



## CONTRACT DOCUMENTS

# UNDERGROUNDING ELECTRICAL SERVICES ON THE S 1ST STREET – STRAND STREET ROAD & UTILITIES EXTENSION PROJECT Project No. M-532



**AUTHORIZED BY SPECIAL PROCUREMENT July 16, 2024**  
City of St. Helens, 265 Strand Street, St. Helens, Oregon 97051

City of St. Helens  
265 Strand Street  
St. Helens, Oregon 97051  
(503) 397-6272

Moore Excavation, Inc.  
PO Box 789  
Fairview, OR 97024  
(503) 674 - 0900

**INTRODUCTION AND TABLE OF CONTENTS**

Contract Documents are listed below. Documents are either attached or bound separately and available from the Project Manager. All documents bound separately are incorporated into the Contract Documents and have the same force and effect as though set forth in full herein.

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..... Available Online

In the event of a conflict, Supplementary Conditions control over all Standard Specifications and other Contract Documents. To the extent Standard Specifications and other Contract Documents conflict, the more restrictive requirement or provision shall control, except where otherwise noted in the Contract Documents, addenda, or amendment.

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# Part 1

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# **Bid Documents**

**UNDERGROUNDING ELECTRICAL SERVICES ON THE ST HELENS WATERFRONT.  
PROJECT NO. M-532  
FIRM OFFER (BID) AND SCHEDULE OF PRICES**

TO FURNISH ALL PERMITS, LABOR, TOOLS, MACHINERY, MATERIALS, TRANSPORTATION, EQUIPMENT AND SERVICES OF ALL KINDS REQUIRED FOR THE CONSTRUCTION OF THIS PROJECT FOR THE CITY OF ST. HELENS, COLUMBIA COUNTY, OREGON, AS STATED IN THE COMPLETED SCHEDULE OF PRICES, ALL IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, PLANS, SPECIFICATIONS, AND DRAWINGS WHICH ARE ON FILE AT THE CITY OF ST. HELENS, CITY HALL, 265 STRAND STREET, ST. HELENS, OREGON 97051.

**NAME OF BIDDER:** MOORE EXCAVATION, INC.  
**CONTACT:** TOBY BURNS  
**ADDRESS:** PO BOX 789  
**CITY** FAIRVIEW **STATE** OR **ZIP** 97024  
**TELEPHONE NO.:** (503) 674-0900  
**FAX NO.:** \_\_\_\_\_  
**EMAIL ADDRESS:** toby.burns@themeigroup.com

To the Honorable Mayor and City Council  
City Hall  
City of St. Helens  
265 Strand Street  
St. Helens, Oregon 97051

In response to competitive bidding, this FIRM OFFER is submitted as an offer by the undersigned to enter into a contract with the City of St. Helens for furnishing all permits, labor, tools, machinery, materials, transportation, equipment and services of all kinds required for, necessary for, or reasonable incidental to, the construction of this Project for the City of St. Helens, Oregon, as shown in the Contract Documents on file at City Hall, 265 Strand Street, St. Helens, Oregon, and which are a condition of this Offer as though they were attached. This offer is subject to the following declarations as to the acts, intentions and understandings of the undersigned and the agreement of the City of St. Helens to the terms and prices herein submitted.

1. The undersigned has familiarized themselves with the nature and extent of the Contract Documents, project Work, site, locality, general nature of Work to be performed by City or others at the site that relates to the project Work required by the Contract Documents, local conditions, and federal state, and local Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the project Work.
2. The undersigned has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) examinations, investigation, exploration, tests, and studies which pertain to the conditions (subsurface or physical) at or contiguous to the site or otherwise and which may affect the cost, progress, performance, or furnishing of the project Work as Contractor deems necessary for the performance and furnishing of the project Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional or supplementary examinations, investigations, explorations, tests, reports, or similar information or data are or will be required by Contractor for such purposes.
3. All of the Contract Documents, including all plans, specifications, and drawings have been examined and an examination of the site of the proposed Work, together with such investigations as are necessary to determine the conditions to be encountered have been made by the undersigned and the terms and conditions of the Contract and solicitation documents are hereby accepted, and that if this Offer is accepted, the undersigned will contract with the City of St. Helens, Oregon, using the form attached and agrees to be bound to the terms and conditions of said Contract and solicitation documents.
4. It is understood that the contract drawings may be supplemented by additional drawings and specifications in explanation and elaboration thereof and, if they are not in conflict with those referred to in paragraph 1 above, they

shall have the same force and effect as though they were attached and they shall be accepted as part of the Contract when issued.

5. The undersigned agrees that upon written acceptance of this bid s/he/it will, within ten working days, of receipt of such notice, execute a formal contract agreement with the City. The undersigned further agrees that s/he/it will provide the following in order to execute the Contract:

- Performance Bond and Payment Bond, both in the amount equal to 100% of the awarded Contract;
- Proof of filing of a Public Works Bond in the required statutory amount with BOLI
- Certificates of Insurance for all required insurance coverages;
- Certificates of Coverage for Workman Compensation and unemployment insurance; and
- All other bonds, permits, licenses, etc. as required in the Contract Documents.

6. The quantities stated in the Schedule of Prices are approximate only and payment will be made at the unit prices stated for the actual quantities incorporated in the completed Work. If there is an increase in the total payment for an item covered by a lump sum price, it shall be computed on the basis of extra work for which an increase in payment will have been earned; and if there is a decrease in a lump sum payment for any such items, it shall be made only as the result of negotiation between the undersigned and the City.

**UNDERGROUNDING ELECTRICAL SERVICES ON THE  
S 1ST STREET – STRAND STREET ROAD & UTILITIES EXTENSION PROJECT  
BID SCHEDULE OF PRICES**

Moore Excavation, Inc  
Revision 2  
5/28/2024



**SCHEDULE OF PRICES**

**UNDERGROUNDING ELECTRICAL SERVICES AT THE 1ST/STRAND PROJECT  
PROJECT NO. M-532**

ITEM #	KIND OF WORK ITEM DESCRIPTION	UNIT	DATE 1/22/24 AMOUNT	UNIT COST	TOTAL
	<b>Electrical</b>				
1.	4" PVC	LF	500	\$26.00	\$13,000.00
2.	3" PVC	LF	1980	\$23.00	\$45,540.00
3.	4" RGS	LF	60	\$165.00	\$9,900.00
4.	3" RGS	LF	310	\$140.00	\$43,400.00
5.	2" RGS	LF	80	\$120.00	\$9,600.00
6.	4" PVC FACTORY ELBOW	EA	8	\$250.00	\$2,000.00
7.	3" PVC FACTORY ELBOW	EA	54	\$240.00	\$12,960.00
8.	4" RGS FACTORY ELBOW	EA	2	\$950.00	\$1,900.00
9.	3" RGS FACTORY ELBOW	EA	7	\$700.00	\$4,900.00
10.	6 AWG CU XHHW	CLF	0.85	\$60.00	\$51.00
11.	3/0 AWG CU XHHW	CLF	2.55	\$3,500.00	\$8,925.00
12.	4/0 AWG CU XHHW	CLF	7.5	\$4,000.00	\$30,000.00
13.	250kCMIL CU XHHW	CLF	14.4	\$4,500.00	\$64,800.00
14.	4 AWG Bare CU Gnd	CLF	0.2	\$1,100.00	\$220.00
15.	METERBASE 200A	EA	3	\$5,000.00	\$15,000.00
16.	ENCLOSED CIRCUIT BREAKER	EA	1	\$250.00	\$250.00
17.	GROUND ROD CU 10' LONG 3/4"	EA	2	\$100.00	\$200.00
18.	NEMA 3R 24" X 24" PULLBOX	EA	1	\$1,000.00	\$1,000.00
19.	TRENCHING & BACKFILL	LF	622	\$337.50	\$209,925.00
20.	TRENCH RESURFACING	SY	69.1	\$200.00	\$13,820.00
21.	Mobilization	LS	1	\$83,000.00	\$83,000.00
22.	Erosion Control	LS	1	\$5,000.00	\$5,000.00
23.	Traffic Control	LS	1	\$8,000.00	\$8,000.00
24.	Permitting 200A Services	EA	20	\$600.00	\$12,000.00
25.	400A Services	EA	1	\$7,500.00	\$7,500.00
	<b>TOTAL BID</b>				\$602,891.00

The following base bid of SIX HUNDRED TWO THOUSAND EIGHT HUNDRED NINETY-ONE DOLLARS AND ZERO CENTS , (\$ 602,891.00 ) is proposed for the project as described in the Contract Documents.

7. All items in the Schedule of Prices have been completed in full by showing a unit or lump sum price or prices for each and every item thereof. The price per item shall be clearly shown in the space provided. The pricing shall be extended to show the total when required.
8. The undersigned submits the unit prices as those at which he will perform the Work involved. The extensions of the column headed "ITEM TOTAL" are made for the sole purpose of facilitating bid comparisons and if there are any discrepancies between the unit prices and the total amount shown, the unit prices shall govern.
9. The undersigned agrees to furnish labor, tools, machinery, materials, transportations, equipment and services of all kinds required for, necessary for, or reasonably incidental to, construction of this Project with all appurtenant Work as required by the plans and specifications of this Offer for the unit or lump sum prices in the "SCHEDULE OF PRICES".
10. In stating prices, it is understood that the prices include all materials and Work required to complete the Contract in accordance with the plans and specifications. If any material, item or service required by the plans and specifications has not been mentioned specifically in the "SCHEDULE OF PRICES", the same shall be furnished and placed with the understanding that the full cost to the City has been merged with the several prices stated in the "SCHEDULE OF PRICES".
11. The undersigned shall furnish bonds required by the specifications and comply with the laws of the State of Oregon which are pertinent to construction contracts of this nature even though such laws may not have been quoted or referred to in the specifications.
12. Accompanying this Offer is a certified check, cashier's check or a bid bond, in the sum of \$ NA , payable to the City of St. Helens, Oregon, this being an amount for ten percent (10%) of the total bid based upon the estimate of quantities at the above price according to the conditions of the advertisement. If this Offer is accepted by the City and the undersigned fails to execute a satisfactory contract and bonds as stated in the Advertisement within ten (10) working days from the date of notification, then the City may, at its option, determine that the undersigned has abandoned the contract and there upon this Offer shall be considered null and void, and the bid security accompanying this Offer shall be forfeited to and become the property of the City of St. Helens. If bid is not accepted, bid security accompanying this Offer shall be returned to the undersigned.
13. The undersigned agrees to be bound by and will comply with the provisions of ORS 279C.838 or 279C.840 or 40 U.S.C. 3141 to 3148, the Oregon Prevailing Wage law or the Federal Davis Bacon Act, as applicable.
14. The undersigned certifies that the undersigned Contractor is not ineligible to receive a contract for a public work pursuant to ORS 279C.860. Bidder further agrees, if awarded a contract, that every subcontractor will be eligible to receive a contract for a public work pursuant to ORS 279C.860.
15. The undersigned certifies that he undersigned Contractor has not discriminated against minority, women or emerging small businesses enterprises in obtaining any required subcontracts. The bidder understands and acknowledges that it may be disqualified from bidding on this public improvement project as set forth in OAR 137-049-0370, including but not limited to City discovery a misrepresentation or sham regarding a subcontract or that the Bidder has violated any requirement of ORS 279A.110 or the administrative rules implementing the Statute.
16. The undersigned agrees that the time of completion shall be defined in the specifications, and further, the undersigned agrees to initiate and complete this Project by the date stated below.  
The Work shall be commenced within five working days after receipt of the written Notice to Proceed.  
The Work shall be completed in all respects within 396 calendar days following issuance of the Notice to Proceed and shall be completed no later than September 15, 2024.
17. The undersigned bidder is licensed by the Oregon Construction Contractors Board, the registration is current and valid, and the bidder's registration number is stated below.



- 18. If applicable, the undersigned bidder is licensed by the State Landscape Contractors Board, the license is current and valid, and the bidder's registration number is stated below.
- 19. The undersigned acknowledges that, in determining the lowest responsible bidder, City shall, for the purpose of awarding the Contract, add a percent increase to each out-of-state bidder's bid price which is equal to the percent of preference given to local bidders in the bidder's home state, as set forth in the chart located at [www.oregon.gov/DAS/EGS/ps/Pages/RecipPref/detail\\_a\\_main\\_page.aspx](http://www.oregon.gov/DAS/EGS/ps/Pages/RecipPref/detail_a_main_page.aspx). "Resident bidder" of Oregon means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid that the bidder is a "resident bidder" of the State of Oregon. The undersigned represents him/her/it in this bid to be either a Resident or a Nonresident bidder by completing the appropriate blank below.
- 20. The undersigned hereby represents that no Commissioner, officer, agency or employee of the City of St. Helens is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder and that no representation, statement or statements, oral or in writing, of the City, its Councilors, officers, agents or employees had induced him/her to enter into this Contract, and the documents made a part of its terms.
- 21. The undersigned has not directly or indirectly induced or solicited any person to submit a false or sham bid or refrain from bidding. The undersigned certifies that this bid has been arrived at independently and submitted without connection with any person, firm or corporation making a bid for the same project and is, in all respects, fair and without collusion or fraud.
- 22. The undersigned confirms that this firm has a Qualified Drug Testing Program for employees in place and will demonstrate this prior to award of Contract.
- 23. The undersigned confirms that if this Contract involves asbestos abatement or removal, the bidder is licensed under ORS 468A.710 for asbestos removal. Asbestos abatement is not implicated in this Contract.
- 24. The City of St. Helens may waive minor informalities, reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any or all bids upon a finding that it is in the public interest to do so.
- 25. The undersigned confirms that this offer is not contingent upon City's acceptance of any terms and conditions other than those contained in the Solicitation and Contract Documents.
- 26. The bidder acknowledges that the Addendum(s) listed below have been reviewed online or a copy obtained and considered as part of the submittal of this Offer and Schedule of Prices. **ADDENDA NUMBERED 0 THROUGH 0 HAVE BEEN REVIEWED.**
- 27. Bidder information and signature.

MOORE EXCAVATION, INC. \_\_\_\_\_

NAME OF BIDDER

BIDDER IS A RESIDENT OF THE STATE OF OREGON \_\_\_\_\_

(See ORS 279A.120)

CONSTRUCTION CONTRACTORS BOARD LICENSE NO 28397 \_\_\_\_\_

DocuSigned by:

*Scott Pellicer*

\_\_\_\_\_  
SIGNATURE OF BIDDER'S AUTHORIZED REPRESENTATIVE

SCOTT PELLICER, PRESIDENT \_\_\_\_\_

OFFICIAL TITLE OF BIDDER'S AUTHORIZED REPRESENTATIVE

7/9/2024 | 2:07 PM PDT \_\_\_\_\_

DATE SIGNED

**FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM**

**UNDERGROUNDING ELECTRICAL SERVICES ON THE ST HELENS WATERFRONT**

Project No. M-532

**City of St. Helens, Oregon**

Person designated to receive form: John Walsh, City Administrator Phone #: 503-397-6272

**BID SUBMISSION DEADLINE** Date: July 25<sup>th</sup>, 2023 Time: 2:00pm AM PM

If the bid is more than \$100,000 this form must be submitted at the location specified in the Invitation to Bid on the advertised bid submission deadline and within two (2) working hours after the advertised bid submission deadline.

List below the Name, Dollar Value and Category of Work of each subcontractor that will be furnishing labor or labor and materials and that is required to be disclosed, the dollar value of the subcontract and the category of work that the subcontractor will be performing. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED).

SUBCONTRACTOR NAME	DOLLAR VALUE	CATEGORY OF WORK

The above listed first-tier subcontractor(s) are providing labor or labor and materials with a Dollar Value equal to or greater than:

- a) 5% of the total Contract Price, or \$15,000 whichever is greater (including all alternates). If the Dollar Value is less than \$15,000 do not list the subcontractor above; or
- b) \$350,000 regardless of the percentage of the total Contract Price.

Failure to submit this form by the disclosure deadline will result in a non-responsive bid. A non-responsive bid will not be considered for award. THIS DOCUMENT SHALL NOT BE FAXED. IT IS THE RESPONSIBILITY OF BIDDERS TO SUBMIT THIS DISCLOSURE FORM AND ANY ADDITIONAL SHEETS BY THE DEADLINE. SEE INSTRUCTIONS TO BIDDERS.

Deliver form to: City Administrator  
City Hall, City of St. Helens  
265 Strand Street  
St. Helens, OR 97051

Form Submitted by (Bidder Name): \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

### FIRST TIER SUBCONTRACTORS

Each first-tier subcontractor must disclose the following information before the Notice To Proceed shall be issued:

(Make additional copies as needed for each subcontractor)

**Subcontractor/Address:** Northstar Electrical Contractors Inc.

For: Electrical

\$ 245,550.00

Builders Board No. 90454 Expires 4/24/2025

Worker's Comp. Verified:  Yes  No

Insurance Company SAIF Policy No. 793309 Expires 9/1/2024

City of St Helens Business License \_\_\_\_\_

**CITY OF ST. HELENS  
STANDARD PUBLIC IMPROVEMENT CONTRACT  
BID BOND SURETY**

We, \_\_\_\_\_, a corporation or partnership duly organized under the laws of the State of \_\_\_\_\_, and authorized to transact business in the State of Oregon, as "PRINCIPAL", and

We, \_\_\_\_\_, a corporation or partnership duly organized under the laws of the State of \_\_\_\_\_, and authorized to transact business in the State of Oregon, as "SURETY",

hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto the City of St. Helens, Oregon, (OBLIGEE) the sum of:  
(\$ \_\_\_\_\_)

\_\_\_\_\_ Dollars.

The condition of the obligation of this bond, is that the PRINCIPAL herein has in response to City's *Notice to Contractors and Invitation to Bid*, submitted its Offer for the **UNDERGROUNDING ELECTRICAL SERVICES ON THE ST HELENS WATERFRONT., PROJECT NO. M-532**, which Offer is incorporated herein and made a part hereof by this reference, and Principal is required to furnish bid security in an amount equal to ten (10%) percent of the total amount of the bid pursuant to ORS 279C.365 and the City's public contracting rules and contract documents.

NOW THEREFORE, if the Offer, submitted by PRINCIPAL, is accepted, and if the Contract pursuant to the Offer is awarded to the PRINCIPAL, and if the PRINCIPAL executes such Contract and furnishes such good and sufficient Performance and Payment Bonds as required by the Bidding and Contract Documents within the time specified and fixed by the Documents, then this obligation shall be void; otherwise it shall remain in full force and effect. If the PRINCIPAL shall fail to execute the proposed Contract and to furnish the Performance and Payment Bonds, the SURETY hereby agrees to pay the OBLIGEE the surety bond sum as liquidated damages within ten (10) days of such failure.

IN WITNESS WHEREOF, we have caused this instrument to be executed and sealed by our duly authorized legal representatives this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

By: \_\_\_\_\_  
[A certified copy of the Agent's Power of Attorney must be attached hereto.]

By: \_\_\_\_\_ Attorney-in-Fact

## Part 2

---

# Contract Documents



**CITY OF ST. HELENS, OREGON  
STANDARD PUBLIC IMPROVEMENT  
CONTRACT**

**UNDERGROUNDING ELECTRICAL SERVICES ON THE ST HELENS WATERFRONT**

**Project No. M-532**

This Contract is between the CITY OF ST. HELENS, a municipal corporation of the State of Oregon (City) and MOORE EXCAVATION, INC. (Contractor). The City's Project Manager for this Contract is Mouhamad Zaher.

**1. Effective Date and Duration**

This Contract is effective on \_\_\_\_\_, 20\_24\_\_\_, or on the date at which every party has signed this Contract, whichever is later. The Work under this Contract shall, unless otherwise terminated or extended, be completed on or before September 15, 2024.

**2. Statement of Work**

General description of the Work and quantities:

The General Character of the Work under this Contract includes the coordination with the local power utility, Columbia River PUD (CRPUD), to convert the identified electrical services from overhead to underground. Provide all trenching, backfill and cover, conduit and fittings, conductors and all other labor and materials not furnished by CRPUD to provide proper operations for each converted electrical service. The contractor will be responsible for obtaining all required electrical permits from Columbia County. Work also includes the installation, maintenance and removal of temporary traffic control and erosion control measures, and the removal and replacement of existing pavement.

The Work is fully described in the Contract Documents, which are hereby incorporated herein and made a part hereof by this reference. The statement of work, including the delivery schedule for the Work, is contained in **Exhibit A**. Contractor shall, at its own risk and expense, perform the Work described in the Contract Documents and furnish all permits, labor, tools, machinery, materials, transportation, equipment and services of all kinds required for, necessary for, or reasonable incidental to, performance of the Work, that is, the construction of this Project for the City of St. Helens, Oregon, as shown in the Contract Documents. Contractor shall secure all Municipal, County, State, or Federal Permits or licenses including but not limited to payment of permit fees, license fees and royalties necessary or incident to performance of the Work on this Contract. The risk of loss for such Work shall not shift to the City until written acceptance of the Work by the City.

