

Date: October 16, 2019
To: Board of Retirement
From: James Wilbanks, Executive Director
Subject: Communications Contract

As mentioned to the Board last month, I was introduced to Ms. Jendi Coursey of Jendi Coursey Communications when she made a presentation to the Mendocino County Expanded Leadership Team meeting in September. I subsequently met with Ms. Coursey and feel her services would be very beneficial in helping MCERA further develop our communications efforts.

In discussing MCERA's communications efforts with Ms. Coursey, we anticipate her services costing around \$5,000 in fiscal year 2020. The amount, not to exceed a limit of \$10,000 is included in the contract to allow for flexibility and additional services only if MCERA needs them.

I recommend approval of the contract and suggest the following motion:

“Madam Chair, I move approval of the Communications Contract and authorize the Executive Director to execute such contract.”

**MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of _____, 2019, is by and between the MENDOCINO MCERA EMPLOYEES RETIREMENT ASSOCIATION (MCERA), hereinafter referred to as the "MCERA", and **Jendi Coursey Communications**, hereinafter referred to as the "CONTRACTOR".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, MCERA may retain independent contractors to perform special services to or for MCERA or any department thereof; and,

WHEREAS, MCERA desires to retain CONTRACTOR to provide assistance with an ongoing public relations campaign for the Mendocino County Employees Retirement Association; and,

WHEREAS, CONTRACTOR is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to MCERA.

NOW, THEREFORE it is agreed that MCERA does hereby retain CONTRACTOR to provide the services described in Exhibit "A", and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Exhibit B	Payment Terms
Exhibit C	Insurance Requirements

The term of this Agreement shall be from the date signed by all parties through June 30, 2020 and shall be renewed each year thereafter unless cancelled in writing by either MCERA or CONTRACTOR.

The compensation payable to CONTRACTOR hereunder shall not exceed Ten Thousand Dollars (\$10,000) for the term of this Agreement.

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GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an Independent Contractor. CONTRACTOR is not the agent or employee of the MCERA in any capacity whatsoever, and MCERA shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold MCERA harmless from any and all liability which MCERA may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of MCERA.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and MCERA laws and that the sole interest of MCERA is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the MCERA agency concerned.

Notwithstanding the foregoing, if the MCERA determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, MCERA may upon two (2) week's written notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. INDEMNIFICATION:

CONTRACTOR. CONTRACTOR agrees to indemnify MCERA and hold it harmless with respect to any and all claims, demands, liabilities, damages, fines, penalties, forfeitures, losses and expenses brought or asserted by any third party under any theory of law in connection with injuries to persons or damage to property resulting from CONTRACTOR's gross negligence, tortuous conduct, or willful act giving rise to such claim(s).

MCERA. MCERA agrees to indemnify CONTRACTOR and hold her harmless with respect to any and all claims, demands, liabilities, damages, fines, penalties, forfeitures, losses and expenses brought or asserted by any third party under any theory of law in connection with MCERA's business and business practices resulting from the MCERA's gross negligence, tortuous conduct, or willful act giving rise to such claim(s), including services requested pursuant to this Agreement that relate to said business and practices.

3. INSURANCE AND BOND: CONTRACTOR shall at all times during the term of the Agreement with the MCERA maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.

4. WORKERS' COMPENSATION: CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from MCERA any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

CONTRACTOR affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONTRACTOR further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONTRACTOR shall furnish to MCERA certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONTRACTOR shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of CONTRACTOR'S and subcontractors' employees.

5. CONFORMITY WITH LAW AND SAFETY:

- a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety

and Health Act. CONTRACTOR shall indemnify and hold MCERA harmless from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.

- b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify the executive director of Mendocino County Employees Retirement Association by telephone. CONTRACTOR shall promptly submit to MCERA a written report, in such form as may be required by MCERA of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of MCERA's equipment, tools, material, or staff were involved.
 - c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the MCERA the opportunity to review and inspect such evidence, including the scene of the accident.
6. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit "B" hereto as funding permits.
- If MCERA overpays CONTRACTOR for any reason, CONTRACTOR agrees to return the amount of such overpayment to MCERA, or at MCERA's option, permit MCERA to offset the amount of such overpayment against future payments owed to CONTRACTOR under this Agreement or any other agreement.
- 7. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.
 - 8. IRREVOCABLE LICENSE: CONTRACTOR hereby grants the MCERA an express royalty-free, irrevocable license to retain and use any documents or materials prepared by CONTRACTOR under this agreement, for promotional purposes, including the MCERA's right to update the materials and prepare derivative works with the exception of any photography provided.
 - 9. CONFLICT OF INTEREST: The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.

10. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To MCERA: MCERA
625 Kings Court #B
Ukiah, CA 95482
Attn: James Wilbanks

To CONTRACTOR: Jendi Coursey Communications
109 W. Perkins St.
Ukiah, CA 95482
Attn: Jendi Coursey

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

11. USE OF MCERA PROPERTY: CONTRACTOR shall not use MCERA property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
12. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: CONTRACTOR certifies that it will comply with all federal, state, and local laws, rules and regulations pertaining to nondiscrimination in employment.
 - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.
 - b. CONTRACTOR shall, if requested to so do by the MCERA, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
 - c. If requested to do so by the MCERA, CONTRACTOR shall provide the MCERA with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - e. The CONTRACTOR shall include the provisions set forth in this paragraph in each of its subcontracts.
13. DRUG-FREE WORKPLACE: CONTRACTOR and CONTRACTOR's employees shall comply with the MCERA's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any MCERA facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a MCERA facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the MCERA department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
14. COMPLIANCE WITH LICENSING REQUIREMENTS: CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses and display the same in a location that is reasonably conspicuous.

Before the MCERA will issue a notice to proceed with the Services, CONTRACTOR and any subcontractors must acquire, at their expense, a business license from MCERA in accordance with MCC 6.0. Such licenses must be kept valid throughout the Agreement term.

CONTRACTOR represents and warrants to MCERA that CONTRACTOR and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

15. **AUDITS; ACCESS TO RECORDS:** The CONTRACTOR shall make available to the MCERA, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the MCERA, and shall furnish to the MCERA, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the MCERA may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.
16. **DOCUMENTS AND MATERIALS:** CONTRACTOR shall maintain and make available to MCERA for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 8 of this Agreement.
17. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
18. **TERMINATION:** The MCERA has and reserves the right to suspend, terminate or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving to the CONTRACTOR notice. Such notice shall be in writing and may be issued by any MCERA officer authorized to execute or amend the contract. In the event that the MCERA should abandon, terminate or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its services as outlined in Exhibit A shall not exceed \$10,000 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.
19. **NON APPROPRIATION:** If MCERA should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, MCERA may unilaterally terminate this Agreement only upon thirty (30)

days written notice to CONTRACTOR. Upon termination, MCERA shall remit payment for all products and services delivered to MCERA and all expenses incurred by CONTRACTOR prior to CONTRACTOR'S receipt of the termination notice.

20. CHOICE OF LAW: This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
21. VENUE: All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
22. WAIVER: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
23. ADVERTISING OR PUBLICITY: CONTRACTOR shall not use the name of MCERA, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of MCERA in each instance.
24. ENTIRE AGREEMENT: This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between MCERA and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding CONTRACTOR's provision of assistance with the public relations campaign for MCERA. This Agreement may not be modified except by a written document signed by both parties. In the event of a conflict between the body of this Agreement and Exhibit A or Exhibit B, the provisions in the body of this Agreement shall control.
25. HEADINGS: Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
26. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.

27. **ASSURANCE OF PERFORMANCE:** If at any time the MCERA has good objective cause to believe CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, MCERA may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to MCERA, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of MCERA's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
28. **SUBCONTRACTING/ASSIGNMENT:** CONTRACTOR shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the MCERA's prior written approval.
- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Only the department head or his or her designee shall have the authority to approve subcontractor(s).
 - c. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.
29. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 8), and Conflict of Interest (Paragraph 9), shall survive termination or expiration for two (2) years.
30. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
31. **INTELLECTUAL PROPERTY WARRANTY:** CONTRACTOR warrants and represents that it has secured all rights and licenses necessary for any and all materials, services, processes, software, or hardware ("CONTRACTOR PRODUCTS") to be provided by CONTRACTOR in the performance of this AGREEMENT, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights. CONTRACTOR hereby grants to MCERA, or

represents that it has secured from third parties, an irrevocable license (or sublicense) to reproduce, distribute, perform, display, prepare derivative works, make, use, sell, import, use in commerce, or otherwise utilize CONTRACTOR PRODUCTS to the extent reasonably necessary to use the CONTRACTOR PRODUCTS in the manner contemplated by this agreement.

