I have only exceeded the contract amount during the record season of 2010-11. Had not the Board approved the over run, I would have absorb the cost.

Respectfully Submitted,

[Signature]

Donn Harter  
Thunder Ridge Co.
RENEWAL OF
LW455956

CERTIFICATE OF INSURANCE
COMMON POLICY DECLARATIONS

Certificate Number
LW454016

This Declaration is attached to and forms part of certificate provisions (Form LPG1).

ITEM 1, NAMED INURED AND MAILING ADDRESS
THUNDER RIDGE Co.
DONN HARTER
PO BOX 193
FISH CAMP
CA 93623

AGENT NAME AND ADDRESS
BURNS & WILCOX, LTD.
200 BURNS & WILCOX CENTER
7675 NORTH PALM AVENUE
FRESNO
CA 93711

ITEM 2, POLICY PERIOD
From: 12/14/2016
To: 12/14/2017
Term: 12 MONTHS

BUSINESS DESCRIPTION: ROAD MAINTENANCE
Insurance is effective with certain UNDERWRITERS AT LLOYD'S, LONDON.

FORM OF BUSINESS: ☑ Individual
☐ Joint Venture ☐ Partnership ☐ Organization ☐ Corporation ☐ LLC

Audit Period: Annual unless otherwise stated:

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS CERTIFICATE,
WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS CERTIFICATE.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS
PREMIUM MAY BE SUBJECT TO ADJUSTMENT

<table>
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<tr>
<th>Coverage Part</th>
<th>Section</th>
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STATE TAX: $75.00
STAMPING FEE: $5.00
TOTAL: $2,580.00

Premium shown is payable: $2,500.00 at inception. $2,500.00

SEE SCHEDULE OF FORMS AND ENDORSEMENTS

This certificate of insurance is made and accepted subject to the foregoing stipulations and conditions together with
such other provisions, agreement or conditions as may be endorsed or added hereto.

Dated at: 12/05/2016

By: BURNS & WILCOX, LTD.

Karen Patrice White
(Commissioned)

LLOYDSMA (S 58) ORIGINAL
COMMERCIAL GENERAL LIABILITY
COVERAGE PART DECLARATIONS

LIMITS OF INSURANCE

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<td>Each Occurrence Limit</td>
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<td>Medical Expense Limit</td>
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BUSINESS DESCRIPTION AND LOCATION OF PREMISES

Form of business: [x] Individual  [ ] Joint Venture  [ ] Partnership  [ ] Organization  [ ] Corporation  [ ] LLC
Business description: ROAD MAINTENANCE
Location of all premises you own, rent or occupy: 7673 FOREST DRIVE, FISH CAMP, CA 93623

PREMIUM

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Additional Insured - CG2011

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FORMS AND ENDORSEMENTS (other than applicable forms and endorsements shown elsewhere in the policy)

SEE SCHEDULE OF FORMS AND ENDORSEMENTS

DEDUCTIBLE: $1,000

* (a) APFR, (c) Total Cost, (f) Admission, (g) Payroll, (e) Gross Sales, (u) Units, (o) Other

THIS SUPPLEMENTAL DECLARATIONS AND THE COMMERCIAL LIABILITY DECLARATIONS, TOGETHER WITH THE COMMON CERTIFICATE CONDITIONS, COVERAGE FORMS AND ENDORSEMENTS COMPLETE THE ABOVE NUMBERED POLICY.
ENDORSEMENT

This endorsement, effective 12/14/2016 forms a part of Policy No.: LBW454016

Issued To: THUNDER RIDGE CO.
JOHN HARTER

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MANDATORY PROVISIONS ENDORSEMENT

In consideration of the premium charged, it is agreed that the following special provisions apply to this policy.

SCHEDULE

Bodily Injury and Property Damage Liability Deductible Endorsement

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<td>Bodily Injury Liability</td>
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<tr>
<td>Property Damage Liability</td>
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Service of Suit Clause
Service of Process will be made upon MENDES AND MOUNT CITY CORP PLAZA
445 SO. FIGUEROA STREET, 38TH FLOOR, LOS ANGELES, CA 90071

Minimum and Advance Premium Endorsement
Minimum Premium $2,500.00

Minimum Earned Premium
Minimum Earned Premium 25.00 % of the original premium.

BODILY INJURY AND PROPERTY DAMAGE LIABILITY DEDUCTIBLE ENDORSEMENT

APPLICATION OF ENDORSEMENT (Enter below any limitation on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage," however caused):

1. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages, and the limits of insurance applicable to "each occurrence" for such coverages will be reduced by the amount of such deductible. "Aggregate"

The deductible amounts include all legal and loss adjustment expenses.

The deductible amounts stated in the Schedule apply under 3. the Bodily Injury Liability or Property Damage Liability Coverages, respectively, to all damages because of "bodily injury" or personal injury" sustained by one person, or to all damages because of "property damage" sustained by one person, any organization, or association or any individual member of any organization or association as the result of any one "occurrence."
This endorsement changes the policy. Please read it carefully.

Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part

Schedule

<table>
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<th>Name Of Additional Insured Person(s) or Organization(s):</th>
<th>Location(s) Of Covered Operations</th>
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<tr>
<td>COUNTY OF MARIPOSA</td>
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<tr>
<td>DIRECTOR OF PUBLIC WORKS</td>
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<tr>
<td>4639 BEN HUR ROAD</td>
<td></td>
</tr>
<tr>
<td>MARIPOSA, CA 95338</td>
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</table>

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II - Who Is an Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" or "personal and advertising injury" caused, in whole or in part, by:
1. Your acts or omissions, or
2. The acts or omissions of those acting on your behalf;
in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
This insurance does not apply to "bodily injury" or "property damage" occurring after:
1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.