**3. Consideration**

a. City agrees to pay Contractor in the manner provided in the Contract documents (actual quantities at unit prices) in the amount not to exceed SIX HUNDRED SIXTY-THREE THOUSAND ONE HUNDRED EIGHTY DOLLARS AND NO CENTS (\$ 663,180.00 ) for accomplishing all the Work required by this Contract and the Contract Documents.

b. Any progress payments to Contractor shall be made only in accordance with the schedule and requirements in **Exhibit A**, if applicable, and Section 21 of the Standard Terms and Conditions for Public Improvement Contracts.

c. City certifies that sufficient funds have been appropriated to make payments required by this Contract during the current fiscal year. Payment for Work performed after July 5 of any given year is subject to funds being appropriated by the St. Helens City Council. If funds are not appropriated, the City may terminate this Contract for convenience by notice to the Contractor.

**CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE**

Business Name (Please Print): MOORE EXCAVATION, INC.

Contact Name: TOBY BURNS Phone: (503) 674-0900 Fax: (503) 674-0909

Address: PO BOX 789, FAIRVIEW, OR 97024

Social Security #: N/A St. Helens Business License #: 01143

Federal Tax ID#: 93-0583943 State Tax ID #: 00181514-7

Construction Contractors Board #: 28397

Citizenship: Nonresident Alien  Yes  No

Business Designation (check one):  Individual  Sole Proprietorship  Partnership  
 Corporation  Government/Nonprofit

The above information must be provided prior to contract approval. Payment information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number provided above. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject you to withholding.

I, the undersigned, understand that the Standard Terms and Conditions For Public Improvement Contracts and Exhibits A through J together with all other Contract Documents as described in Section 5 of the Standard Terms and Conditions For Public Improvement Contracts, and the separately bound 2021 Oregon Standard Specifications for Construction, and the City Public Facilities Construction Standards Manual, are an integral part of this Contract and agree to perform the Work described in the Contract Documents, including but not limited to Exhibit A, in accordance with the terms and conditions of this Contract. I further understand the City is prohibited from entering into a contract when the contractor has neglected or refused to file any return, pay any tax, or properly contest a tax, pursuant to ORS305.385; I hereby certify, under penalty of perjury and false swearing, that I/my business am/is not in violation of any Oregon Tax Laws; I further certify that I am an independent contractor as defined in ORS 670.600.

Signed by Contractor: DocuSigned by:  
*Scott Pellecer* 7/9/2024 | 2:07 PM PDT  
\_\_\_\_\_  
Signature/Title SCOTT PELLECECER, PRESIDENT Date

*NOTICE TO CONTRACTOR: This Contract does not bind the City of St. Helens unless and until it has been executed by the Mayor after authorization by the City Council at a public meeting.*

**CITY OF ST. HELENS SIGNATURE**

Approved: \_\_\_\_\_  
Mayor Rick Scholl Date  
Authorized by the full Council on \_\_\_\_\_

Attest: \_\_\_\_\_  
City Recorder Date

Reviewed: \_\_\_\_\_  
City Attorney Date

---

**CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE**

Business Name (Please Print): MOORE EXCAVATION, INC.

Contact Name: TOBY BURNS Phone: (503) 674-0900 Fax: (503) 674-0909

Address: PO BOX 789, FAIRVIEW, OR 97024

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 Corporation  Government/Nonprofit

The above information must be provided prior to contract approval. Payment information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number provided above. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject you to withholding.

I, the undersigned, understand that the Standard Terms and Conditions For Public Improvement Contracts and Exhibits A through J together with all other Contract Documents as described in Section 5 of the Standard Terms and Conditions For Public Improvement Contracts, and the separately bound 2021 Oregon Standard Specifications for Construction, and the City Public Facilities Construction Standards Manual, are an integral part of this Contract and agree to perform the Work described in the Contract Documents, including but not limited to Exhibit A, in accordance with the terms and conditions of this Contract. I further understand the City is prohibited from entering into a contract when the contractor has neglected or refused to file any return, pay any tax, or properly contest a tax, pursuant to ORS305.385; I hereby certify, under penalty of perjury and false swearing, that I/my business am/is not in violation of any Oregon Tax Laws; I further certify that I am an independent contractor as defined in ORS 670.600.

Signed by Contractor:

Signature/Title SCOTT PELLECCER, PRESIDENT Date \_\_\_\_\_

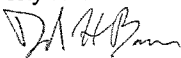
*NOTICE TO CONTRACTOR: This Contract does not bind the City of St. Helens unless and until it has been executed by the Mayor after authorization by the City Council at a public meeting.*

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**CITY OF ST. HELENS SIGNATURE**

Approved: Mayor Rick Scholl Date \_\_\_\_\_  
Authorized by the full Council on \_\_\_\_\_

Attest: City Recorder Date \_\_\_\_\_

Reviewed:  Date 7/5/2024  
City Attorney Date \_\_\_\_\_



**CITY OF ST. HELENS  
STANDARD TERMS AND CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS**

**1. Contractor is Independent Contractor**

- a. Contractor shall perform the Work required by this Contract as an independent contractor. Although the City reserves the right (i) to specify the desired results; (ii) to determine (and modify) the delivery schedule for the Work to be performed; and (iii) to evaluate the quality of the completed performance, the City cannot and will not control the means, methods or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means, methods and manner of performing the Work.
- b. The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement attached as Exhibit C.
- c. Contractor will be responsible for any federal, state or local taxes applicable to any compensation or payment paid to Contractor under this Contract.
- d. Contractor is not eligible for any federal Social Security, unemployment insurance, state Public Employees' Retirement System, or workers' compensation benefits from compensation or payments to Contractor under this Contract.

**2. Subcontracts and Assignment**

Contractor shall not subcontract any of the Work required by this contract, or assign, sell, dispose of, or transfer any of its interest in this contract, nor delegate duties under the contract, either in whole or in part, without the prior written consent of the City. Such consent, if provided, shall not relieve the Contractor of any of the obligations under the contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. Contractor agrees that if subcontractors are employed in the performance of this contract, the Contractor and its subcontractors are subject to the requirements and sanction of ORS Chapter 656, Workers' Compensation.

Use of Subcontractors, material suppliers or equipment suppliers shall in no way release Contractor from any obligations of the Contract with City. Contractor will provide in all subcontract agreements that the Subcontractor, material supplier and equipment supplier will be bound by the terms and conditions of this Contract to the extent that they relate to the Subcontractor's work, material or equipment. All subcontracts are assignable to the City at City's option, in the event this agreement is terminated for default of Contractor.

**3. No Third Party Beneficiaries**

City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**4. Successors in Interest**

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns, if any.

**5. Contract Documents**

The Contract Documents, which comprise the entire Contract between the City and Contractor, include all sections or parts of the bid package however denominated, including all documents and plans attached or referenced therein, the Notice to Contractors - Invitation to Bid, Offer, First-Tier Subcontractors Disclosure Form, Surety Bid Bond, Public Improvement Contract, Contract Standard Terms and Conditions and Exhibits thereto, Performance Bond, Payment Bond, Special Provisions, Plans entitled **UNDERGROUNDING ELECTRICAL SERVICES ON THE S 1ST STREET - STRAND STREET ROAD & UTILITIES EXTENSION PROJECT, NO. M-532**, Construction Drawings, Standard Drawings, and Contract Addendums, all attached hereto, and incorporated herein by this reference, together with the Prevailing Wage (BOLI) if applicable AND any other separately bound reference, 2021 Oregon Standard Specifications for

Construction, the City of St. Helens Engineering Department Public Facilities Construction Standards Manual Appendix to St. Helens Community Development Code, incorporated herein by this reference. All exhibits, schedules and lists attached to the Contract Documents, or delivered pursuant to the Contract Documents, shall be deemed a part of the Contract Documents and incorporated herein, where applicable, as if fully set forth herein.

#### **6. Contractor's Representations**

By executing this Contract, the Contractor hereby certifies that the representations made by the Contractor in the Contract Documents, including specifically the Offer, are true and correct and are incorporated herein by this reference. Contractor further certifies that Contractor has given the City written notice of conflicts, errors, ambiguities, or discrepancies that it has discovered in the Contract Documents, and the written resolution thereof by the City is acceptable to the Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of terms and conditions for performing and furnishing the Project Work.

#### **7. Drug Testing**

Contractor shall demonstrate to the City that it has a drug-testing program in place.

#### **8. Notice to Proceed**

Written Notice to Proceed will be given by the City after the Contract has been executed and the performance bond, payment bond, public works bond and all required insurance documents approved, and a pre-construction meeting has been held with the Contractor's and City's key personnel. Notice to proceed shall not be unreasonably delayed and shall generally occur within thirty (30) days of the Contract Date. Reasonable delay may be occasioned by the need to obtain necessary permits or easements or utility relocation. The Contractor shall commence the project Work within five (5) days of the date of the written Notice to Proceed. Contractor is not to commence Work under the Contract prior to such written notice.

#### **9. Suspension of the Work**

The City, and its authorized representatives, may suspend portions or all of the project Work due to causes including, but not limited to:

- a. Failure of the Contractor to correct unsafe conditions;
- b. Failure of the Contractor to carry out any provision of the Contract;
- c. Failure of the Contractor to carry out orders;
- d. Conditions, in the opinion of the City, which are unsuitable for performing the project Work;
- e. Allowance of time required to investigate differing site conditions;
- f. Any reason considered to be in the public interest.

The Contract Time will not be extended, nor will the Contractor be entitled to any additional compensation, if the Work is suspended pursuant to subsections (a), (b) or (c). If the Project Work is suspended pursuant to subsection (f), the Contractor is entitled to a reasonable extension of the contract time and reasonable compensation for all verified costs resulting from the suspension plus a reasonable allowance for overhead with respect to such costs. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such suspension. The foregoing provision concerning compensation in the event of a suspension of Work of this Contract shall not apply if such suspension occurs as a result of the Contractor's violation of any Federal, State, or Local statutes, ordinances, rules or regulations, or as a result of any violation by the Contractor of the terms of this Contract, including a determination by the City that the Contractor has not progressed satisfactorily with the Work in accordance with specifications.

#### **10. Early Termination**

The City and the Contractor, by mutual written agreement, may terminate this Contract at any time.

The City may terminate this Contract, in whole or in part, at any time for any reason considered by the City, in the exercise of its sole discretion, to be in the public interest. The City will provide the Contractor, and the Contractor's surety, seven (7) days prior written notice of a termination for convenience.

The City may terminate this Contract in the event of a material breach of the Contract by the Contractor. Prior to such default termination, however, the City shall give to the Contractor written notice of the breach and the intent to terminate for default. If the Party has not cured the breach within 15 days of the date of the notice (or if the breach cannot be cured in 15 days, Contractor has provided a cure plan that has been accepted by City and is making substantial progress in curing), then the City may terminate the Contract for default by giving a written notice of termination for default.

Any termination for default that is found to be improper for any reason shall be converted to a termination for convenience and Contractor's remedies shall be limited as if the termination had been one for convenience at inception.

#### **11. Payment on Early Termination**

- a. If this Contract is terminated by mutual agreement, the City shall pay the Contractor for Work performed in accordance with the Contract prior to the termination date in an amount agreed to by the parties as part of the termination agreement. Contractor shall not be entitled to any amount for overhead or profit on uncompleted Work.
- b. If this Contract is terminated by the City for convenience, City shall pay the Contractor for Work properly completed before the termination for convenience, along with costs incurred by Contractor due to the termination. Contractor shall not be entitled to any amount for overhead or profit on uncompleted Work. Contractor shall remain liable for Work performed prior to the termination for convenience.
- c. If this Contract is terminated by the City for default due to a material, uncured breach by the Contractor, then the City shall pay the Contractor, if applicable, as provided Section 12, Remedies for Default. Contractor shall remain liable for Work performed prior to the termination for default.

#### **12. Remedies for Default**

In the event of a termination for default by City due to a material, uncured breach by the Contractor, payment to Contractor will be immediately suspended. The City may proceed to complete the Work either itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the City the amount of the excess procurement costs within 14 days of written demand. To the extent that the procurement costs are lower than the remaining unpaid balance under this Contract, the City shall pay such difference to Contractor. After notice of termination for default, the Contractor and the Contractor's surety shall provide the City with immediate and peaceful possession of the Project site and premises, and materials located on and off the Project site and premises for which the Contractor received progress payment.

The remedies provided to the City under this Contract for a material, uncured breach by the Contractor shall not be exclusive. The City also shall be entitled to any other contractual, equitable or legal remedies that are available.

#### **13. Access to Records**

Contractor shall maintain and the City and its authorized representatives shall have access to all books, documents, papers and records of Contractor which relate to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of ten years after final payment. Contractor shall follow generally accepted accounting principles. Copies of applicable records shall be made available upon request at no charge to City. Failure to keep records for the required period shall be deemed a spoliation of evidence.

#### **14. Ownership of Work Product**

All work products of the Contractor that result from this Contract, including but not limited to background data, documentation and staff work that is preliminary to final reports, are the property of City. Draft documents and preliminary work submitted to the City for review and comment shall not be considered as owned, used or retained by the City until the final document is submitted.

The City shall own all proprietary rights, including but not limited to copyrights, trade secrets, patents and all other intellectual or other property rights in and to such work products. Preexisting trade secrets of the Contractor shall be noted as such and shall not be considered as a work product of this Contract. All such work products shall be considered "works made for hire" under the provisions of the United States Copyright Act and all other equivalent laws.

Use of any work product of the Contractor by the City for any purpose other than the use intended by this contract is at the risk of the City. Use of any work product by Contractor for other than this Project is prohibited without the written consent of the City.

#### **15. Compliance with Applicable Law**

Contractor shall comply and require all Subcontractors to comply with all federal, state, and local laws and ordinances, and City contracting rules applicable to the work under this contract, including without limitation ORS Chapter 279A-C and specifically ORS 279A.110, 279A.120, 279A.125, 279C.365, 279C.370, 279C.375, 279C.380, 279C.505, 279C.510, 279C.515, 279C.520, 279C.525, 279C.527, 279C.528, 279C.530, 279C.540, 279C.545, 279C.555, 279C.560, 279.565, 279C.570, 279C.580, 279C.585, 279C.600 to 279C.625, 279C.650 to 279C.670, and ORS 279C.800 to 279C.870, if applicable.

- a. Contractor shall:
  - 1) Make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the Work provided for in the Contract;
  - 2) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of the Contract;
  - 3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished;
  - 4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167;
  - 5) Demonstrate that an employee drug testing program is in place;
  - 6) To the extent the Work includes demolition, salvage or recycle construction and demolition debris, if feasible and cost-effective;
  - 7) To the extent the Work includes lawn and landscape maintenance, compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- b. If the Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the Contract as the claim becomes due, City may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the Contract.
- c. If the Contractor or its subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract within 30 days after receiving payment from City, Contractor or its subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
- d. If Contractor or its subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- e. Paying a claim in the manner authorized (b) through (d) above does not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim .
- f. No person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases the employee shall be paid at least time and a half pay:
  - 1)
    - i. For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

- ii. For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- 2) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.
- g. Contractor shall give notice in writing to employees who work on Work covered by the Contract, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- h. Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- i. Contractor shall comply with ORS 656.017 unless exempt under ORS 656.126.
- j. The withholding of retainage by Contractor and its subcontractors shall be in accordance with ORS 701.420.
- k. In accordance with ORS 279C.560, unless City finds in writing that accepting a bond, security or other instrument poses an extraordinary risk that is not typically associated with the bond, security or other instrument, City will approve the Contractor's written request to deposit bonds, securities or other instruments with the City or in a custodial account or other account satisfactory to City with an approved bank or trust company, to be held instead of cash retainage for the benefit of City. In such event, City will reduce the cash retainage by an amount equal to the value of the bonds, securities and other instruments. Interest or earnings on the bonds, securities and other instruments shall accrue to the Contractor. Bonds, securities and other instruments deposited instead of cash retainage shall be assigned to or made payable to City and shall be of a kind approved by the Director of the Oregon Department of Administrative Services, including but not limited to: Bills, certificates, notes or bonds of the United States; Other obligations of the United States or agencies of the United States; Obligations of a corporation wholly owned by the federal government; Indebtedness of the Federal National Mortgage Association; General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon; or Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as City may require to protect its interests. When City determines that all requirements for the protection of City's interest have been fulfilled, the bonds and securities deposited instead of cash retainage will be released to the Contractor. If City accepts a surety bond from Contractor in lieu of retainage, Contractor shall accept like bonds from its subcontractors or suppliers from which Contractor has retainage. Contractor shall then reduce the moneys Contractor holds as retainage in an amount equal to the value of the bond and pay the amount of the reduction to the subcontractor or supplier.
- l. City shall make progress payments on the Contract monthly as work progresses. Payments shall be based upon estimates of work completed that are approved by City. A progress payment is not considered acceptance or approval of any work or waiver of any defects therein. City shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence 30 days after receipt of the invoice from the Contractor or 15 days after the payment is approved by City, whichever is the earlier date. The rate of interest charged to City on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after receipt of the invoice from Contractor or 15 days after the payment is approved by City, whichever is the earlier date, but the rate of interest may not exceed 30 percent. Interest shall be paid automatically when payments become overdue. City shall document, calculate and pay any interest due when payment is made on the principal. Interest payments shall accompany payment of net due on the Contract. City will not require Contractor to petition, invoice, bill or wait additional days to receive interest due. When an invoice is filled out incorrectly, when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, City shall so notify Contractor within 15 days stating the reason or reasons the invoice is defective or improper or the

reasons for the dispute. A defective or improper invoice, if corrected by Contractor within seven days of being notified by City, may not cause a payment to be made later than specified in this section unless interest is also paid. If requested in writing by a subcontractor, Contractor, within 10 days after receiving the request, shall send to the subcontractor a copy of that portion of any invoice, request for payment submitted to City or pay document provided by City to Contractor specifically related to any labor or materials supplied by the subcontractor. Payment of interest may be postponed when payment on the principal is delayed because of disagreement between City and Contractor.

- m. City will reserve as retainage from all progress payment five percent (5%) of the payment. As work progresses, City may (but is not required) reduce the amount of the retainage and City may (but is not required) eliminate retainage on any remaining monthly contract payments after 50 percent of the Work under the Contract is completed if, in City's opinion, such work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by Contractor, and the application shall include written approval of Contractor's surety. However, when the contract work is 97.5 percent completed, City may, at the City's sole discretion and without application by Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of a written application by Contractor, the City shall respond in writing within a reasonable time. The retainage held by City shall be included in and paid to Contractor as part of the final payment of the Contract Price. City shall pay to Contractor interest at the rate of 1.5 percent per month on the final payment due Contractor, interest to commence 30 days after the work under the Agreement has been completed and accepted and to run until the date when the final payment is tendered to Contractor. Contractor shall notify City in writing when the contractor considers the work complete and Owner shall, within 15 days after receiving the written notice, either accept the work or notify Contractor of work yet to be performed on the Contract. If City does not, within the time allowed, notify Contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.
- n. Contractor shall include in each subcontract for property or services the Contractor enters into with a subcontractor, including a material supplier, for the purpose of performing this Contract:
- 1) A payment clause that obligates Contractor to pay subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the City pays to Contractor under the Contract.
  - 2) A clause that requires Contractor to provide subcontractor with a standard form that the subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from Contractor.
  - 3) A clause that requires Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. Contractor may change the form or the regular administrative procedures Contractor uses for processing payments if Contractor: (i) Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and (ii) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
  - 4) An interest penalty clause that obligates Contractor, if the Contractor does not pay the subcontractor within 30 days after receiving payment from City, to pay subcontractor an interest penalty on amounts due in each payment Contractor does not make in accordance with the payment clause included in the subcontract under paragraph 1) of this subsection. Contractor or subcontractor is not obligated to pay an interest penalty if the only reason that Contractor or subcontractor did not make payment when payment was due is that Contractor or subcontractor did not receive payment from City or Contractor when payment was due. The interest penalty: (i) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and (ii) Is computed at the rate specified in ORS 279C.515 (2).
- o. Contractor shall, in each of the Contractor's subcontracts, require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection (n) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.

The requirements applicable to contractors set forth in these sections are all incorporated into this contract by this reference as though set forth herein in their entirety. Contractor also expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, as amended (iv) ORS 659A.142, (v) all regulations and administrative rules established pursuant to those laws; and (vi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. In addition, Contractor expressly agrees to comply with all federal and state tax laws. A condition or clause required by law to be in this contract shall be considered included and incorporated into the Contract and made a part as if set forth herein in its entirety.

#### **16. Licensing with Construction Contractor's Board**

The Contractor hereby certifies that the Contractor is licensed with the Construction Contractors Board in accordance with ORS 701.021 to 701.042 and, further, that all subcontractors performing work under this contract, unless exempt, shall also be licensed with the Construction Contractors Board before the subcontractors commence work under the contract.