CONTRACTOR further warrants and represents that it knows of no allegations, claims, or threatened claims that the CONTRACTOR PRODUCTS provided to MCERA under this Agreement infringe any patent, copyright, trademark or other proprietary right. In the event that any third party asserts a claim of infringement against the MCERA relating to a CONTRACTOR PRODUCT, CONTRACTOR shall indemnify and defend the MCERA pursuant to Paragraph 2 of this AGREEMENT

In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for MCERA the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.

32. ELECTRONIC COPIES: The parties agree that an electronic copy, including facsimile copy, email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.
33. COOPERATION WITH MCERA: CONTRACTOR shall cooperate with MCERA and MCERA staff in the performance of all work hereunder.
34. PERFORMANCE STANDARD: CONTRACTOR shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in CONTRACTOR's profession. MCERA has relied upon the professional ability and training of CONTRACTOR as a material inducement to enter into this Agreement. CONTRACTOR hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of CONTRACTOR 's work by MCERA shall not operate as a waiver or release. If MCERA believes that any of CONTRACTOR 's work is not in accordance with such level of competency and standard of care, a mutually-acceptable professional will meet with both parties to mediate the dispute. If no resolution is possible, the professional will make his/her own judgment as to whether or not the standard has been met. If the professional determines that CONTRACTOR's work is not in accordance with generally accepted professional practices and standards of care, MCERA shall have the right to do any or all of the following: (a) require CONTRACTOR to meet with MCERA to review the quality of the work and resolve matters of concern; (b) require CONTRACTOR to repeat the work at no additional charge until it is satisfactory; (c) terminate this

Agreement pursuant to the provisions of paragraph 19 (Termination) or (d) pursue any and all other remedies at law or in equity.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

To communicate effectively, it is essential that MCERA's key stakeholders understand and support the organization's mission and goals. The public relations goal is for stakeholders to hold MCERA in high regard. Here are the basic steps we'll undertake to create a communication plan.

1. Identify stakeholders, including MCERA staff and board members, employee members, local opinion leaders, allied organizations, potential naysayers or opponents, members of the media, members of the public.
2. Develop messaging with key stakeholders in mind.
 - Explain MCERA's position and goals
 - Explain MCERA's actions with regard to stated goals
 - Prepare talking points for potential naysayers
3. Recommend strategies for sharing the messages.

General Outreach

- Press releases
- Blogging/Op-eds
- Radio interviews
- Social media posts
- Website content
- Email campaign

Targeted Outreach

One-on-one meetings with key stakeholders

Presentations at small gatherings and/or to key groups

Targeted emails to opinion leaders

4. Create templates for various types of outreach (e.g., press release, social media post, etc.).
5. Consider additional ways to publicize the messages (e.g., explainer videos, FAQs)
6. If appropriate, consider ways to collaborate with community partners

Note: the action items listed above are subject to change.

[END OF DEFINITION OF SERVICES]

EXHIBIT B

PAYMENT TERMS

MCERA will pay CONTRACTOR as per the following instructions:

1. Upon receipt of CONTRACTOR's invoice, MCERA shall pay for deliverables as per Exhibit A at a rate of \$175 per hour.
2. Payments under this Agreement shall not exceed \$10,000.
3. Invoices shall include a description of services/work completed, as per Exhibit A.
4. Invoices shall be sent via email to Judy.Zeller@mendocinocounty.org.
5. Invoices shall be submitted quarterly and the final invoice shall be submitted no later than July 31, 2020, for any services rendered through June 30, 2020.

[END OF PAYMENT TERMS]

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude MCERA from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, CONTRACTOR's indemnity obligations under Paragraph 2 of this Agreement.

CONTRACTOR agrees to carry at a minimum the following:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

[END OF INSURANCE REQUIREMENTS]