#### **17. Prevailing Wages**

Contractor expressly agrees to be bound by and comply with prevailing rate of wage laws applicable to Contractor's Work in accordance with ORS 279C.800 et seq. The prevailing wage rates in effect when this Project was first advertised are hereby expressly incorporated into this Agreement by reference. Information on BOLI Prevailing Wage Rates may be obtained at the following site: [www.oregon.gov/BOLI/WHI/PWR/pwr\\_state.shtml](http://www.oregon.gov/BOLI/WHI/PWR/pwr_state.shtml). A copy of these rates may be requested by calling the Bureau of Labor and Industries directly (Bureau of Labor and Industries – (971) 673-0838). Information on the Federal Davis-Bacon Act rates may be obtained at the following site: [www.oregon.gov/ODOT/HWY/SPECS/wages.shtml](http://www.oregon.gov/ODOT/HWY/SPECS/wages.shtml). Contractor's workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

Contractor shall have a public works bond filed with the Construction Contractors Board and shall provide Owner with a copy of such bond before starting work unless Contractor is exempt under ORS 279C.836(4), (7), (8) or (9). Contractor shall include a similar provision in any subcontract.

Contractor shall keep the prevailing rates of wage for Project posted in a conspicuous and accessible place in or about the Project and, if it provides a health and welfare plan or pension plan or both, shall post a notice describing the plan, including information on how and where to make claims and where to obtain further information, in a conspicuous and accessible place in or about the Project.

Contractor shall furnish to City a weekly affidavit with supporting detailed exhibits in a form that complies with the certified statement requirements of ORS 279C.845, certifying wages paid and to whom during each preceding weekly payroll period, for itself and all subcontractor who are required to submit such certified statements under ORS 279C.845. If Contractor has failed to timely submit a required certified statement, City, pursuant to ORS 279C.845(8), shall withhold twenty-five percent (25%) from any amount owed to Contractor until Contractor provides the required certified statement.

#### **18. Change Orders/Extra Work**

The Contractor agrees to complete this Contract in accordance with the attached specifications and requirements, including any change orders. A change order submitted by the City must be agreed upon by the Contractor and the City, and in the event of failure to so agree, the City may then proceed with any additional work in any manner the City may choose. A decision by the City to proceed to have work done by another party shall in no way relieve either the Contractor or City of this Contract and neither will such action be cause for collection of damages by either party to the contract, one from the other. Only the City Council or designated Contracting Officer with delegated contracting authority can authorize extra (and/or changed) work and compensation. Such authorization must be in writing. The parties expressly recognize that City personnel are not authorized to order extra (and/or) changed work or to waive contract requirements or authorize additional compensation. Failure of the Contractor to secure City authorization for extra work shall constitute a waiver of any and all claims or rights to adjustment in the Contract Price or Contract Time due to such unauthorized extra work and thereafter Contractor shall be entitled to no compensation whatsoever for the performance of such work. Contractor further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed by Contractor without express and prior authorization of the City.

If Contractor proposes an alternative material, process or system to City, or supplies City with specifications or plans for use in the Project, Contractor warrants to City that such alternative material, process or system is adequate, accurate, complete, fit for its intended purpose, and, if accepted by City, that an acceptable result will be achieved. Contractor, at its own cost, will remedy, any Work that violates this warranty until an acceptable result is achieved.

**19. Inspection and Acceptance**

Inspection and acceptance of all work required under this contract shall be performed by the City. The Contractor shall be advised of the acceptance or of any deficiencies in the deliverable items.

**20. Liquidated Damages**

City and Contractor recognize that time is of the essence of this Contract and that City will suffer substantial financial loss if the project work is not completed within the timeframe specified in Section (1) of the Public Improvement Contract. City and Contractor also recognize the difficulties involved in proving in a legal or other dispute resolution preceding the actual loss suffered by City if the project work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the City one thousand and fifty dollars per day (\$1050/day) for each and every day that elapses in excess of the Contract Time. This amount is a genuine pre-estimation of the damages expected because of a delay in the completion of this project.

Any sums due as liquidated damages shall be deducted from any money due or which may become due to the Contractor under this Contract. Payment of liquidated damages shall not release the Contractor from obligations in respect to the fulfillment of the entire contract, nor shall the payment of such liquidated damages constitute a waiver of the City's right to collect any additional damages which may be sustained by failure of the Contractor to complete the work on time. Permitting the Contractor to continue and finish the project work or any part thereof after the Contract Time has expired shall in no way operate as a waiver on the part of the City or any of its rights under this Contract. The City may in its discretion grant the Contractor an extension of time upon a showing made by the Contractor that the work has been unavoidably delayed by conditions beyond the control of Contractor.

**21. Liability, Indemnity and Hold Harmless**

Contractor warrants that all its work will be performed in accordance with the Contract Documents, in accordance with generally accepted practices and standards, as well as in accordance with the requirements of applicable federal, state, and local laws. Acceptance of Contractor's work by City shall not operate as a waiver or release.

The Contractor shall hold harmless, indemnify, and defend City, its officers, agents, and employees from any and all liability, actions, claims, losses, damages or other costs of whatsoever nature, including attorney's fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during or in connection with the performance of the Work, actions or failure to perform actions, and other activities of Contractor or its officers, employees, subcontractors or agents, under this Contract, including the negligent professional acts, errors, or omissions of Contractor or its officers, employees, subcontractors, or agents. Such indemnification shall also cover claims brought against City under state or federal workers compensation laws. This indemnity provision excludes liability arising out of the sole negligence of the City and its employees.

The Contractor shall assume all responsibility for the work and shall bear all losses and damages directly or indirectly resulting to the Contractor, to the City, to the Engineer, and to their officers, agents, and employees on account of (a) the character or performance of the work, (b) unforeseen difficulties, (c) accidents, or (d) any other cause whatsoever. The Contractor shall assume this responsibility even if (a) fault is the basis of the claim, and (b) any act, omission or conduct of the City connected with the Contract is a condition or contributory cause of the claim, loss, damage or injury.

Contractor waives any and all statutory or common law rights of defense and indemnification by the City.

Contractor shall also defend and indemnify City from all loss or damage that may result from Contractor's wrongful or unauthorized use of any patented article or process.



If any aspect of the above indemnities shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall be stricken to the extent illegal or invalid, with the remaining terms continuing to be valid, and such shall not affect the validity of the remainder of this indemnification.

Any specific duty or liability imposed or assumed by the Contractor as may be otherwise set forth in the Contract documents shall not be construed as a limitation or restriction of the general liability or duty imposed upon the Contractor by this section.

In the event any such action or claim is brought against the City, the Contractor shall, if the City so elects and upon tender by the City, defend the same at the Contractor's sole cost and expense, promptly satisfy any judgment adverse to the City or to the City and the Contractor jointly, and reimburse the City for any loss, cost, damage, or expense, including attorney fees, suffered or incurred by the City.

## **22. Insurance**

The Contractor shall provide and maintain during the life of this Contract the insurance coverage as described in Exhibit B. All costs for such insurance shall be borne by the Contractor and shall be included in the Contract Price. In case of the breach of any provision of this section, the City may elect to take out and maintain at the expense of the Contractor such insurance as the City may deem proper. The City may deduct the cost of such insurance from any monies that may be due or become due the Contractor under this Contract. Failure to maintain insurance as provided is a material breach and cause for default termination of the Contract. Contractor shall furnish City certificates of insurance acceptable to City prior to execution by the City and before Contractor or any subcontractor commences work under this Contract. The certificate shall show the name of the insurance carrier, coverage, type, amount (or limits), policy numbers, effective and expiration dates and a description of operations covered. The certificate will include the deductible or retention level and required endorsements. Insuring companies or entities are subject to City's acceptance. If requested, copies of insurance policies shall be provided to the City. Contractor shall be responsible for all deductibles, self-insured retention's, and/or self-insurance. Approval of the insurance shall not relieve or decrease the liability of the Contractor hereunder.

## **23. Bonds / Notice of Bond Claims**

At the time of execution of the Contract, the Contractor shall furnish Performance and Payment Bonds written by a corporate surety or other financial assurance in an amount equal to the amount of the Contract Price based upon the estimate of quantities or lump sum as set forth in the Contract. The bonds shall be continuous in effect and shall remain in full force and effect until compliance with and fulfillment of all terms and provisions of the Contract, including the warranty obligation of Section 24, all applicable laws and the prompt payment of all persons supplying labor and/or material for prosecution of the work. The bonds or other financial assurance is subject to approval by the City.

## **24. Two-Year Warranty**

- a. In addition to and not in lieu of any other warranties required under the Contract, Contractor shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City and at no cost to the City, any and all defects, breaks or failures of the Work occurring within two years following the date of final completion due to faulty or inadequate materials or workmanship. Contractor shall also repair any damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing its duties and obligations under this Contract when such defects or damage occur within the warranty period. The two-year warranty period shall, with relation to such required repair, be extended two years from the date of completion of such repair.
- b. If Contractor, after written notice, fails within ten days to proceed to comply with the terms of this section, City may have the defects corrected, and the Contractor and Contractor's surety shall be liable for all expense incurred. If Contractor, after two attempts, fails to make all necessary repairs and replacements to remedy, in a manner satisfactory to the City, any identified defect, break or failure of the Work, Contractor will be deemed to be in breach of warranty and City may have the defects corrected, and the Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor and Contractor or Surety shall pay the cost of repairs. Failure of the City to act in case of an emergency shall not relieve Contractor or Surety from liability and payment of all such costs.

**25. Nondiscrimination in Labor**

Contractor shall comply with provisions of City's Equal Opportunity Policy and comply with ORS Chapter 659 and ORS Chapter 659A relating to unlawful employment practices and discrimination by employers against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262 or to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

**26. Environmental Regulations**

- a. Pursuant to ORS 279C.525(1), the following is a list of federal, state and local agencies which have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract.

**Federal Agencies:**

- Agriculture, Department of Forest Service, Soil Conservation Service
- Defense, Department of Army Corps of Engineers Energy, Department of
- Federal Energy Regulatory Commission Environmental Protection Agency
- Health and Human Services, Department of
- Housing and Urban Development, Department of
- Solar Energy and Energy Conservation Bank
- Interior, Department of
- Bureau of Land Management, Bureau of Indian Affairs , Bureau of Mines , Bureau of Reclamation
- Geological Survey, Minerals Management Service
- U.S. Fish and Wildlife Service
- Labor, Department of Mine Safety and Health Administration Occupational Safety and Health Administration
- Transportation, Department of Coast Guard
- Federal Highway Administration
- Water Resources Council

**State Agencies:**

- Administrative Services, Department of
- Agriculture, Department of Columbia River Gorge
- Commission Consumer & Business Services, Department of
- Oregon Occupational Safety & Health Division
- Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Land Conservation and Development Commission
- Parks and Recreation, Department of
- Soil and Water Conservation Commission
- State Engineer
- State Land Board (Lands, Division of State)
- Water Resources Department

**Local Agencies:**

- City of St. Helens City Council
- City Councils
  - County Courts
  - County Commissioners of Columbia County
  - Port Districts
  - County Service Districts
  - Sanitary Districts
  - Water Districts
  - Fire Protection Districts
  - Historical Preservation Commissions
  - Planning Commissions

If the Contractor awarded the project is delayed or must undertake additional Work by reason of the enactment of new statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources or the amendment of existing statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful bid, the City may:

- i. Terminate the contract;
  - ii. Complete the work itself;
  - iii. Use non-city forces already under contract with the City;
  - iv. Require that the underlying property owner be responsible for cleanup;
  - v. Solicit bids for a new contractor to provide the necessary services; or
  - vi. Issue the Contractor a change order setting forth the additional work that must be undertaken.
- b. The solicitation documents make specific reference to known conditions at the construction site that may require the Contractor to comply with the ordinances, rules or regulations identified above. If Contractor encounters a condition not referred to in the solicitation documents, not caused by the Contractor and not discoverable by a reasonable pre-bid visual site inspection, and the condition requires compliance with the ordinances, rules or regulations enacted by the governmental entities identified above, Contractor shall immediately give written notice of the condition to the City. Except in the case of an emergency and except as may otherwise be required by any environmental or natural resource ordinance, rule or regulation, the Contractor shall not commence work nor incur any additional job site costs in regard to the condition encountered and described in this section without written direction from City. Upon request by the City, the Contractor shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition. This cost estimate shall be promptly delivered to the City for resolution. Within a reasonable period of time following delivery of an estimate of this section, the City may:
- i. Terminate the contract;
  - ii. Complete the work itself;
  - iii. Use non-city forces already under contract with the City;
  - iv. Require that the underlying property owner be responsible for cleanup;
  - v. Solicit bids for a new contractor to provide the necessary services; or
  - vi. Issue the Contractor a change order setting forth the additional work that must be undertaken.
- c. If the City chooses to terminate the contract under this section, the termination shall be treated as a termination for convenience with Contractor's remedies so limited. If the contracting agency causes work to be done by another contractor, Contractor may not be held liable for actions or omissions of the other contractor. If a change order is issued, the change order shall include an appropriate extension of Contract Time and compensate the Contractor for additional costs reasonably incurred as a result of complying with the applicable statutes, ordinances, rules or regulations. The City shall have access to the Contractor's bid documents when making the contracting agency's determination of any additional compensation due to the Contractor.

Notwithstanding the above, the City has allocated all or a portion of the known environmental and natural resource risks to a Contractor by listing such environmental and natural resource risks with specificity in the solicitation documents.

## **27. Waiver**

The failure of the City to enforce any provision of this contract shall not constitute a waiver by the City of that or any other provision. City shall not be precluded or estopped by any measurement, estimate or certificate made either before or after completion and acceptance of work or payment therefore, from showing the true amount and character of work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that Work or materials do not conform in fact to the Contract Documents. City shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate, or payment in accordance therewith, from recovering from the Contractor and their Sureties such damages as it may sustain by reason of their failure to comply with terms of the Contract, or from enforcing compliance with the Contract. Neither acceptance by City, or by any representative or agent of the City, of the whole or any part of the work, nor any extension of time, nor any possession taken by City, nor any payment for all or any part of the project, shall operate as a



**35. Merger Clause**

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. BY ITS SIGNATURE, CONTRACTOR ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS CONTRACT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.



**UNDERGROUNDING ELECTRICAL SERVICES ON THE  
S 1ST STREET - STRAND STREET ROAD & UTILITIES EXTENSION PROJECT  
PROJECT NO. M-532**

**LIST OF EXHIBITS**

<b>EXHIBIT A</b>	STATEMENT OF WORK, COMPENSATION, AND PAYMENT SCHEDULE
<b>EXHIBIT B</b>	PUBLIC IMPROVEMENT CONTRACT INSURANCE REQUIREMENTS
<b>EXHIBIT C</b>	CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR
<b>EXHIBIT D</b>	BONDS (PAYMENT AND PERFORMANCE)
<b>EXHIBIT E</b>	CERTIFICATE OF SUBSTANTIAL COMPLETION
<b>EXHIBIT F</b>	CERTIFICATE OF COMPLIANCE
<b>EXHIBIT G</b>	CONTRACTOR'S RELEASE OF LIENS AND CLAIMS
<b>EXHIBIT H</b>	CERTIFICATE OF FINAL COMPLETION
<b>EXHIBIT I</b>	INSTRUCTIONS TO BIDDERS
<b>EXHIBIT J</b>	OREGON PREVAILING WAGE RATES

## **EXHIBIT A**

### **STATEMENT OF WORK, COMPENSATION and PAYMENT SCHEDULE**



**See Plans and Specifications titled**

**UNDERGROUNDING ELECTRICAL SERVICES ON THE  
S 1ST STREET – STRAND STREET ROAD & UTILITIES EXTENSION PROJECT  
PROJECT NO. M-532**









**ADDITIONAL REMARKS SCHEDULE**

AGENCY HUB International Northwest, LLC		NAMED INSURED Moore Excavation Inc. PO Box 789 Fairview OR 97024	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

RE: MEI Job# 4696-4, City of St. Helens Project No. M-532 Undergrounding Electrical Services on the S. 1st Street - Strand Street Road and Utilities Extension Project

Certificate Holder Includes: the City, and its agents, officers, and employees are Additional Insureds

**Carrier no:** 20001

**Endorsement no:** WC000313  
(Ed. 430B)

**SAIF policy:** 811138 Moore Excavation Inc

## Waiver of Our Right to Recover from Others Endorsement

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

### Schedule

Description: ALL OPERATIONS

Contractor name: Persons and/or organizations with whom the insured-employer is required by written contract to waive subrogation rights.

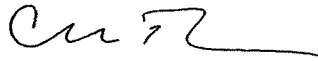
This endorsement does not alter the rights of an injured worker to pursue recovery from another party or SAIF to receive a statutory share of recoveries by an injured worker, even from the party listed in the schedule.

The premium charge for this endorsement is based on one (1) percent of your manual premium.

**Effective date:** October 01, 2023

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Countersigned September 20, 2023 at Salem, Oregon



WC000313  
(Ed. 430B)

Chip Terhune  
President and Chief Executive Officer

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CONTRACTORS ADDITIONAL INSURED - AUTOMATIC STATUS  
AND AUTOMATIC WAIVER OF SUBROGATION  
WHEN REQUIRED IN WRITTEN CONTRACT, AGREEMENT,  
PERMIT OR AUTHORIZATION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. Additional Insured - Owners, Lessees Or Contractors - Automatic Status For Other Parties When Required In Written Contract Or Agreement With You**

**1. Section II - Who Is An Insured** is amended to include as an additional insured any person or organization you have agreed in writing in a contract or agreement to add as an additional insured on this Coverage Part. Such person(s) or organization(s) is an additional insured only with respect to liability for:

a. "Bodily injury", "property damage" or "personal and advertising injury" *caused, in whole or in part, by* the performance of your ongoing operations by you or on your behalf, under that written contract or written agreement. Ongoing operations 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; and

b. "Bodily injury" or "property damage" *caused, in whole or in part, by* "your work" performed under that written contract or written agreement and in-

cluded in the "products-completed operations hazard", but only if:

(1) The Coverage Part to which this endorsement is attached provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard"; and

(2) The written contract or written agreement requires you to provide additional insured coverage included within the "products-completed operations hazard" for that person or organization.

If the written contract or written agreement requires you to provide additional insured coverage included within the "products-completed operations hazard" for a specified length of time for that person or organization, the "bodily injury" or "property damage" must occur prior to the expiration of that period of time in order for this insurance to apply.

If the written contract or written agreement requires you to provide additional insured coverage for a person or organization per only ISO additional insured endorsement form number **CG 20 10**, without specifying an edition date, and without specifically requiring additional insured coverage included within the "products-completed operations hazard", this Paragraph **b.** does not apply to that person or organization.

2. If the written contract or written agreement described in Paragraph **1.** above specifically requires you to provide additional insured coverage to that person or organization:

a. *Arising out of* your ongoing operations or *arising out of* "your work"; or

- b. By way of an edition of an ISO additional insured endorsement that includes *arising out of* your ongoing operations or *arising out of* "your work";

then the phrase *caused, in whole or in part, by* in Paragraph **A.1.a.** and/or Paragraph **A.1.b.** above, whichever applies, is replaced by the phrase *arising out of*.

- 3. With respect to the insurance afforded to the additional insureds described in Paragraph **A.1.**, 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 architectural, engineering or surveying services, including:

- a. The preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- 4. This Paragraph **A.** does not apply to additional insureds described in Paragraph **B.**

**B. Additional Insured - State Or Governmental Agency Or Subdivision Or Political Subdivision - Automatic Status When Required In Written Permits Or Authorizations**

- 1. **Section II - Who Is An Insured** is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision you have agreed in writing in a permit or authorization to add as an additional insured on this Coverage Part. Such state or governmental agency or subdivision or political subdivision is an additional insured only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued, in writing, a permit or authorization.

- 2. With respect to the insurance afforded to the additional insureds described in Paragraph **B.1.**, the following additional exclusions apply:

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard."

- C. The insurance afforded to additional insureds described in Paragraphs **A.** and **B.:**

- 1. Only applies to the extent permitted by law; and
- 2. Will not be broader than that which you are required by the written contract, written agreement, written permit or written authorization to provide for such additional insured; and
- 3. Does not apply to any person, organization, state, governmental agency or subdivision or political subdivision specifically named as an additional insured for the same project in the schedule of an endorsement added to this Coverage Part.

- D. With respect to the insurance afforded to the additional insureds described in Paragraphs **A.** and **B.**, the following is added to **Section III - Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the written contract, written agreement, written permit or written authorization described in Paragraphs **A.** and **B.** For the purpose of determining the required amount of insurance only, we will include the minimum amount of any Umbrella Liability or Excess Liability coverage required for that additional insured in that written contract, written agreement, written permit or written authorization; or
- 2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

- E. **Section IV - Commercial General Liability Conditions** is amended to add the following:

**Automatic Additional Insured Provision**

This insurance applies only if the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed:

1. During the policy period; and
2. Subsequent to your execution of the written contract or written agreement, or the issuance of a written permit or written authorization, described in Paragraphs **A.** and **B.**

- F.** Except when **G.** below applies, the following is added to **Section IV - Commercial General Liability Conditions, Other Insurance,** and supersedes any provision to the contrary:

**When Other Additional Insured Coverage Applies On An Excess Basis**

This insurance is primary to other insurance available to the additional insured described in Paragraphs **A.** and **B.** except:

1. As otherwise provided in **Section IV - Commercial General Liability Conditions, Other Insurance, b. Excess Insurance;** or
2. For any other valid and collectible insurance available to the additional insured as an additional insured on another insurance policy that is written on an excess basis. In such case, this insurance is also excess.

- G.** The following is added to **Section IV - Commercial General Liability Conditions, Other Insurance,** and supersedes any provision to the contrary:

**Primary Insurance When Required By Written Contract, Agreement, Permit Or Authorization**

Except when wrap-up insurance applies to the claim or "suit" on behalf of the additional insured, this insurance is primary to any other insurance available to the additional insured described in Paragraphs **A.** and **B.** provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract, agreement, permit or authorization de-

scribed in Paragraph **A.** or **B.** that this insurance would be primary to any other insurance available to the additional insured.

As used in this endorsement, wrap-up insurance means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s).

**Primary And Noncontributory Insurance When Required By Written Contract, Agreement, Permit Or Authorization**

Except when wrap-up insurance applies to the claim or "suit" on behalf of the additional insured, this insurance is primary to and will not seek contribution from any other insurance available to the additional insured described in Paragraphs **A.** and **B.** provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract, agreement, permit or authorization described in Paragraph **A.** or **B.** that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

As used in this endorsement, wrap-up insurance means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s).

- H. Section IV - Commercial General Liability Conditions, Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following:

**Waiver of Subrogation**

We waive any right of recovery against any additional insured under this endorsement, because of any payment we make under this endorsement, to whom the insured has waived its right of recovery in a written contract, written agreement, written permit or written authorization. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such additional insured prior to loss.

### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this Coverage Part restrict this insurance. Read the entire Coverage Part carefully to determine rights, duties and what is and is not covered.

Throughout this Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Coverage Part. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under SECTION II - WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION V - DEFINITIONS.

#### SECTION I - COVERAGES

##### COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

###### 1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in SECTION III - LIMITS OF INSURANCE; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY; or medical expenses under SECTION I - COVERAGES, COVERAGE C. MEDICAL PAYMENTS.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under

##### SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the "coverage term" in which "bodily injury" or "property damage" occurs, you did not know, per Paragraph 1.d. below, that the "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part.

c. "Bodily injury" or "property damage" which:

- (1) Occurs during the "coverage term"; and
  - (2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have occurred;
- includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "coverage term" in which it first became known by you.

d. You will be deemed to know that "bodily injury" or "property damage" has occurred at the earliest time when any "authorized representative":

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
- (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or
- (5) Becomes aware, or reasonably should have become aware, of a

condition from which "bodily injury" or "property damage" is substantially certain to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

#### 2. Exclusions

This insurance does not apply to:

##### a. Expected or Intended Injury

"Bodily injury" or "property damage" which may reasonably be expected to result from the intentional or criminal acts of the insured or which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually expected or intended. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

##### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured 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:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. When a claim for such "bodily injury" or "property damage" is made, we will defend that claim provided the insured has assumed the obligation to defend such claim in the "insured contract". Such defense payments will not reduce the limits of insurance.

##### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

##### d. Workers' Compensation and Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

##### e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured sustained in the "workplace";
- (2) An "employee" of the insured arising out of the performance of duties related to the conduct of the insured's business; or
- (3) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraphs (1) or (2) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

##### f. Pollutant

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants".

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, Paragraph (a) does not apply to:

- (1) "Bodily injury" to any person injured while on any premises, site or location owned or occupied by, or rented or loaned to, you provided;

- a) The injury is caused by the inadequate ventilation of vapors;
- b) The person injured is first exposed to such vapors during the policy period; and
- c) Within 30 days of such first exposure, the person injured is clinically diagnosed or treated by a physician for the medical condition caused by the exposure to such vapors. However, Paragraph c) does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

This exception 1) shall apply only to Named Insureds; we shall have no duty to defend or pay damages for any person or organization that is not a Named Insured. However, this paragraph does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

For the purpose of the exception granted in Paragraph 1) only, vapors means any gaseous or airborne irritant or airborne contaminant, including smoke, fumes, vapor or soot, but excluding asbestos, which is discharged, dispersed, emitted, released or escapes from materials, machinery or equipment used in the service or maintenance of the premises. Vapors does not mean any gaseous or

airborne irritants or contaminants used in a manufacturing process or which is the product or by-product of any manufacturing process;

- 2) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor, and the owner or lessee of such premises, site or location has been added to this Coverage Part as an additional insured with respect to your ongoing operations or your work, performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- 3) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

- 1) Any insured; or
- 2) Any person or organization for whom you may be legally responsible;

- (d) At or from any premises, site or location on which any insured or any contractor's or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, Paragraph (d) does not apply to:

- 1) "Bodily injury" or "property damage" arising out of the discharge, dispersal, seepage, migration, release, es-

cape or emission of fuels, lubricants or other operating fluids, or exhaust gases, which are needed to perform, or are the result of, the normal electrical, hydraulic or mechanical functions necessary for the operation of, mobile equipment or its parts, if such fuels, lubricants or other operating fluids, or exhaust gases, escape, seep or migrate, or are discharged or dispersed, released or emitted from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids, or exhaust gases, escape, seep or migrate, or are discharged or dispersed, released or emitted with the intent to cause "bodily injury" or "property damage" or with the knowledge that "bodily injury" or "property damage" is substantially certain to occur, or if such fuels, lubricants or other operating fluids, or exhaust gases, are brought on to the premises, site or location with such intent to escape, seep or migrate, or be discharged, dispersed, released or emitted as part of the operations being performed by such insured, contractor or subcontractor;

- 2) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- 3) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or

- (e) At or from any premises, site or location on which any insured or any contractor's or subcontractors working directly or indirectly on any insured's behalf are performing operations if the op-

erations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants";

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants";

However, Paragraphs (2)(a) and (b) do not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, or order of statutory or regulatory requirement, or such claim or suit by or on behalf of a governmental authority.

**g. Aircraft, Auto or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and loading or unloading.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of officers by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:

- (a) Less than 51 feet long; and

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- (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
  - (a) The operation of machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
  - (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

**h. Mobile Equipment**

- "Bodily injury" or "property damage" arising out of:
  - (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
  - (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

**i. War**

- "Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:
  - (1) War, including undeclared or civil war;
  - (2) Warlike action by a military force, including action in hindering or deterring against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - (3) Insurrection, rebellion, revolution, usurped power, or action taken by

- governmental authority in hindering or defending against any of these.
- Damage to Property**  
"Property damage" to:
  - (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
  - (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
  - (3) Property loaned to you;
  - (4) Personal property in the care, custody or control of an insured;
  - (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
  - (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

**ITS OF INSURANCE.**

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**Damage to Your Product**

- "Property damage" to "your product" arising out of it or any part of it.

**k.**

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- Damage to Your Work**  
"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".  
This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
- Damage to Impaired Property or Property Not Physically Injured**  
"Property damage" to "impaired property" or property that has not been physically injured, arising out of:
  - (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
  - (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

**Recall of Products, Work or Impaired Property**

Any liability or damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product"; or
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**Personal and Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**Asbestos**

"Bodily injury" or "property damage" arising out of, attributable to, or any way related to asbestos in any form or transmittal in any manner.

- Employment-Related Practices**  
"Bodily injury" to:
  - (1) A person arising out of any:
    - (a) Refusal to employ that person;
    - (b) Termination of that person's employment; or
    - (c) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defilement, harassment, humiliation or discrimination directed at that person; or
  - (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

**This exclusion applies:**

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**Additional Insured Prior Knowledge**

An additional insured added by attachment of an endorsement to this Coverage Part that is seeking coverage for a claim or "suit", if that additional insured knew, per the following paragraph, that "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part, prior to the "coverage term" in which such "bodily injury" or "property damage" occurs or begins to occur.

An additional insured added by attachment of an endorsement to this Coverage Part will be deemed to have known that "bodily injury" or "property damage" has occurred or has begun to occur at the earliest time when that additional insured, or any one of its owners, members, partners, managers, executive officers, "employees" assigned to manage that additional insured's insurance program, or "employees" assigned to give or receive notice of an "occurrence", "personal and advertising injury" offense, claim or "suit".

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
- (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "bodily injury" or "property damage" is substantially certain to occur.

**s. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

**t. Distribution of Material in Violation of Statutes**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions c. through q. do not apply to "property damage" by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner, for which the amount we will pay is limited to the Damage to Premises Rented To You Limit as described in SECTION III - LIMITS OF INSURANCE.

**COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in SECTION III - LIMITS OF INSURANCE; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under SECTION I - COVERAGES, COVERAGE A, BODILY INJURY AND PROPERTY DAMAGE LIABILITY; SECTION I - COVERAGES, COVERAGE B, PERSONAL AND ADVERTISING INJURY LIABILITY; or medical expenses under SECTION I - COVERAGES, COVERAGE C, MEDICAL PAYMENTS.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

b. This insurance applies to "personal and advertising injury" only if:

- (1) The "personal and advertising injury" is caused by an offense arising out of your business; and
- (2) The "personal and advertising injury" offense was committed in the "coverage territory" during the policy period; and
- (3) Prior to the "coverage term" in which the "personal and advertising injury" offense is committed, you did not know per Paragraph 1.d. below that the offense had been committed or had begun to be committed, in whole or in part.

c. "Personal and advertising injury" caused by an offense which:

- (1) Was committed during the "coverage term"; and

(2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have been committed; includes any continuation, change or resumption of that offense after the end of the "coverage term" in which it first became known by you.

d. You will be deemed to know that a "personal and advertising injury" offense has been committed at the earliest time when any "authorized representative":

- (1) Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";
- (3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that the offense had been committed or had begun to be committed; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" is substantially certain to occur.

**2. Exclusions**

This insurance does not apply to:

- a. **Knowing Violation of Rights of Another**  
"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".
- b. **Material Published With Knowledge of Falsity**  
"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.
- c. **Material Published Prior to Coverage Term**  
"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the later of the following:

- (1) The inception of this Coverage Part; or
- (2) The "coverage term" in which insurance coverage is sought.

**d. Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

**e. Contractual Liability**

"Personal and advertising injury" for which the insured 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:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "personal and advertising injury" is caused by or arises out of an offense committed subsequent to the execution of the contract or agreement. When a claim for such "personal and advertising injury" is made, we will defend that claim, provided the insured has assumed the obligation to defend such claim in the "insured contract". Such defense payments will not reduce the limits of insurance.

**f. Breach of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

**g. Quality or Performance of Goods - Failure to Conform to Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

**h. Wrong Description of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

**i. Infringement of Copyright, Patent, Trademark or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, pat-

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**COVERAGE C. MEDICAL PAYMENTS**

- 1. **Insuring Agreement**
  - a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
    - (1) On premises you own or rent;
    - (2) On ways next to premises you own or rent; or
    - (3) Because of your operations;

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within three years of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

was committed or began to be committed.

An additional insured added by attachment of an endorsement to this Coverage Part will be deemed to have known that a "personal and advertising injury" offense has been committed or has begun to be committed at the earliest time when that additional insured, or any one of its owners, members, partners, managers, executives, officers, "employees" assigned to manage that additional insured's insurance program or "employees" assigned to give or receive notice of an "occurrence", "personal and advertising injury" offense, claim or suit:

- (1) Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";
- (3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that the "personal and advertising injury" offense had been committed; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" is substantially certain to occur.

**t. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Wadlike action by a military force, including action in hindering or deterring against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or deterring against any of these.

**s. Distribution of Material in Violation of Statutes**

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or discrimination directed at that person; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**n. Pollutant**

"personal and advertising injury", arising out of the actual, alleged or threatened discharge, disposal, seepage, migration, release, escape or emission of "pollutants" at any time.

**o. Pollutant-Related**

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**p. Asbestos**

"Personal and advertising injury" arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner.

**q. Additional Insured Prior Knowledge**

An additional insured added by attachment of an endorsement to this Coverage Part that is seeking coverage for a claim or "suit" if that additional insured knew, per the following paragraph, that a "personal and advertising injury" offense had been committed or had begun to be committed, in whole or in part, prior to the "coverage term" in which such offense

ent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**j. Insureds in Media and Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 17. a., b. and c. of "personal and advertising injury" under SECTION V -DEFINITIONS.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the internet is not, by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board any insured hosts, owns, or over which any insured exercises control.

**l. Unauthorized Use of Another's Name or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**m. Employment Related Practices**

"Personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamatory information, harassment, humiliation

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- 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. **Athletic Activities**  
To any person injured while officiating, coaching, practicing for, instructing or participating in any physical exercises or games, sports, or athletic contests or exhibitions of an athletic or sports nature.
- f. **Products-Completed Operations Hazard**  
Included within the "products-completed operations hazard".
- g. **Coverage A Exclusions**  
Excluded under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**.

**SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**

- 1. All expenses we incur.
- 2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- 3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- 4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.

- (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), 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 "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.

**(2) "Property damage" to property:**

- (a) Owned, occupied or used by; or
- (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. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.**

**c. 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.

you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

- d. 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 Coverage Part.
- 3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Insurance under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

- b. **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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.

**SECTION III - LIMITS OF INSURANCE**

1. 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. a. The General Aggregate Limit is the most we will pay for the sum of:

- (1) Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;

- (2) Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

- (3) Damages under **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**.

This General Aggregate Limit will not apply if either the Location General Aggregate

gate Limit of Insurance, Paragraph 2.b., or the Construction Project General Aggregate Limit of Insurance, Paragraph 2.c. applies.

b. A separate Location General Aggregate Limit of Insurance, equal to the amount of the General Aggregate Limit shown in the Declarations, shall apply to each location owned by, or rented or leased to you and is the most we will pay for the sum of:

- (1) Damages under **COVER-AGE C. MEDICAL PAYMENTS**, which can be attributed to operations at only a single location owned by, or rented or leased to you.

c. A separate Construction Project General Aggregate Limit of Insurance, equal to the amount of the General Aggregate Limit shown in the Declarations, shall apply to each construction project and is the most we will pay for the sum of:

- (1) Damages under **COVER-AGE C. MEDICAL PAYMENTS**, which can be attributed to operations at only a single location owned by, or rented or leased to you.

(2) Damages under **COVER-AGE C. MEDICAL PAYMENTS**, which can be attributed to operations at only a single location owned by, or rented or leased to you.

d. Only for the purpose of determining which General Aggregate Limit of Insurance, 2.a., 2.b., or 2.c., applies:

- (1) Location means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railway.

(2) Construction project means a location you do not own, rent or lease where ongoing improvements, alterations, installation, demolition or maintenance work is performed by you or on your behalf. All connected ongoing improvements, alterations, installation, demolition or maintenance work performed by you or on

your behalf at the same location for the same persons or organizations, no matter how often or under how many different contracts, will be deemed to be a single construction project.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under **COVER-AGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Subject to 2.a. above, the Personal and Advertising Injury Limit is the most we will pay under **COVER-AGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under **COVER-AGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**; and
- b. Medical expenses under **COVER-AGE C. MEDICAL PAYMENTS**, because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under **COVER-AGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire or explosion, while rented to you or temporarily occupied by you with permission of the owner.

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under **COVER-AGE C. MEDICAL PAYMENTS** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each "coverage term".

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**

1. **Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. **Duties in the Event of Occurrence, Offense, Claim or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence or

a "personal and advertising injury" of- fense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

**3. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- 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 Part unless all of its terms have been fully complied with.

A person or organization may sue us to re-cover 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 Coverage Part 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.

**4. Liberalization**

If, within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part as of the latter of:

- a. The date we implemented the change in your state; or
- b. The date this Coverage Part became effective; and

will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

**5. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under **COVER-AGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** or **COVER-AGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** of this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

**b. Excess Insurance**

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis;

(a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar insurance for "your work";

(b) That is Fire or Explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(c) 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; or

- (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to SECTION I - COVERAGES, COVERAGE A, BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2, Exclusions, g. Aircraft, Auto or Watercraft.

- (2) Any other primary insurance available to the insured covering liability for damages arising out of the premises or operations, or the products and completed operations, for which the insured has been added as an additional insured by attachment of an endorsement.

- (3) Any other insurance:

- (a) Whether primary, excess, contingent or on any other basis, except when such insurance is written specifically to be excess over this insurance; and

- (b) That is a consolidated (wrap-up) insurance program which has been provided by the prime contractor/project manager or owner of the consolidated project in which you are involved.

When this insurance is excess, we will have no duty under COVERAGE A, BODILY INJURY AND PROPERTY DAMAGE LIABILITY or COVERAGE B, PERSONAL AND ADVERTISING INJURY LIABILITY 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 of 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.

**6. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If:

- (1) The earned premium is less than the deposit premium, we will return the excess to the first Named Insured; or
- (2) The earned premium is greater than the deposit premium, the difference will be due and payable to us by the first Named Insured upon notice from us.

- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**7. Representations**

By accepting this Coverage Part, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this Coverage Part in reliance upon your representations.

**8. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part 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 claim is made or "suit" is brought.

**9. Transfer of Rights of Recovery Against Others to Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to bring "suit" or transfer those rights to us and help us enforce them.

**10. Two or More Coverage Forms or Policies Issued by Us**

If this Coverage Part and any other Coverage Form, Coverage Part or policy issued by us or by any company affiliated with us apply to the same "occurrence" or "personal and advertising injury" offense, the aggregate maximum limit of insurance under all the Coverage Forms, Coverage Parts or policies shall not exceed the highest applicable limit of insurance under any one Coverage Form, Coverage Part or policy. This condition does not apply to any Coverage Form, Coverage Part or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Part.

**11. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date. If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V - DEFINITIONS**

- 1. "Advertisement" means a notice that is broadcast, telecast or published in the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. "Advertisement" includes a publicity article. For purposes of this definition:

- a. Notices that are published include material placed on the internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement".

- 2. "Authorized representative" means:

- a. If you are designated in the Declarations as:

- (1) An individual, you and your spouse are "authorized representatives".

- (2) A partnership or joint venture, your members, your partners, and their spouses are "authorized representatives".

- (3) A limited liability company, your members and your managers are "authorized representatives".

- (4) An organization other than a partnership, joint venture or limited liability company, your "executive officers" and directors are "authorized representatives". Provided you are not a publicly traded organization, your stockholders are also "authorized representatives".

- (5) A trust, your trustees are "authorized representatives".

Your "employees":

- (1) Assigned to manage your insurance program; or

- (2) Responsible for giving or receiving notice of an "occurrence", "personal and advertising injury" offense, claim or "suit".

are also "authorized representatives".

- 3. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- 4. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

- 5. "Coverage term" means the following individual increments, or if a multi-year policy period, increments of time, which comprise the policy period of this Coverage Part:

- a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at

12:00 AM standard time at your mailing address shown in the Declarations on the earlier of:

- (1) The day the policy period shown in the Declarations ends; or
  - (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
- b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or

c. All other parts of the world if the injury or damage arises out of:

- (1) Goods or products made or sold by you in the territory described in a. above;
- (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
- (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication,

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement to which we agree.

7. "Electronic data" means information, facts or programs stored as on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment

8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "property damage" by fire or explosion to premises while rented to you, or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury", "property damage", or "personal and advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury", "property damage" or "personal and advertising injury" arising out of construction or demolition operations, within 50 feet of any rail-

road property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing.

(2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

- (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

(3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (2) above and supervisory, inspection, architectural or engineering activities;

(4) That indemnifies an advertising, public relations or media consulting firm for "personal and advertising injury" arising out of the planning, execution or failure to execute marketing communications programs. Marketing communications programs include but are not limited to comprehensive marketing campaigns; consumer, trade and corporate advertising for all media; media planning, buying, monitoring and analysis; direct mail; promotion; sales materials; design; presentations; point-of-sale materials; market research; public relations and new product development;

(5) Under which the insured, if an advertising, public relations or media consulting firm, assumes liability for "personal and advertising injury" arising out of the insured's rendering or failure to render professional services, including those services listed in Paragraph (4), above;

(6) That indemnifies a web-site designer or content provider, or Internet search, access, content or service provider for injury or damage arising out of the planning, execution or failure to execute "Internet" services. Internet services include but are not limited to design, production, distribution, maintenance and administration of web-sites and web-banners; hosting web-sites; registering domain names; registering with search

engines; marketing analysis; and providing access to the Internet or other similar networks; or

(7) Under which the insured, if a web-site designer or content provider, or service provider, assumes liability for injury or damage arising out of the insured's rendering or failure to render Internet services, including those listed in Paragraph (6), above.

13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" includes supervisors furnished to you by the labor leasing firm. "Leased worker" does not include a "temporary worker".

14. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device other than a hand truck that is not attached to the aircraft, watercraft or "auto".

15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

- (1) Power cranes, shovels, loaders, diggers or drills; or
- (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to

permanently attached equipment of the following types:

- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right or private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

f. The use of another's advertising idea in your "advertisement"; or

g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

18. "Pollutant" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property or the environment regardless of whether the injury or damage is caused directly or indirectly by the "pollutants" and whether:

- a. The insured is regularly or otherwise engaged in activities which faint or degrade the environment; or
- b. The insured uses, generates or produces the "pollutant".

19. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed; or
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a schedule, states that products-completed operations are included.

20. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

21. "Suit" means a civil proceeding in which money damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
- c. An appeal of a civil proceeding.

22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

23. "Volunteer worker" means a person who is not your "employee", and who donates his or

her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Workplace" means that place and during such hours to which the employee sustaining "bodily injury" was assigned by you, or any other person or entity acting on your behalf, to work on the date of "occurrence".

25. "Your product":

- a. Means:
  - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

26. "Your work":

- a. Means:
  - (1) Work or operations performed by you or on your behalf; and
  - (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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**B. Limits Of Insurance:**

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

**1. Employee Benefit Liability Coverage**

Each Employee Limit \$1,000,000  
Aggregate Limit \$3,000,000  
Deductible Amount \$ 1,000

**3. Damage To Premises Rented To You**

The lesser of:

- a. The Each Occurrence Limit shown in the Declarations; or
- b. \$500,000 unless otherwise stated \$ \_\_\_\_\_

**4. Supplementary Payments**

- a. Bail Bonds: \$2,500

b. Loss Of Earnings: \$ 500

**5. Medical Payments**

Medical Expense Limit: \$ 10,000

**9. Property Damage To Borrowed Equipment**

Each Occurrence Limit: \$10,000  
Deductible Amount \$ 250

**16. Voluntary Property Damage Coverage (Coverage a.) And Care, Custody Or Control Liability Coverage (Coverage b.)**

**Limits Of Insurance**

Coverage a. \$1,000 Each Occurrence  
\$5,000 Aggregate  
Coverage b. \$5,000 Each Occurrence unless otherwise stated \$ \_\_\_\_\_

**Deductible Amount (Each Occurrence)**

Coverage a. \$250  
Coverage b. \$250 unless otherwise stated \$ \_\_\_\_\_

COVERAGE	PREMIUM BASIS					RATE (For Limits in Excess of \$5,000)	ADVANCE PREMIUM (For Limits in Excess of \$5,000)
	(a) Area	(b) Payroll	(c) Gross Sales	(d) Units	(e) Other		
b. Care, Custody Or Control						\$	\$
<b>TOTAL ANNUAL PREMIUM</b>						<b>\$</b>	<b>\$</b>

C. Coverages

1. Employee Benefit Liability Coverage

a. The following is added to Section I - Coverages:

Employee Benefit Liability Coverage

(1) Insuring Agreement

(a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But

1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and

2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments

(b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and

- 1) Occurs during the policy period; or
- 2) Occurred prior to the "first effective date" of

this endorsement provided.

a) You did not have knowledge of a claim or "suit" on or before the "first effective date" of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

i) Reports all, or any part, of the act, error or omission to us or any other insurer;

ii) Receives a written or verbal demand or claim for damages because of the act, error or omission, and

b) There is no other applicable insurance.

(2) Exclusions

This insurance does not apply to:

(a) Bodily Injury, Property Damage Or Personal And Advertising Injury

"Bodily injury"; "property damage" or "personal and advertising injury";

(b) Dishonest, Fraudulent, Criminal Or Malicious Act

Damages arising out of any intentional dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

(c) Failure To Perform A Contract

Damages arising out of failure or performance of contract by any insurer.

(d) Insufficiency Of Funds

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

(e) Inadequacy Of Performance/Advice Given With Respect To Participation

Any claim based upon:

- 1) Failure of any investment to perform;
- 2) Errors in providing information on past performance of investment vehicles; or
- 3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

Workers' Compensation And Similar Laws

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

(g) ERISA

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

(h) Available Benefits

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

(i) Taxes, Fines Or Penalties

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

(j) Employment-Related Practices

Any liability arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, demotion, harassment, humiliation, discrimination or other employment-related practices, acts or omissions; or
- (4) Consequential liability as a result of (1), (2) or (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

(3) Supplementary Payments

Section I - Coverages, Supplementary Payments - Coverages A And B also apply to this Coverage.

b. Who Is An Insured

As respects Employee Benefit Liability Coverage, Section II - Who Is An Insured is replaced by the following:

(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 part-

ners, 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) Each of your "employees" who is or was authorized to administer your "employee benefit program".

(b) Any persons, organizations or "employees" having temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed, or

(c) 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 Coverage Part.

(3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organi-

zation. However, coverage under this provision.

(a) 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) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

### c. Limits Of Insurance

As respects Employee Benefit Liability Coverage, Section III - Limits Of Insurance is replaced by the following:

(1) The Limits of Insurance shown in Section B, Limits Of Insurance, 1. Employee Benefit Liability Coverage and the rules below fix the most we will pay regardless of the number of:

(a) Insureds;

(b) Claims made or "suits" brought;

(c) Persons or organizations making claims or bringing "suits";

(d) Acts, errors or omissions; or

(e) Benefits included in your "employee benefit program".

(2) The Aggregate Limit shown in Section B, Limits Of Insurance,

1. Employee Benefit Liability Coverage or this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

(3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section B, Limits Of Insurance, 1. Employee Benefit Liability Coverage is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

(a) An act, error or omission; or

(b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions; negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program."

### (4) Deductible Amount

(a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the Deductible Amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.

(b) The Deductible Amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employees", dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

(c) The terms of this insurance, including those with respect to:

1) Our right and duty to defend the insured against any "suits" seeking those damages; and

2) Your duties, and the duties of any other involved, insured, in the event of an act, error or omission, or claim;

apply irrespective of the application of the Deductible Amount.

(d) We may pay any part or all of the Deductible Amount to effect settlement of any claim or "suit" and, upon no-

ification of the action taken, you shall promptly reimburse us for such part of the Deductible Amount as we have paid.

### d. Additional Conditions

As respects Employee Benefit Liability Coverage, Section IV - Commercial General Liability Conditions is amended as follows:

(1) Item 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit is replaced by the following:

### 2. Duties In The Event Of An Act, Error Or Omission, Or Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:

(1) What the act, error or omission was and when it occurred; and

(2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

b. If a claim is made or "suit" is brought against any insured, you must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers re-

ceived in connection with the claim or "suit".

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit", and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

(2) Item 5. Other Insurance is replaced by the following:

**5. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when c. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b. below.

**b. Method Of Sharing**

If all of the other insurance permits contribu-

tion 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.

**c. No Coverage**

This insurance shall not cover any loss for which the insured is entitled to recovery under any other insurance in force previous to the effective date of this Coverage Part.

**e. Additional Definitions**

As respects Employee Benefit Liability Coverage, Section V - Definitions is amended as follows:

(1) The following definitions are added:

1. "Administration" means:

a. Providing information to their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";

b. Interpreting the "employee benefit programs";

c. Handling records in connection with the "employee benefit programs"; or

d. Effecting, continuing or terminating any "employee's" participation in

any benefit included in the "employee benefit program".

However, "administration" does not include:

a. Handling payroll deductions; or

b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.

2. "Cafeteria plans" means plans authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.

3. "Employee benefit programs" means a program providing some of all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:

a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;

b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits.

c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and

d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

4. "First effective date" means the date upon which coverage was first effected in a series of uninterrupted renewals of insurance coverage.

(2) The following definitions are deleted in their entirety and replaced by the following:

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or

c. An appeal of a civil proceeding.

**2. Unintentional Failure To Disclose Hazards**

**Section IV - Commercial General Liability Conditions, 7. Representations** is amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

**3. Damage To Premises Rented To You**

a. The last Paragraph of 2. Exclusions under **Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

Exclusions c. through q. do not apply to "property damage" by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you with permission of the owner, for which the amount we will pay is limited to the **Damage To Premises Rented To You Limit** as described in **Section III - Limits Of Insurance**.

b. The insurance provided under **Section I - Coverage A - Bodily Injury And Property Damage Liability** applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

(1) As respects Water Damage Legal Liability, as provided in Paragraph 3.b. above.

The exclusions under **Section I - Coverage A - Bodily Injury And Property Damage Liability, 2. Exclusions**, other than i. **War and the Nuclear Energy Liability Exclusion (Broad Form)**, are deleted and the following are added:

This insurance does not apply to:

- (a) "Property damage":
  - (i) Assumed in any contract or agreement, or
  - (ii) Caused by or resulting from any of the following:
    - 1) Wear and tear;

- 2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- 3) Smog;
- 4) Mechanical breakdown, including rupture or bursting caused by centrifugal force;
- 5) Settling, cracking, shrinking or expansion;
- 6) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals; or
- 7) Presence, growth, proliferation, spread or any activity of fungi, including mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by fungi.

(b) "Property damage" caused directly or indirectly by any of the following:

- (i) Earthquake, volcanic eruption, landslide or any other earth movement;
- (ii) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;
- (iii) Water under the ground surface pressing on, or flowing or seeping through.

1) Foundations, walls, floors or paved surfaces;

2) Basements, whether paved or not; or

3) Doors, windows or other openings.

(c) "Property damage" caused by or resulting from water that leaks or flows from plumbing, heating, air conditioning, fire protection systems, or other equipment, caused by or resulting from freezing, unless:

- (i) You did your best to maintain heat in the building or structure; or
- (ii) You drained the equipment and shut off the water supply if the heat was not maintained.

(d) "Property damage" to:

(i) Plumbing, heating, air conditioning, fire protection systems, or other equipment or appliances; or

(ii) The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet or ice, whether driven by wind or not.

**c. Limit Of Insurance**

With respect to the insurance afforded in Paragraphs 3.a. and 3.b. above, the **Damage To Premises Rented To You Limit** as shown in the Declarations is amended as follows:

(1) Paragraph 6. of **Section III - Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph 5. above, the **Damage To Premises Rented To You Limit** is the most we will pay under **Coverage A - Bodily Injury And Property Damage Liability** for damages because of "property damage" to any one premises:

- a. While rented to you, or temporarily occupied by

you with permission of the owner;

b. In the case of damage by fire, explosion, lightning, smoke or soot, while rented to you; or

c. In the case of damage by water, while rented to and occupied by you.

(2) The most we will pay is limited as described in **Section B, Limits Of Insurance, 3. Damage To Premises Rented To You** of this endorsement.

**4. Supplementary Payments**

Under **Section I - Supplementary Payments - Coverages A And B**:

a. Paragraph 2. is replaced by the following:

Up to the limit shown in **Section B, Limits Of Insurance, 4.a. Ball Bonds** of this endorsement for cost of ball bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the **Bodily Injury Liability Coverage** applies. We do not have to furnish these bonds.

b. Paragraph 4. is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in **Section B, Limits Of Insurance, 4.b. Loss Of Earnings** of this endorsement per day because of time off from work.

**5. Medical Payments**

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in **Section B, Limits Of Insurance, 5. Medical Payments** of this endorsement.

**6. 180 Day Coverage For Newly Formed Or Acquired Organizations**

**Section II - Who Is An Insured** is amended as follows:

Subparagraph a. of Paragraph 3. is replaced by the following:

- a. Insurance 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.

**7. Waiver Of Subrogation**

**Section IV - Commercial General Liability Conditions, 9. Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract or agreement with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

**8. Automatic Additional Insured - Specified Relationships**

a. The following is added to **Section II - Who Is An Insured**:

(1) Any person(s) or organization(s) described in Paragraph 8.a.(2) of this endorsement (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of a written contract, written agreement, written permit or written authorization.

(2) Only the following persons or organizations are additional insureds under this endorsement and insurance coverage provided to such additional insureds is limited as provided herein.

**(a) Managers Or Lessors Of Premises**

The manager or lessor of a premises leased to you with whom you have agreed per Paragraph 8.a.(1) of this endorsement to provide insurance, but only with respect to liability arising out of the ownership, maintenance or

use of that part of the premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

(i) Any "occurrence" which takes place after you cease to be a tenant in that premises;

(ii) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**(b) Lessor Of Leased Equipment**

Any person or organization from whom you lease equipment when you and such person(s) or organization(s) have agreed per Paragraph 8.a.(1) of this endorsement to provide insurance. Such person(s) or organization(s) are insureds only with respect to 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(s) or organization(s). A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends. However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

**(c) Vendors**

Any person or organization (referred to below as vendor) with whom you have agreed per Paragraph 8.a.(1) of this endorsement to provide insurance, 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, subject to the following additional exclusions:

(i) The insurance afforded the vendor does not apply to:

1) "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;

2) Any express warranty unauthorized by you;

3) Any physical or chemical change in the product made intentionally by the vendor;

4) Repackaging, except when intended solely for the purpose of inspection, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

5) 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;

6) Demonstration, installation, servicing

or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

7) Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

8) "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:

a) The exceptions contained in Paragraphs (c) (i) 4) or 6) of this endorsement; or

b) 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.

(ii) This insurance does not apply to any insured person or organization:

1) From whom you have acquired such products, or any ingredient, part

or container, entering into, accompanying or containing such products; or

- 2) When liability included within the "products" completed operations hazard" has been excluded under this Coverage Part with respect to such products.

**(d) State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises**

Any state or governmental agency or subdivision or political subdivision with which you have agreed per Paragraph 8.a.(1) of this endorsement to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

- (i) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellular entrances, coal holes, driveways, manholes, marquees, hoist-way openings, sidewalk vaults, street banners or decorations and similar exposures; or
- (ii) The construction, erection or removal of elevators; or
- (iii) The ownership, maintenance or use of any elevators covered by this insurance.

**(e) Mortgagee, Assignee Or Receiver**

Any person or organization with whom you have agreed per Paragraph 8.a.(1) of this endorsement to provide insurance, but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you. However, this insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- (3) The insurance afforded to additional insureds described in Paragraph 8.a.(1) of this endorsement:

- (a) Only applies to the extent permitted by law, and
- (b) Will not be broader than that which you are required by the written contract, written agreement, written permit or written authorization to provide for such additional insured; and

- (c) Does not apply to any person, organization, vendor, state, governmental agency or subdivision or political subdivision, specifically named as an additional insured under any other provision of endorsement added to this Coverage Part, provided such other provision or endorsement covers the injury or damage for which this insurance applies.

- b. With respect to the insurance afforded to the additional insureds described in Paragraph 8.a.(1) of this endorsement, the following is added to Section III - Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

- (1) Required by the written contract, written agreement, written permit or written authorization described

in Paragraph 8.a.(1) of this endorsement; or

- (2) Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**c. Section IV - Commercial General Liability Conditions is amended to include the following:**

**Automatic Additional Insured Provision**

This insurance applies only if the "bodily injury" or "property damage" occurs or the "personal and advertising injury" offense is committed:

- (1) During the policy period; and
- (2) Subsequent to your execution of the written contract or written agreement, or the issuance of a written permit or written authorization, described in Paragraph 8.a.(1).

**d. Section IV - Commercial General Liability Conditions is amended as follows:**

Condition 5, Other Insurance is amended to include:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured per Paragraph 8.a.(1) of this endorsement provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract, agreement, permit or authorization described in 8.a.(2) of this endorsement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

**9. Property Damage To Borrowed Equipment**

- a. The following is added to Exclusion 2.J, Damage To Property under Sec-

**tion I - Coverage A - Bodily Injury And Property Damage Liability:**

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

- b. With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

- (1) The Limits of Insurance shown in the Declarations are replaced by the limits designated in Section B, Limits Of Insurance, 9. Property Damage To Borrowed Equipment with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section B, Limits Of Insurance, 9. Property Damage To Borrowed Equipment of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (a) Insureds;
- (b) Claims made or "suits" brought; or
- (c) Persons or organizations making claims or bringing "suits".

**(2) Deductible Clause**

- (a) Our obligation to pay damages on your behalf applies only to the amount of deductibles for each "occurrence" which are in excess of the Deductible Amount stated in Section B, Limits Of Insurance, 9. Property Damage To Borrowed Equipment of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.

- (b) Section IV - Commercial General Liability Conditions, 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit, applies to each claim or "suit" irrespective of the amount.

(c) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**10. Employees As Insureds - Specified Health Care Services And Good Samaritan Services**

Paragraph 2.a.(1)(d) under Section II - Who Is An Insured does not apply to:

- a. Your "employees" who provide professional health care services on your behalf as a duly licensed nurse, emergency medical technician or paramedic in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place; or
- b. Your "employees" or "volunteer workers", other than an employed or volunteer doctor, providing first aid or good samaritan services during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

**11. Broadened Notice Of Occurrence**

Paragraph a. of Condition 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit under Section IV - Commercial General Liability Conditions is replaced by the following:

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".

**12. Nonowned Aircraft**

The following is added to Exclusion 2.g. Aircraft, Auto Or Watercraft under Section I - Coverage A - Bodily Injury And Property Damage Liability:

This exclusion does not apply to an aircraft you do not own, provided that:

- a. The pilot in command holds a current effective certificate, issued by a duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
- b. The aircraft is rented with a trained, paid crew, and
- c. The aircraft does not transport persons or cargo for a charge.

**13. Bodily Injury Redefined**

Section V - Definitions, 4. "Bodily injury" is replaced by the following:

4. "Bodily injury" means bodily harm or injury, sickness, disease, disability, humiliation, shock, fright, mental anguish or mental injury, including care, loss of services or death resulting from any of these at any time.

**14. Expected Or Intended Injury Redefined**

The last sentence of Exclusion 2.a. Expected Or Intended Injury under Section I - Coverage A - Bodily Injury And Property Damage Liability is replaced by the following:

This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**15. Former Employees As Insureds**

The following is added to Paragraph 2. under Section II - Who Is An Insured:

2. Each of the following is also an insured:  
Any of your former "employees", directors, managers, members, partners or "executive officers" including but not limited to retired, disabled or those on leave of absence, but only for acts within the scope of their employment by you or for duties related to the conduct of your business.

**16. Voluntary Property Damage Coverage**

a. Coverage D - Voluntary Property Damage Coverage

Section I - Coverages is amended to include the following:

(1) Insuring Agreement

(a) We will pay the cost to repair or replace "property damage" to property of others arising out of operations incidental to your business when:

- 1) Damage is caused by you, or
- 2) Damage occurs while in your possession.

At your written request, we will make this payment regardless of whether you are at fault for the "property damage".

If you, at our request, replace, or make any repairs to, damaged property of others, the amount we will pay under Voluntary Property Damage Coverage will be determined by your actual cost to replace or repair the damaged property, excluding any profit or overhead.

Any payment we make under Voluntary Property Damage Coverage shall not be interpreted as an admission of liability by you or by us.

It shall be your duty, not our duty, to defend any claim or "suit" to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered.

(b) This insurance applies to "property damage" only if:

- 1) The "property damage" takes place in the "coverage territory"; and
- 2) The "property damage" occurs during the policy period.

(2) Exclusions

This insurance does not apply to "property damage" that would be excluded by Coverage A - Bodily Injury And Property Damage Liability, 2. Exclusions, except for j. Damage To Property, paragraphs (3), (4), (5) and (6), k. Damage To Your Product, and l. Damage To Your Work.

(3) Definitions

For purposes of Voluntary Property Damage Coverage only, the following definitions under Section V - Definitions are replaced by the following:

16. "Occurrence" means an incident, including continuous or repeated exposure to substantially the same general harmful conditions that result in "property damage".

20. "Property damage" means physical injury to tangible property. "Electronic data" is not tangible property, and "property damage" does not include disappearance, abstraction or theft.

b. Care, Custody Or Control Liability Coverage

For purposes of the coverage provided by Care, Custody Or Control Liability Coverage in this endorsement only:

(1) Section I - Coverage A - Bodily Injury And Property Damage Liability, 2. Exclusions, j. Damage To Property, Subparagraphs (3), (4) and (5) do not apply to "property damage" to the property of others described therein.

(2) It shall be your duty, not our duty to defend any claim or "suit" to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered.

This Paragraph (2) supersedes any provision in the Coverage Part to the contrary.

(3) "Property damage" for which Care, Custody Or Control Liability Coverage provides coverage



age shall be deemed to be caused by an "occurrence", but shall not serve to limit or restrict the applicability of any exclusion for "property damage" under this Coverage Part.

**c. Limits Of Insurance And Deductibles**

For purposes of the coverage provided by **Voluntary Property Damage Coverage and Care, Custody Or Control Liability Coverage, Section III - Limits Of Insurance** is amended to include the following:

(1) The Limits of Insurance shown in the Declarations are replaced by the limits designated in Section **B. Limits Of Insurance, 16. Voluntary Property Damage Coverage And Care, Custody Or Control Liability Coverage**, in this endorsement. These limits are inclusive of, and not in addition to, the limits being replaced. The Limits of Insurance shown in the Schedule 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) (a) Subject to (3) below, the **Voluntary Property Damage Coverage, Each Occurrence Limit Of Insurance** is the most we will pay for the sum of damages under **Voluntary Property Damage Coverage:**

(b) The **Care, Custody Or Control Liability Coverage, Each Occurrence Limit Of Insurance** is the most we will pay for the sum of damages under **Care, Custody Or Control Liability Coverage**.

because of all "property damage" arising out of any one "occurrence".

(3) The **Voluntary Property Damage Coverage, Aggregate Limit Of Insurance** is the most we will pay for the sum of all damages under **Voluntary Property Damage Coverage**. This limit applies separately to each "coverage term".

**(4) Deductible Clause**

(a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the Deductible Amount stated for the applicable coverage in the Schedule. The limits of insurance will not be reduced by the application of such Deductible Amount.

(b) **Section IV - Commercial General Liability Conditions, 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**, applies to each claim or "suit" irrespective of the amount.

(c) We may pay any part or all of the Deductible Amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the Deductible Amount as has been paid by us.

**17. Broadened Contractual Liability - Work Within 50 Of Railroad Property**

**Section V - Definitions, 12. "Insured contract"** is amended as follows:

- a. Paragraph c. is replaced by the following:
  - c. Any easement or license agreement.
- b. Paragraph f.(1) is deleted in its entirety.

**18. Alienated Premises**

**Exclusion 2j. Damage to Property, Paragraph (2) under Section I - Coverage A - Bodily Injury And Property Damage Liability** does not apply if the premises are "your work".

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

**CinciPlus®  
BUSINESS AUTO XC+®  
(EXPANDED COVERAGE PLUS)  
ENDORSEMENT**

This endorsement modifies insurance provided by the following:

**BUSINESS AUTO COVERAGE FORM**

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

**A. Blanket Waiver of Subrogation**

**SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer of Rights of Recovery Against Others to Us** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" arising out of the operation of a covered "auto" when you have assumed liability for such "bodily injury" or "property damage" under an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution or the "insured contract".

**B. Noncontributory Insurance**

**SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance** c. is deleted in its entirety and replaced by the following:

c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary and we will not seek contribution from any other insurance for any liability assumed under an "insured contract" that requires liability to be assumed on a primary noncontributory basis.

**C. Additional Insured by Contract**

**SECTION II - LIABILITY COVERAGE, A. Coverage, 1. Who is an Insured** is amended to include as an insured any person or organization for whom you have agreed in a valid written contract to provide insurance as afforded by this policy.

This provision is limited to the scope of the valid written contract.

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However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**E. Audio, Visual and Data Electronic Equipment**

**SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limit of Insurance** is amended by adding the following:

4. The most we will pay for all "loss" to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "accident" is the lesser of:

- The actual cash value of the damaged or stolen property as of the time of the "accident";
- The cost of repairing or replacing the damaged or stolen property with either property of like kind and quality, or \$2,500.
- Provided the equipment, at the time of the "loss" is:

- Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- Removable from a permanently installed housing unit as described in Paragraph 2.a. above; or
- An integral part of such equipment.

**F. Who is an Insured - Amended**

**SECTION II - LIABILITY COVERAGE, A. Coverage, 1. Who is an Insured** is amended by adding the following:

The following are "insureds":

- Any subsidiary 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 form.

However, the insurance afforded by this provision does not apply to any subsidiary that is an "insured" under any other automobile liability policy or would be an "insured" under such policy but for termination of such policy or the exhaustion of such policy's limits of insurance.

- Any organization that is newly acquired or formed by you and over which you maintain majority ownership. The insurance provided by this provision:

a. Is effective on the date of acquisition or formation, and is afforded for 180 days after such date;

b. Does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization;

c. Does not apply to any newly acquired or formed organization that is a joint venture or partnership; and

d. Does not apply to an insured under any other automobile liability policy or would be an insured under such a policy but for the termination of such policy or the exhaustion of such policy's limits of insurance.

- Any of your "employees" while using a covered "auto" in your business or your personal affairs, provided you do not own, hire or borrow that "auto".

**G. Liability Coverage Extensions - Supplementary Payments - Higher Limits**

**SECTION II - LIABILITY COVERAGE, A. Coverage, 2. Coverage Extensions, a. Supplementary Payments** is amended by:

- Replacing the \$2,000 Limit of Insurance for bail bonds with \$4,000 in (2); and
- Replacing the \$250 Limit of Insurance for reasonable expenses with \$500 in (4).

**H. Amended Fellow Employee Exclusion**

**SECTION II - LIABILITY COVERAGE, B. Exclusions, 5. Fellow Employee** is modified as follows:

Exclusion 5. Fellow Employee is deleted.

**I. Hired Auto - Physical Damage**

If hired "autos" are covered "autos" for Liability Coverage, then Comprehensive and Collision Physical Damage Coverages as provided under **SECTION III - PHYSICAL DAMAGE COVERAGE** of this Coverage Part are extended to "autos" you hire, subject to the following:

- The most we will pay for "loss" to any hired "auto" is \$50,000 or the actual cash value or cost to repair or replace, whichever is the least, minus a deductible.
- The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage, or \$1,000, whichever is less.
- Hired Auto - Physical Damage coverage is excess over any other collectible insurance.

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4. Subject to the above limit, deductible, and excess provisions we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own insured under this policy.

Coverage includes loss of use of that hired auto, provided it results from an "accident" for which you are legally liable and as a result of which a monetary loss is sustained by the leasing or rental concern. The most we will pay for any one "accident" is \$3,000.

If a limit for Hired Auto - Physical Damage is shown in the Schedule, then that limit replaces, and is not added to, the \$50,000 limit indicated above and the deductibles shown in the Schedule are applicable.

#### J. Rental Reimbursement

**SECTION III - PHYSICAL DAMAGE COVERAGE** is amended by adding the following:

1. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of a "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductible applies to this coverage.

2. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:

a. The number of days reasonably required to repair the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you; or

b. 30 days.

3. Our payment is limited to the lesser of the following amounts:

a. Necessary and actual expenses incurred; or

b. \$50 per day.

4. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

5. We will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under **SECTION III - PHYSICAL DAMAGE COVERAGE, A, Coverage, 4, Coverage Extensions.**

#### K. Transportation Expense - Higher Limits

**SECTION III - PHYSICAL DAMAGE COVERAGE, A, Coverage, 4, Coverage Extensions** is amended by replacing \$20 per day with \$50 per day, and \$600 maximum with \$1,500 maximum in **Extension a, Transportation Expenses.**

#### L. Airbag Coverage

**SECTION III - PHYSICAL DAMAGE COVERAGE, B, Exclusions, 3.a.** is amended by adding the following:

However, the mechanical and electrical breakdown portion of this exclusion does not apply to the accidental discharge of an airbag. This coverage for airbags is excess over any other collectible insurance or warranty.

#### M. Loan or Lease Gap Coverage

**SECTION III - PHYSICAL DAMAGE COVERAGE, C, Limit of Insurance** is deleted in its entirety and replaced by the following, but only for private passenger type "autos" with an original loan or lease, and only in the event of a "total loss" to such a private passenger type "auto":

a. The most we will pay for "loss" in any one "accident" is the greater of:

(1) The amount due under the terms of the covered or loan to which your leased private passenger type "auto" is subject, but will not include:

(a) Overdue lease or loan payments;

(b) Financial penalties imposed under the lease due to high mileage, excessive use or abnormal wear and tear;

(c) Security deposits not refunded by the lessor;

(d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

(e) Carry-over balances from previous loans or leases, or or damaged property.

(2) Actual cash value of the stolen or damaged property.

b. An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of "loss".

2. **SECTION V - DEFINITIONS** is amended by adding the following, but only for the purposes of this **Loan or Lease Gap Coverage:**

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

#### N. Glass Repair - Waiver of Deductible

**SECTION III - PHYSICAL DAMAGE COVERAGE, D, Deductible** is amended by adding the following:

No deductible applies to glass damage if the glass is repaired in a manner acceptable to us rather than replaced.

#### O. Duties in the Event of an Accident, Claim, Suit or Loss - Amended

**SECTION IV - BUSINESS AUTO CONDITIONS, A, Loss Conditions, 2, Duties in the Event of Accident, Claim, Suit or Loss, a.** is amended by adding the following:

This condition applies only when the "accident" or "loss" is known to:

1. You, if you are an individual;

2. A partner, if you are a partnership;

3. An executive officer or insurance manager, if you are a corporation; or

4. A member or manager, if you are a limited liability company.

**P. Unintentional Failure to Disclose Hazards**  
**SECTION IV - BUSINESS AUTO CONDITIONS, B, General Conditions, 2, Concealment, Misrepresentation or Fraud** is amended by adding the following:

However, if you unintentionally fail to disclose any hazards existing on the effective date of this Coverage Form, we will not deny coverage under this Coverage Form because of such failure.

#### Q. Mental Anguish Resulting from Bodily Injury

**SECTION V - DEFINITIONS, C, "Bodily injury"** is deleted in its entirety and replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish and death sustained by the same person that results from such bodily injury, sickness or disease. "Bodily injury" does not include mental anguish or death that does not result from bodily injury, sickness or disease.

#### R. Coverage for Certain Operations in Connection with Railroads

With respect to the use of a covered "auto" in operations for or affecting a railroad:

1. **SECTION V - DEFINITIONS, H, "Insured contract"**, 1.c, is deleted in its entirety and replaced by the following:

c. An easement or license agreement;

2. **SECTION V - DEFINITIONS, H, "Insured contract"**, 2.a, is deleted.

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**NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT**

## COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM

Various provisions in this Coverage Part restrict this insurance. Read the entire Coverage Part carefully to determine rights, duties and what is and is not covered.

Throughout this Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Coverage Part. The words "we," "us," and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under SECTION II - WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION V - DEFINITIONS.

### SECTION I - COVERAGE

#### A. Insuring Agreement

1. We will pay on behalf of the insured the "ultimate net loss" which the insured is legally obligated to pay as damages for "bodily injury," "personal and advertising injury" or "property damage" to which this insurance applies:

- Which is in excess of the "underlying insurance," or
- Which is either excluded or not insured by "underlying insurance."

2. This insurance applies to "bodily injury," "personal and advertising injury" or "property damage" only if:

- The "bodily injury," "personal and advertising injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
- The "bodily injury" or "property damage" occurs during the policy period shown in the Declarations; or
- The "personal and advertising injury" results from an "occurrence" that takes place during the policy period shown in the Declarations; and
- Prior to the "coverage term" in which "bodily injury" or "property damage" occurs, or a "personal and advertising injury" offense is committed, you did not know, per Paragraph 5, below, that the "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part, or

that the "personal and advertising injury" offense had been committed or had begun to be committed, in whole or in part.

3. "Bodily injury" or "property damage" which:

- Occurs during the "coverage term"; and
- Was not, prior to the "coverage term", known by you, per Paragraph 5, below, to have occurred;

includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "coverage term" in which it first became known by you.

4. "Personal and advertising injury" caused by an offense which:

- Was committed during the "coverage term"; and
- Was not, prior to the "coverage term", known by you, per Paragraph 5, below, to have been committed;

includes any continuation, change or resumption of that "personal and advertising injury" offense after the end of the "coverage term" in which it first became known by you.

5. You will be deemed to know that "bodily injury" or "property damage" has occurred, or that a "personal and advertising injury" offense has been committed at the earliest time when any "authorized representative":

- Reports all, or any part, of the "bodily injury," "personal and advertising injury" or "property damage" to us or any other insurer;
- Receives a written or verbal demand or claim for damages because of the "bodily injury," "personal and advertising injury" or "property damage";
- First observes, or reasonably should have first observed, the "bodily injury" or "property damage," or the offense that caused the "personal and advertising injury";
- Becomes aware, or reasonably should have become aware, by any means, other than as described in c. above, that "bodily injury" or "property

damage" had occurred or had begun to occur, or that the "personal and advertising injury" offense had been committed or had begun to be committed; or

- Becomes aware, or reasonably should have become aware, of a condition from which "bodily injury," "personal and advertising injury" or "property damage" is substantially certain to occur.

6. The amount we will pay for damages is limited as described in SECTION III - LIMITS OF INSURANCE.

No other obligation or liability to pay sums or perform acts or services is covered, unless expressly provided for under SECTION I - COVERAGE, C. Defense and Supplementary Payments.

#### B. Exclusions

This insurance does not apply to:

- Asbestos**  
Any liability arising out of, attributable to or any way related to asbestos in any form or transmitted in any manner.
- Breach of Contract, Failure to Perform, Wrong Description and Violation of Another's Rights**  
"Personal and advertising injury":
  - Arising out of breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
  - Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
  - Arising out of the wrong description of the price of goods, products or services stated in your "advertisement"; or
  - Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury."

3. **Contractual Liability**

Any liability for which the insured 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 "bodily injury," "personal and advertising injury" or "property damage":

- Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- Arising out of the wrong description of the price of goods, products or services stated in your "advertisement"; or
- Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury."

4. **Contractual Liability**

Any liability for which the insured 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 "bodily injury," "personal and advertising injury" or "property damage":

- Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- Arising out of the wrong description of the price of goods, products or services stated in your "advertisement"; or
- Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury."

a. That the insured would have, in the absence of the contract or agreement; or

- Assumed in a contract or agreement that is an "insured contract," provided the "bodily injury," "personal and advertising injury" or "property damage" occurs subsequent to the execution of the contract or agreement.

4. **Damage to Impaired Property or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

5. **Damage to Property**

"Property damage" to property owned by any insured, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property.

6. **Damage to Your Product**

"Property damage" to "your product" arising out of it or any part of it.

7. **Damage to Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

8. **Distribution of Material In Violation of Statutes**

Any liability arising directly or indirectly out of any action or omission that violates or is alleged to violate:

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Includes copyrighted material of ISO Properties, Inc., with its permission.

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**9. Electronic Chatrooms or Bulletin Boards**  
 "Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**10. Electronic Data**  
 Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

**11. Employer's Liability Limitation**  
 Any liability arising from any injury to:

a. An "employee" of the insured sustained in the "workplace";

b. An "employee" of the insured arising out of the performance of duties related to the conduct of the insured's business; or

c. The spouse, child, parent, brother or sister of that "employee" as a consequence of a, or b, above.

This exclusion applies:

a. Whether the insured may be liable as an employer or in any other capacity; and

b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply when such insurance is provided by valid and collectible "underlying insurance" listed in the Schedule of Underlying Insurance, or would have been provided by such listed "underlying insurance" except for the exhaustion by payment of claims of its limits of insurance, and then only for such hazards for which coverage is provided by such "underlying insurance", unless otherwise excluded by this Coverage Part.

**12. Employment-Related Practices**  
 Any liability arising from any injury to:

a. A person arising out of any:

(1) Refusal to employ that person;

(2) Termination of that person's employment; or

(3) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

b. The spouse, child, parent, brother or sister of that person as a consequence of any injury to that person at whom any of the employment-related practices described in Paragraphs (1), (2), or (3) above is directed.

This exclusion applies:

a. Whether the insured may be liable as an employer or in any other capacity; and

b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**13. Expected or Intended Injury**  
 "Bodily injury" or "property damage" which may reasonably be expected to result from the intentional or criminal acts of the insured or which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually intended or expected.

However, this exclusion does not apply to:

a. "Bodily injury" resulting from the use of reasonable force to protect persons or property; or

b. "Bodily injury" or "property damage" resulting from the use of reasonable force to prevent or eliminate danger in the operation of "autos" or watercraft.

**14. Falsity, Prior Publication, Criminal Act and Media and Internet Type Businesses**  
 "Personal and advertising injury":

a. Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;

b. Arising out of oral or written publication of material whose first publication took place before the later of the following:

(1) The inception of this Coverage Part; or

(2) The "coverage term" in which insurance coverage is sought;

c. Arising out of a criminal act committed by or at the direction of the insured; or

d. Committed by an insured whose business is:

(1) Advertising, broadcasting, publishing or telecasting;

(2) Designing or determining content of web-sites for others; or

(3) An internet search, access, content or service provider.

However, Paragraph d. does not apply to Paragraphs 17.a., b., c., d. and i. of "personal and advertising injury" under SECTION V - DEFINITIONS.

For the purposes of Paragraph d., the placing of frames, borders or links, or advertising, for you or others anywhere on the internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**15. Infringement of Copyright, Patent, Trademark or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement in your "advertisement", of copyright, trade dress or slogan.

**16. Pollutant - Auto**

a. "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, emission or escape of "pollutants":

(1) That are, or that are contained in any property that is:

(a) Being transported or towed by, handled, or handled for movement, into, onto or from, an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion;

(b) Otherwise in the course of transit by or on behalf of the insured; or

(c) Being stored, disposed of, treated or processed in or upon an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion;

(2) Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted into or onto an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion; or

(3) After the "pollutants" or any property in which the "pollutants" are contained are moved from an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion to any other place where they are finally delivered, disposed of or abandoned by the insured.

Paragraph (1) above does not apply to "bodily injury" or "property damage" arising from fuels, lubricants, or other operating fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion or its parts, if:

(a) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

(b) The "bodily injury" or "property damage" does not arise out of the operation of any equipment listed in Paragraphs f.(2) and (3) of the definition of "mobile equipment".

However, this exception to Paragraph (1) does not apply if the fuels, lubricants, or other operating fluids, exhaust gases or other similar "pollutants" are intentionally discharged, dispersed, emitted or released.

Paragraphs (2) and (3) above do not apply to an "occurrence" that occurs away from premises owned by or rented to an insured with respect to "pollutants" not in or upon an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion; and
- (b) The discharge, dispersal, seepage, migration, release, emission or escape of the "pollutants" is caused directly by such upset, overturn or damage.

b. Any liability caused by "pollutants" and arising from the operation, maintenance, use, loading or unloading of an "auto", for which insurance coverage is excluded by "underlying insurance".

#### 17. Pollutant - Other Than Auto

a. "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, emission or escape of "pollutants":

- (1) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured.

However, Paragraph a.(1) of this exclusion does not apply to the following if such liability is covered by "underlying insurance" listed in the Schedule of Underlying Insurance, but only to the extent insurance is provided at the

"underlying limit" specified in the Schedule of Underlying Insurance for the "underlying insurance" listed and subject to all its terms, limitations and conditions:

- (a) "Bodily injury", if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use by the building's occupants or their guests;

(b) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor; and the owner or lessee of such premises, site or location has been added to your "underlying insurance" as an additional insured with respect to your ongoing operations or "your work" performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (c) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(2) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible;

(4) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations, if the "pollutants" are brought on or to the

premises, site or location in connection with such operations by such insured, contractor or subcontractor.

However, Paragraph a.(4) of this exclusion does not apply to the following if such liability is covered by "underlying insurance" listed in the Schedule of Underlying Insurance, but only to the extent insurance is provided at the "underlying limit" specified in the Schedule of Underlying Insurance for the "underlying insurance" listed and subject to all its terms, limitations and conditions:

- (a) "Bodily injury" or "property damage" arising out of the escape or fumes, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(b) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or your subcontractor; or

(c) "Bodily injury" or "property damage" arising out of heat,

smoke or fumes from a "hostile fire"; or

- (5) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations, if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of, "pollutants".

b. "Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" at any time.

c. Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this Paragraph c. does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

d. Any liability caused by "pollutants"; for which insurance coverage is excluded by "underlying insurance".

#### 18. Recall of Products, Work or Impaired Property

Any liability or damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- a. "Your product";

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"underlying limit" specified in the Schedule of Underlying Insurance for the "underlying insurance" listed and subject to all its terms, limitations and conditions:

- (a) "Bodily injury", if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use by the building's occupants or their guests;

(b) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor; and the owner or lessee of such premises, site or location has been added to your "underlying insurance" as an additional insured with respect to your ongoing operations or "your work" performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (c) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(2) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible;

(4) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations, if the "pollutants" are brought on or to the

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b. "Your work"; or  
c. "Impaired Property";  
if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

19. **Unauthorized Use of Another's Name or Product**  
"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or meta-tag or any other similar tactics to mislead another's potential customers.

20. **Uninsured / Underinsured Motorist**  
Any liability or obligation to any insured or anyone else under any uninsured motorist, underinsured motorist, automobile no-fault or first party personal injury law.

21. **War**  
Any liability, however caused, arising directly or indirectly, out of:  
a. War, including undeclared or civil war;  
b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack by any government, sovereign or authority using military personnel or other agents; or  
c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

22. **Workers' Compensation**  
Any liability or obligation of the insured under any workers' compensation, unemployment compensation, disability benefits or similar law. However, this exclusion does not apply to liability of others assumed by you under an "insured contract" in existence at the time of "occurrence".

**C. Defense and Supplementary Payments**  
1. We will have the right and duty to defend the insured against any "suit" seeking damages because of "bodily injury", "personal and advertising injury" or "property damage" to which this insurance applies. We will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "personal and advertising

ing injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence", and settle any claim or "suit" that may result when:  
a. The applicable limits of the "underlying insurance" and any other insurance have been exhausted by payment of claims; or  
b. Damages are sought for "bodily injury", "personal and advertising injury" or "property damage" which are not covered by "underlying insurance" or other insurance.

2. Our right and duty to defend ends when the applicable Limits of Insurance, as stated in the Declarations, has been exhausted by payment of claims.  
3. We have no duty to investigate, settle or defend any claim or "suit" other than those circumstances described in Paragraph C.1. However, we do have the right to participate in the investigation, settlement or defense of any claim or "suit" to which this insurance applies. If we exercise this right, we will do so at our expense.

4. If there is no underlying insurer or other insurance obligated to do so, we will pay the following when we provide a defense:  
a. All expenses we incur.  
b. The cost of bail bonds up to \$3,000. We do not have to furnish these bonds.  
c. The cost of bonds to appeal a judgment or award in any claim or "suit" we defend and the cost of bonds to release attachments, but only for bond amounts within the applicable Limits of Insurance. We do not have to furnish these bonds.  
d. Reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including the actual loss of earnings.  
e. All costs taxed against the insured in the "suit".

5. If there is no underlying insurer obligated to do so, we will pay the following for an "occurrence" to which this insurance applies, even if we have no duty to provide a defense:  
a. Prejudgment interest awarded against the insured on that part of the

judgment we become obligated to pay and which falls within the applicable Limit of Insurance. If we make an offer to pay the applicable Limits of Insurance, we will not pay any pre-judgment interest based on the period of time after the offer.  
b. All interest awarded against the insured on the full amount of any judgment that accrues:  
(1) After entry of the judgment; and  
(2) Before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Insurance.

6. The payments described in Paragraphs 4, and 5, above will not reduce the Limits of Insurance provided by this Coverage Part when defense or supplementary payments provided by the "underlying insurance" do not reduce their Limits of Insurance. However, when defense or supplementary payments provided by the "underlying insurance" reduce their Limits of Insurance, then such expense payments paid by us will reduce the Limits of Insurance provided by this Coverage Part.

7. If we are prevented by law or otherwise from carrying out any of the provisions of SECTION I - COVERAGE, C. Defense and Supplementary Payments, we will pay any expense incurred with our written consent.

**SECTION II - WHO IS AN INSURED**  
1. Except for liability arising out of the ownership, maintenance, occupancy or use of an "auto":  
a. If you are designated in the Declarations as:  
(1) 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.  
(2) A partnership or joint venture, you are an insured. Your members, partners and their spouses are also insureds, but only with respect to the conduct of your business.  
(3) 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.

(4) 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. Each of the following is also a Named Insured:  
(a) Any "subsidiary" company of such organization, including any "subsidiary" of such "subsidiary":  
1) Existing at the inception of this Coverage Part; or  
2) Formed or acquired on or after the inception of this Coverage Part.  
(b) Any other company controlled and actively managed by such organization or any "subsidiary" thereof.  
1) At the inception of this Coverage Part; or  
2) If the control and active management thereof is acquired on or after the inception of this Coverage Part.

(5) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.  
b. Each of the following is also an insured:  
(1) Any "employee" of yours while acting within the scope of their duties as such.  
(2) Any person or organization while acting as your real estate manager.  
(3) Any person or organization having proper temporary custody of your property if you die, but only:  
(a) With respect to liability arising out of the maintenance or use of that property; and  
(b) Until your legal representative has been appointed.  
(4) Your legal representative if you die, but only with respect to duties as such.  
2. Only with respect to liability arising out of the ownership, maintenance, occupancy or use of an "auto":

judgment we become obligated to pay and which falls within the applicable Limit of Insurance. If we make an offer to pay the applicable Limits of Insurance, we will not pay any pre-judgment interest based on the period of time after the offer.  
b. All interest awarded against the insured on the full amount of any judgment that accrues:  
(1) After entry of the judgment; and  
(2) Before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Insurance.

6. The payments described in Paragraphs 4, and 5, above will not reduce the Limits of Insurance provided by this Coverage Part when defense or supplementary payments provided by the "underlying insurance" do not reduce their Limits of Insurance. However, when defense or supplementary payments provided by the "underlying insurance" reduce their Limits of Insurance, then such expense payments paid by us will reduce the Limits of Insurance provided by this Coverage Part.

7. If we are prevented by law or otherwise from carrying out any of the provisions of SECTION I - COVERAGE, C. Defense and Supplementary Payments, we will pay any expense incurred with our written consent.

**SECTION II - WHO IS AN INSURED**  
1. Except for liability arising out of the ownership, maintenance, occupancy or use of an "auto":  
a. If you are designated in the Declarations as:  
(1) 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.  
(2) A partnership or joint venture, you are an insured. Your members, partners and their spouses are also insureds, but only with respect to the conduct of your business.  
(3) 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.

(4) 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. Each of the following is also a Named Insured:  
(a) Any "subsidiary" company of such organization, including any "subsidiary" of such "subsidiary":  
1) Existing at the inception of this Coverage Part; or  
2) Formed or acquired on or after the inception of this Coverage Part.  
(b) Any other company controlled and actively managed by such organization or any "subsidiary" thereof.  
1) At the inception of this Coverage Part; or  
2) If the control and active management thereof is acquired on or after the inception of this Coverage Part.

(5) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.  
b. Each of the following is also an insured:  
(1) Any "employee" of yours while acting within the scope of their duties as such.  
(2) Any person or organization while acting as your real estate manager.  
(3) Any person or organization having proper temporary custody of your property if you die, but only:  
(a) With respect to liability arising out of the maintenance or use of that property; and  
(b) Until your legal representative has been appointed.  
(4) Your legal representative if you die, but only with respect to duties as such.  
2. Only with respect to liability arising out of the ownership, maintenance, occupancy or use of an "auto":

judgment we become obligated to pay and which falls within the applicable Limit of Insurance. If we make an offer to pay the applicable Limits of Insurance, we will not pay any pre-judgment interest based on the period of time after the offer.  
b. All interest awarded against the insured on the full amount of any judgment that accrues:  
(1) After entry of the judgment; and  
(2) Before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Insurance.

6. The payments described in Paragraphs 4, and 5, above will not reduce the Limits of Insurance provided by this Coverage Part when defense or supplementary payments provided by the "underlying insurance" do not reduce their Limits of Insurance. However, when defense or supplementary payments provided by the "underlying insurance" reduce their Limits of Insurance, then such expense payments paid by us will reduce the Limits of Insurance provided by this Coverage Part.

7. If we are prevented by law or otherwise from carrying out any of the provisions of SECTION I - COVERAGE, C. Defense and Supplementary Payments, we will pay any expense incurred with our written consent.

**SECTION II - WHO IS AN INSURED**  
1. Except for liability arising out of the ownership, maintenance, occupancy or use of an "auto":  
a. If you are designated in the Declarations as:  
(1) 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.  
(2) A partnership or joint venture, you are an insured. Your members, partners and their spouses are also insureds, but only with respect to the conduct of your business.  
(3) 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.

(4) 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. Each of the following is also a Named Insured:  
(a) Any "subsidiary" company of such organization, including any "subsidiary" of such "subsidiary":  
1) Existing at the inception of this Coverage Part; or  
2) Formed or acquired on or after the inception of this Coverage Part.  
(b) Any other company controlled and actively managed by such organization or any "subsidiary" thereof.  
1) At the inception of this Coverage Part; or  
2) If the control and active management thereof is acquired on or after the inception of this Coverage Part.

(5) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.  
b. Each of the following is also an insured:  
(1) Any "employee" of yours while acting within the scope of their duties as such.  
(2) Any person or organization while acting as your real estate manager.  
(3) Any person or organization having proper temporary custody of your property if you die, but only:  
(a) With respect to liability arising out of the maintenance or use of that property; and  
(b) Until your legal representative has been appointed.  
(4) Your legal representative if you die, but only with respect to duties as such.  
2. Only with respect to liability arising out of the ownership, maintenance, occupancy or use of an "auto":

judgment we become obligated to pay and which falls within the applicable Limit of Insurance. If we make an offer to pay the applicable Limits of Insurance, we will not pay any pre-judgment interest based on the period of time after the offer.  
b. All interest awarded against the insured on the full amount of any judgment that accrues:  
(1) After entry of the judgment; and  
(2) Before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Insurance.

6. The payments described in Paragraphs 4, and 5, above will not reduce the Limits of Insurance provided by this Coverage Part when defense or supplementary payments provided by the "underlying insurance" do not reduce their Limits of Insurance. However, when defense or supplementary payments provided by the "underlying insurance" reduce their Limits of Insurance, then such expense payments paid by us will reduce the Limits of Insurance provided by this Coverage Part.

7. If we are prevented by law or otherwise from carrying out any of the provisions of SECTION I - COVERAGE, C. Defense and Supplementary Payments, we will pay any expense incurred with our written consent.

**SECTION II - WHO IS AN INSURED**  
1. Except for liability arising out of the ownership, maintenance, occupancy or use of an "auto":  
a. If you are designated in the Declarations as:  
(1) 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.  
(2) A partnership or joint venture, you are an insured. Your members, partners and their spouses are also insureds, but only with respect to the conduct of your business.  
(3) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business.  
(4) 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.

(5) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.  
b. Each of the following is also an insured:  
(1) Any "employee" of yours while acting within the scope of their duties as such.  
(2) Any person or organization while acting as your real estate manager.  
(3) Any person or organization having proper temporary custody of your property if you die, but only:  
(a) With respect to liability arising out of the maintenance or use of that property; and  
(b) Until your legal representative has been appointed.  
(4) Your legal representative if you die, but only with respect to duties as such.  
2. Only with respect to liability arising out of the ownership, maintenance, occupancy or use of an "auto":

judgment we become obligated to pay and which falls within the applicable Limit of Insurance. If we make an offer to pay the applicable Limits of Insurance, we will not pay any pre-judgment interest based on the period of time after the offer.  
b. All interest awarded against the insured on the full amount of any judgment that accrues:  
(1) After entry of the judgment; and  
(2) Before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Insurance.

6. The payments described in Paragraphs 4, and 5, above will not reduce the Limits of Insurance provided by this Coverage Part when defense or supplementary payments provided by the "underlying insurance" do not reduce their Limits of Insurance. However, when defense or supplementary payments provided by the "underlying insurance" reduce their Limits of Insurance, then such expense payments paid by us will reduce the Limits of Insurance provided by this Coverage Part.

7. If we are prevented by law or otherwise from carrying out any of the provisions of SECTION I - COVERAGE, C. Defense and Supplementary Payments, we will pay any expense incurred with our written consent.

**SECTION II - WHO IS AN INSURED**  
1. Except for liability arising out of the ownership, maintenance, occupancy or use of an "auto":  
a. If you are designated in the Declarations as:  
(1) 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.  
(2) A partnership or joint venture, you are an insured. Your members, partners and their spouses are also insureds, but only with respect to the conduct of your business.  
(3) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business.  
(4) 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.

(5) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.  
b. Each of the following is also an insured:  
(1) Any "employee" of yours while acting within the scope of their duties as such.  
(2) Any person or organization while acting as your real estate manager.  
(3) Any person or organization having proper temporary custody of your property if you die, but only:  
(a) With respect to liability arising out of the maintenance or use of that property; and  
(b) Until your legal representative has been appointed.  
(4) Your legal representative if you die, but only with respect to duties as such.  
2. Only with respect to liability arising out of the ownership, maintenance, occupancy or use of an "auto":

judgment we become obligated to pay and which falls within the applicable Limit of Insurance. If we make an offer to pay the applicable Limits of Insurance, we will not pay any pre-judgment interest based on the period of time after the offer.  
b. All interest awarded against the insured on the full amount of any judgment that accrues:  
(1) After entry of the judgment; and  
(2) Before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Insurance.

6. The payments described in Paragraphs 4, and 5, above will not reduce the Limits of Insurance provided by this Coverage Part when defense or supplementary payments provided by the "underlying insurance" do not reduce their Limits of Insurance. However, when defense or supplementary payments provided by the "underlying insurance" reduce their Limits of Insurance, then such expense payments paid by us will reduce the Limits of Insurance provided by this Coverage Part.

7. If we are prevented by law or otherwise from carrying out any of the provisions of SECTION I - COVERAGE, C. Defense and Supplementary Payments, we will pay any expense incurred with our written consent.



provided for such additional insureds thereunder.

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.

### SECTION III - LIMITS OF INSURANCE

1. 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. The Aggregate Limit is the most we will pay for all damages:

- a. Included in the "products-completed operations hazard";
- b. Because of "bodily injury" by disease sustained by your "employees" arising out of and in the course of their employment by you; or
- c. Because of "bodily injury", "personal and advertising injury" or "property damage" not included within a. or b. above. However, this Aggregate Limit will not apply to damages which are not subject to an Aggregate Limit in the "underlying insurance".

The Aggregate Limit applies separately to a. b., and c. The Aggregate Limit described in c. will apply only to damages not subject to a. or b. above.

3. Subject to the Limit of Insurance described in 2.c. above:

- a. Only in the event that "underlying insurance" specifically listed in the Schedule of Underlying Insurance provides an annual Aggregate Limit of Insurance for damages that would not be subject to 2.a. or b. above that is applicable separately to each:

- (1) Location owned by, or rented or leased to you solely with respect to damages which are the result of a claim or "suit" for "bodily injury" or "property damage" which can be attributed to operations at only a single location, then the Aggregate Limit described in 2.c. above applies separately to each location owned by, or rented or leased to you.

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- a. You are an insured.
- b. Anyone else while using with your permission an "auto" you own, hire or borrow is also an insured except:

- (1) The owner or any other person or organization (except your "executive officers" or principals) from whom you hire or borrow an "auto", unless such persons or organizations are insureds in your "underlying insurance" listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is provided by such "underlying insurance". This exception does not apply if the "auto" is a trailer or semi-trailer connected to an "auto" you own.

- (2) Your "employee", if the "auto" is owned by that "employee" or a member of his or her household, unless:

- (a) Such "employee" is an insured with respect to that "auto" in the "underlying insurance" listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is provided by such "underlying insurance"; or
- (b) The "bodily injury" or "property damage" is sustained by a co-"employee" of such "employee".

- (3) Someone using an "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos", unless that business is yours.

- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from an "auto".

- c. Anyone liable for the conduct of an insured described in Paragraphs 2.a. and b. above is also an insured, but only if they are provided insurance coverage for such liability by valid and collectible "underlying insurance" listed in the Schedule of Underlying Insurance and then only for such hazards for which coverage is provided by such "underlying insurance".

3. At your option and subject to the terms of this insurance, any additional insureds not addressed by Paragraphs 1. and 2. above covered in the "underlying insurance" listed in the Schedule of Underlying Insurance are also insureds, but only to the extent that insurance is

- (2) Of your construction projects solely with respect to damages which are the result of a claim or "suit" for "bodily injury" or "property damage" which can be attributed only to ongoing operations and only at a single construction project, then the Aggregate Limit described in 2.c. above applies separately to each of your construction projects.

- b. Only with respect to the application of Limits of Insurance described in 3.a. above, the following terms location and construction project will have the following meanings:

- (1) Location means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

- (2) Construction project means a location you do not own, rent or lease where ongoing improvements, alterations, installation, demolition or maintenance work is performed by you or on your behalf. All connected ongoing improvements, alterations, installation, demolition or maintenance work performed by you or on your behalf at the same location for the same persons or entities, no matter how often or under how many different contracts, will be deemed to be a single construction project.

4. Subject to the limits described in 2. and 3. above, the Each Occurrence Limit is the most we will pay for the "ultimate net loss":

- a. In excess of the applicable limits of "underlying insurance"; or
- b. If an "occurrence" is not covered by "underlying insurance"; but covered by the terms and conditions of this Coverage Part.

Because of all "bodily injury", "personal and advertising injury" and "property damage" arising out of any one "occurrence":

We will not pay more than the Limit of Insurance shown in this Coverage Part's Declarations for each "occurrence" because any Personal Umbrella Liability Policy(ies) is / are attached to this policy.

5. Subject to the limits described in 2., 3. and 4. above and to the terms and conditions of the "underlying insurance":

- a. If the limits of "underlying insurance" have been reduced by payment of claims, this

Coverage Part will continue in force as excess of the reduced "underlying insurance"; or

- b. If the limits of "underlying insurance" have been exhausted by payment of claims, this Coverage Part will continue in force as "underlying insurance".

6. The Limits of Insurance of this Coverage Part apply separately to each "coverage term".

### SECTION IV - CONDITIONS

#### 1. Appeals

If the insured or any insurer who provides the applicable "underlying insurance" elects not to appeal a judgment which exceeds the "underlying limit", we may elect to do so at our own expense. We shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall this provision increase our liability beyond:

- a. Our applicable Limits of Insurance for all "ultimate net loss";
- b. Our applicable Defense and Supplementary Payments as described in SECTION I - COVERAGE, C. Defense and Supplementary Payments; and
- c. The expense of such appeal.

#### 2. Audit

If this Coverage Part is subject to Audit, as indicated in the Declarations, then the following Condition applies:

- a. The premium shown in the Premium Computation Endorsement as Advance Premium is a deposit premium. At the close of each audit period, we will compute the earned premium for that period. If:

- (1) The earned premium is less than the deposit premium, we will return the excess to the first Named Insured; or
- (2) The earned premium is greater than the deposit premium, the difference will be due and payable to us by the first Named Insured upon notice from us. The due date for audit and retrospective premiums is the date shown as the due date on the bill.

However, in no event will the earned premium be less than the Minimum Premium stated in the Premium Computation Endorsement.

- b. The first Named Insured must keep records of the information we need for pre-

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mium computation, and send us copies at such times as we may request.

**3. Bankruptcy**

Bankruptcy or insolvency of the insured or the insured's estate shall not relieve us of any obligations under this Coverage Part.

**4. Duties in the Event of Occurrence, Claim or Suit**

a. You must see to it that we are notified as soon as practicable of an "occurrence" which may result in a claim or "suit". To the extent possible, notice should include:

- (1) How, when and where the "occurrence" took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence".

This requirement applies only when the "occurrence" is known to an "authorized representative".

b. If a claim is made or "suit" is brought against any insured that is likely to involve this Coverage Part, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

This requirement will not be considered breached unless the breach occurs after such claim or "suit" is known to an "authorized representative".

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment,

assume any obligation, or incur any expense, other than for first aid, without our consent.

**5. First Named Insured**

The person or organization first named in the Declarations will act on behalf of all other insureds where indicated in this Coverage Part.

**6. Legal Action Against Us and Loss Payments**

a. No legal action may be brought against us unless there has been full compliance with all the terms of this Coverage Part nor until the amount of the insured's obligation to pay has been finally determined as provided below. No person or organization has any right under this Coverage Part to bring us into any action to determine the liability of the insured.

b. We shall be liable for payment of the "ultimate net loss" for any "occurrence" to which this Coverage Part applies:

- (1) For "occurrences" not covered by "underlying insurance"; or
- (2) In excess of the "underlying limit" applicable to the "occurrence" only after the insurers who provide the applicable "underlying insurance" have paid or become obligated to pay the amount of the "underlying limit" applicable to the "occurrence".

Our payment will be made following final determination of the amount of the insured's obligation to pay either by final judgment against the insured or by written agreement with the insured, the claimant, the underlying insurers and us.

**7. Liberalization**

If, within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part at the latter of:

- a. The date we implemented the change in your state; or
  - b. The date this Coverage Part became effective; and
- Will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

**8. Maintenance of Underlying Insurance**

a. While this Coverage Part is in effect, the insured shall maintain in force the "underlying insurance" listed in the Schedule of Underlying Insurance as collectible insurance. The terms, conditions and endorsements of "underlying insurance" will not materially change and renewals or replacements of "underlying insurance" will not be more restrictive in coverage.

b. Limits of "underlying insurance" will not be reduced, except for any reduction or exhaustion in the aggregate limits of insurance due to payment of claims which are in accordance with SECTION 11 - COVERAGE, A. Insuring Agreement, Paragraph 2, of this Coverage Part.

c. In the event you fail or neglect to maintain "underlying insurance" as required, this Coverage Part will apply as though such "underlying insurance" was in force and collectible at the time a claim is presented to us which is in accordance with SECTION 11 - COVERAGE, A. Insuring Agreement, Paragraph 2, of this Coverage Part.

d. The limits of "underlying insurance" shall be deemed applicable, regardless of any defense which the insurer who provides the "underlying insurance" may assert because of the insured's failure to comply with any Condition of the policy or the inability of the insurer to pay by reason of bankruptcy or insolvency.

**9. Other Insurance**

This insurance is excess over, and shall not contribute with any other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

**10. Premium**

The premium for this Coverage Part shall be as stated in the Declarations. The advance and anniversary premiums are not subject to adjustment, except as stated in the Declarations, or as stated in an endorsement issued by us to form a part of this Coverage Part.

You shall maintain records of such information as is necessary for premium computation, and shall, if requested by us, send copies of such records to us at the end of the "coverage term" and at such times during the policy period as we may direct.

**11. Representations**

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a. By acceptance of this Coverage Part, you agree that the statements in the Declarations are your agreements and representations, that this Coverage Part is issued in reliance upon the truth of such representations and that this Coverage Part embodies all agreements existing between you and us or any of our agents relating to this insurance.

b. However, to the extent that the following applies in the "underlying insurance" listed specifically in the Schedule of Underlying Insurance, it will also apply to this Coverage Part:

Based on our reliance upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of this Coverage Part, we will not reject coverage under this Coverage Part based solely on such failure.

**12. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part 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.

**13. Transfer of Rights of Recovery Against Others to Us**

a. If the insured has rights to recover all or part of any payment 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.

b. Any recoveries shall be applied as follows:

- (1) First, we will reimburse anyone, including the insured, the amounts actually paid by them that were in excess of our payments;
- (2) Next, we will be reimbursed to the extent of our actual payment; and
- (3) Lastly, any amounts left after meeting the obligations outlined in (1) and (2) above will be distributed to anyone else known to us at the time a recovery is made and who is legally entitled to such recovery.

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Expenses incurred in the recovery shall be apportioned among all interests in the ratio of their respective recoveries as finally settled. If there is no recovery as a result of our attempts, we shall bear all of the recovery expenses.

- c. If prior to an "occurrence" to which this Coverage Part would apply, you and the issuer of your applicable "underlying insurance" listed specifically in the Schedule of Underlying Insurance waive any right of recovery against a person or organization for injury or damage, we will also waive any rights we may have against such person or organization.

#### 14. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first named insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

#### SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. "Advertisement" includes a publicity article. For the purposes of this definition:

- a. Notices that are published include material placed on the internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement".

#### 2. "Authorized representative" means:

- a. If you are:
- (1) An individual, you and your spouse are "authorized representatives".
  - (2) A partnership or joint venture, your members, your partners, and their spouses are "authorized representatives".
  - (3) A limited liability company, your members and your managers are "authorized representatives".
  - (4) An organization other than a partnership, joint venture or limited liability company, your "executive officers"

and directors are "authorized representatives". Provided you are not a publicly traded organization, your stockholders are also "authorized representatives".

- (5) A trust, your trustees are "authorized representatives".
- b. Your "employees" assigned to manage your insurance program or assigned to give or receive notice of an "occurrence", claim or "suit" are also "authorized representatives".

#### 3. "Auto" means:

- a. Any land motor vehicle, trailer or semi-trailer designed for travel on public roads; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

"Auto" does not include "mobile equipment".

4. "Bodily injury" means bodily harm or injury, sickness, disease, disability, humiliation, shock, fright, mental anguish or mental injury, including care, loss of services or death resulting from any of these at any time.

5. "Coverage term" means the following individual increments, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:

- a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 AM standard time at your mailing address shown in the Declarations on the earlier of:

- (1) The day the policy period shown in the Declarations ends; or
  - (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
- b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".
6. "Coverage territory" means anywhere.

7. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cards, data processing devices or any other media which are used with electronically controlled equipment.

8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any similar governing document.

10. "Hostile fire" means one that becomes uncontrollable or breaks out from where it was intended to be.

11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement,

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work", or
- b. Your fulfilling the terms of the contract or agreement.

#### 12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "property damage" by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract".
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business, other

than a contract or agreement pertaining to the rental or lease of any "auto", (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury", "property damage" or "personal and advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or

9. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

Paragraphs f. and g. do not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury", "property damage" or "personal and advertising injury" arising out of construction or demolition operations, within 50 feet of any railroad property, and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing. However, if such liability is insured by valid and collectible "underlying insurance" as listed in the Schedule of Underlying Insurance, this Paragraph (1) shall not apply for such hazards for which insurance coverage is afforded by such "underlying insurance".
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failure to render professional services,

including those listed in Paragraph (2) above and supervisory, inspection, architectural or engineering activities;

- (4) That indemnifies an advertising, public relations or media consulting firm for "personal and advertising injury" arising out of the planning, execution or failure to execute marketing communications programs. Marketing communications programs include but are not limited to comprehensive marketing campaigns; consumer, trade and corporate advertising for all media; media planning, buying, monitoring and analysis; direct mail; promotion; sales materials; design; presentations; point-of-sale materials; market research; public relations and new product development;

(5) Under which the insured, if an advertising, public relations or media consulting firm, assumes liability for "personal and advertising injury" arising out of the insured's rendering or failure to render professional services, including those services listed in Paragraph (4), above;

(6) That indemnifies a web-site designer or content provider, or Internet search, access, content or service provider for injury or damage arising out of the planning, execution or failure to execute Internet services. Internet Services include but are not limited to design, production, distribution, maintenance and administration of web-sites and web-banners; hosting web-sites; registering domain names; registering with search engines; marketing analysis; and providing access to the Internet or other similar networks;

(7) Under which the insured, if a web-site designer or content provider, or Internet search, access, content or service provider, assumes liability for injury or damage arising out of the insured's rendering or failure to render Internet services, including those listed in Paragraph (6), above;

(8) That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or

(9) That holds a person or organization engaged in the business of transporting property by "auto" for hire harm-

less for your use of an "auto" over a route or territory that person or organization is authorized to serve by public authority.

13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" includes supervisors furnished to you by the labor leasing firm. "Leased worker" does not include a "temporary worker".

14. "Loading or unloading" means the handling of property;

a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

16. "Occurrence" means:

a. An accident, including continuous or repeated exposure to substantially the same general harmful conditions, that results in "bodily injury" or "property damage"; or

b. An offense that results in "personal and advertising injury".

All damages arising from the same accident, continuous or repeated exposure to substantially the same general harmful conditions, act or offense shall be deemed to arise from one "occurrence" regardless of:

(1) The frequency of repetition;

(2) The number or kind of media used; or

(3) The number of claimants.

17. "Personal and advertising injury" means injury, including "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. Abuse of process;

d. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

e. Defamation of character, including oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

f. Oral or written publication, in any manner, of material that violates a person's right of privacy;

g. The use of another's advertising idea in your "advertisement";

h. Infringing upon another's copyright, trade dress or slogan in your "advertisement"; or

i. Discrimination, unless insurance coverage therefor is prohibited by law or statute.

18. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include, but are not limited to, substances which are generally recognized in industry or government to be harmful or toxic to persons, property or the environment regardless of whether the injury or damage is caused directly or indirectly by the "pollutants" and whether:

a. The insured is regularly or otherwise engaged in activities which limit or degrade the environment; or

b. The insured uses, generates or produces the pollutant.

19. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

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(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the site has been completed, if your contract calls for work at more than one site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or

(2) The existence of tools, uninstalled equipment or abandoned or unused materials.

20. "Property damage" means:

a. Physical injury to or destruction of tangible property including all resulting loss of use. All such loss of use shall be deemed to occur at the time of the physical injury or destruction that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

21. "Subsidiary" means any organization in which more than 50% of the outstanding securities or voting rights representing the present right to control, directly or indirectly, in any combination, by one or more of the Named Insureds.

22. "Suit" means a civil proceeding in which monetary damages because of "bodily injury", "personal and advertising injury" or "property damage"

age" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such money damages are claimed and to which the insured must submit or does submit with our consent;

b. Any other alternative dispute resolution proceeding in which such money damages are claimed, and to which the insured submits with our consent; or

c. An appeal of a civil proceeding.

23. "Temporary worker" means a person who is furnished to you to:

a. Substitute for a permanent "employee" on leave; or

b. Meet seasonal or short-term workload conditions.

24. "Ultimate net loss" means the sum actually paid or payable in the settlement or satisfaction of the insured's legal obligation for damages, covered by this insurance, either by adjudication or compromise. "Ultimate net loss" does not include Defense and Supplementary Payments as described in SECTION I - COVERAGE, C, Defense and Supplementary Payments of this Coverage Part.

25. "Underlying insurance" means the insurance listed in the Schedule of Underlying Insurance and the insurance available to the insured under all other insurance policies applicable to the "occurrence". "Underlying insurance" also includes any type of self-insurance or alternative method by which the insured arranges for funding of legal liabilities that affords coverage that this Coverage Part covers.

26. "Underlying limit" means the total of the applicable limits of all "underlying insurance" less the amount, if any, by which the applicable limit of the applicable policy listed in the Schedule of Underlying Insurance has been reduced solely by payment of loss resulting from claims which are in accordance with SECTION I - COVERAGE, A, Insuring Agreement, Paragraph 2, of this Coverage Part.

27. "Workplace" means that place and during such hours to which the "employee" sustaining injury was assigned by you, or any other person or entity acting on your behalf, to work on the date of "occurrence".

28. "Your product":

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You; or

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of your product; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

29. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

(2) The providing of or failure to provide warnings or instructions.

## NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL UMBRELLA LIABILITY COVERAGE PART

- A. SECTION I - COVERAGE, B. Exclusions is modified to add the following:

This insurance does not apply to:

1. Any liability:
  - a. With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability, or
  - b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

2. Any liability resulting from the "hazardous properties" of "nuclear material", if
  - a. The "nuclear material" (1) is at any "nuclear facility" owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom.
  - b. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - c. The injury or damage arises out of the furnishing by an insured or services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territo-

ries or possessions or Canada, this Exclusion c. applies only to "property damage" to such "nuclear facility" and any property thereat.

- B. SECTION V - DEFINITIONS is hereby modified to add the following definitions:

1. "Hazardous properties" include radioactive, toxic or explosive properties;
2. "Nuclear material" means "source material", "special nuclear material" or "by-product material";
3. "Source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
4. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";
5. "Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

6. "Nuclear facility" means:
  - a. Any "nuclear reactor";
  - b. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", (3) or handling, processing or packaging "waste";
  - c. Any equipment or device used for the processing, fabricating or alloying of "special nuclear materials", if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combina-

tion thereof, or more than 250 grams of uranium 235;

- d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste"; and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

7. "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

8. "Property damage" includes all forms of radioactive contamination of property.

## EXHIBIT C

### CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR

#### A. CONTRACTOR IS A CORPORATION

**CORPORATION CERTIFICATION:** I am authorized to act on behalf of the entity named below, and certify under penalty of perjury that it is a corporation.

Moore Excavation, Inc.

Entity

DocuSigned by:

Scott Pellear

Signature

7/9/2024 | 2:07 PM PDT

Date

#### B. CONTRACTOR IS INDEPENDENT

**Independent Contractor Standards.** As used in various provisions of ORS Chapters including but not limited to 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 are met.

Contractor and Project Manager certify that the Contractor meets the following standards:

1. Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. Contractor furnishes the tools or equipment necessary for the contracted labor or services.
4. Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.
6. Contractor is licensed under ORS chapter 701, if the Contractor provides labor or services for which such license is required.
7. Contractor has filed federal and state income tax returns in the name of the business or a business Schedule C as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year.
8. Contractor represents to the public that the labor or services are to be provided by an independently established business as four or more of the following circumstances exist.

(Check all of the following that apply (must be a minimum of four):)

- The labor or services are primarily carried out at a location that is separate from Contractors residence or is primarily carried out in a specific portion of Contractors residence, which is set aside as the location of the business.
- Commercial advertising or business cards are purchased for the business, or Contractor has a trade association membership.
- Telephone listing is used for the business that is separate from the personal residence listing.
- Labor or services are performed only pursuant to written contracts.
- Labor or services are performed for two or more different persons within a period of one year.

Contractor assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omissions insurance or liability insurance relating to the labor or services to be provided.

**If any action is taken by a person or enforcement agency relating to Contractor's independent contractor status in connection with this contract, Contractor shall defend, hold harmless and indemnify the City of St. Helens, its elected and appointed officials, employees, volunteers and agents from any such action, claim, judgment, fine, penalty, or order to pay. Contractor shall pay any additional costs incurred by the City in defending such action or incurred as a result of such action. This indemnification is in addition to any indemnification otherwise in this agreement.**

DocuSigned by:

*Scott Pellecer*

7/9/2024 | 2:07 PM PDT

Contractor Signature Scott Pellecer, President

Date

Project Manager Signature

Date



# EXHIBIT D

## BONDS





**CITY OF ST. HELENS  
STANDARD PUBLIC IMPROVEMENT  
CONTRACT PAYMENT BOND**

Bond No.: 023228646  
Project Name: UNDERGROUNDING ELECTRICAL SERVICES ON THE S 1ST STREET - STRAND STREET  
and No.: ROAD & UTILITIES EXTENSION PROJECT  
Project No. M-532

Liberty Mutual Insurance Company	(Surety)	Bond Amount	\$ 663,180.00
N/A	(Surety)	Bond Amount	\$ N/A

**Total Penal Sum of Bond** \$663,180.00

We, Moore Excavation, Inc., a corporation or partnership duly organized under the laws of the State of OR, and authorized to transact business in the State of Oregon, as "**PRINCIPAL**," and,

We, Liberty Mutual Insurance Company, a corporation or partnership duly organized under the laws of the State of MA, and authorized to transact surety business in the State of Oregon, as "**SURETY**," and,

We, the above named Principal and Surety(ies), hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto the City of St. Helens, Oregon, (**OBLIGEE**) the sum of (\$ 663,180.00) (Six Hundred Sixty Three Thousand One Hundred Eighty and 00/100\*\*\*) dollars, lawful money of the United States. [Provided, we the Sureties bind ourselves in such sum "Jointly and Severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety above), and

WHEREAS, the Principal has entered into a Contract with the City of St. Helens, the specifications, terms and conditions of which are contained in the Contract Documents for the above identified Project; and

WHEREAS, the terms and conditions of the Contract Documents, as defined in the Contract, are made a part of this performance bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans, specifications, and schedule of contract prices which are set forth in the contract and any attachments, and all authorized modifications of the Contract which increase the amount of the work, or the cost of the Contract, or constitute authorized extensions of time for performance of the Contract, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things by it undertaken to be performed under said Contract and any duly authorized modifications that are made, upon the terms set forth therein, and within

the time prescribed therein, or as extended therein as provided in the Contract, with or without notice to the sureties, including the requirements of ORS Chapter 279A-C, including specifically the conditions in ORS 279C.500 to 279C.530, and shall indemnify and save harmless the City of St. Helens, Oregon, its officers, employees, agents and assigns, against any claim for direct or indirect damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Contractor or its subcontractors, and shall promptly pay all persons supplying labor, materials or both to the Principal or its subcontractors for prosecution of the Work provided in the Contract; and shall promptly pay all contributions due the State Industrial Accident Fund and the State Unemployment Compensation Fund from the Principal or its subcontractor in connection with the performance of the Contract; and shall pay over to the Oregon Department of Revenue all sums required to be deducted and retained from the wages of employees of the Principal and its subcontractors pursuant to ORS 316.167, and shall permit no lien nor claim to be filed or prosecuted against the City on account of any labor or materials furnished; and shall do all things required of the Contractor by the laws of this State, and the laws of the City of St. Helens, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Nonpayment of the bond premium will not invalidate this bond nor shall the City of St. Helens be obligated for the payment of any premiums.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES:

Dates this June day of 30, 2024.

Liberty Mutual Insurance Company  
Surety

By: Ashlee Baumgartner  
(Attorney-in-Fact) (Address) (Telephone) Ashlee Baumgartner  
PO Box 10167, Eugene, OR 97440  
541-687-1117

Moore Excavation, Inc.  
Principal

By: Scott Pellecer  
DocuSigned by: Scott Pellecer  
(Address) (Telephone) PO Box 789 Scott Pellecer, President  
Fairview, OR 97024  
503-674-0900



**CITY OF ST. HELENS  
STANDARD PUBLIC IMPROVEMENT  
CONTRACT PERFORMANCE BOND**

Bond No.: 023228646  
Project Name UNDERGROUNDING ELECTRICAL SERVICES ON THE S 1ST STREET - STRAND STREET  
and No.: ROAD & UTILITIES EXTENSION PROJECT  
Project No. M-532

<u>Liberty Mutual Insurance Company</u> (Surety)	Bond Amount	<u>\$ 663,180.00</u>
<u>N/A</u> (Surety)	Bond Amount	<u>\$ N/A</u>

**Total Bond Amount** \$ 663,180.00

We, Moore Excavation, Inc., a corporation or partnership duly organized under the laws of the State of OR, and authorized to transact business in the State of Oregon, as "PRINCIPAL," and,

We, Liberty Mutual Insurance Company, a corporation or partnership duly organized under the laws of the State of MA, and authorized to transact surety business in the State of Oregon, as "SURETY," and,

We, the above named Principal and Surety(ies), hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto the City of St. Helens, Oregon, (**OBLIGEE**) the sum of (\$ 663,180.00) (Six Hundred Sixty Three Thousand One Hundred Eighty and 00/100\*\*\*) dollars, lawful money of the United States. [Provided, we the Sureties bind ourselves in such sum "Jointly and Severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety above), and

WHEREAS, the Principal has entered into a Contract with the City of St. Helens, the specifications, terms and conditions of which are contained in the Contract Documents for the above identified Project; and

WHEREAS, the terms and conditions of the Contract Documents, as defined in the Contract, are made a part of this performance bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans, specifications, and schedule of contract prices which are set forth in the contract and any attachments, and all authorized modifications of the Contract which increase the amount of the work, or the cost of the Contract, or constitute authorized extensions of time for performance of the Contract, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things by it undertaken to be performed under said Contract and any duly authorized modifications that are made, upon the terms set forth therein, and within

the time prescribed therein, or as extended therein as provided in the Contract, with or without notice to the sureties, including the requirements of ORS Chapter 279A-C, including specifically the conditions in ORS 279C.500 to 279C.530, and shall indemnify and save harmless the City of St. Helens, Oregon, its officers, employees, agents and assigns, against any claim for direct or indirect damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Contractor or its subcontractors, and shall in all respects perform said Contract, and shall permit no lien nor claim to be filed or prosecuted against the City on account of any labor or materials furnished; and shall do all things required of the Contractor by the laws of this State, and the laws of the City of St. Helens, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Nonpayment of the bond premium will not invalidate this bond nor shall the City of St. Helens be obligated for the payment of any premiums.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES:

Dates this June day of 30, 2024.

Liberty Mutual Insurance Company

Surety

By: Ashlee Baumgartner  
(Attorney-in-Fact) (Address) (Telephone) Ashlee Baumgartner  
PO Box 10167, Eugene, OR 97440  
541-687-1117

Moore Excavation, Inc.

Principal

By: Scott Pellecer  
DocuSigned by: Scott Pellecer  
(Address) (Telephone) PO Box 789 Scott Pellecer, President  
Fairview, OR 97024  
503-674-0900



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company

Certificate No: 8211095-969225

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Ashlee Baumgartner; Tina A. Costa; James R Cox; Erik Finrow; David M. Holland; Summer Hugh; Kristen McGillvrey; Dean R. Pollock

all of the city of Eugene state of OR each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 13th day of December, 2023.



Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

State of PENNSYLVANIA  
County of MONTGOMERY ss

On this 13th day of December, 2023 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal  
Teresa Pastella, Notary Public  
Montgomery County  
My commission expires March 28, 2025  
Commission number 1126044  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS: Section 12. Power of Attorney.**

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.**

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this \_\_\_\_\_ day of \_\_\_\_\_.



By: Renee C. Llewellyn  
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.



# EXHIBIT E

## CERTIFICATE OF SUBSTANTIAL COMPLETION

CITY'S Project No. M-532 ENGINEER'S Project No. N/A

UNDERGROUNDING ELECTRICAL SERVICES ON THE S 1ST STREET - STRAND STREET ROAD & UTILITIES  
EXTENSION PROJECT

CONTRACTOR: MOORE EXCAVATION, INC.

Contract For: CITY OF ST. HELENS Contract Date \_\_\_\_\_

This Certificate of Substantial Completion applies to:

- All Work under the Contract Documents, or
- To the following specified parts thereof:

The Work to which this Certificate applies has been inspected by authorized representatives of CITY, CONTRACTOR and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

\_\_\_\_\_  
DATE OF SUBSTANTIAL COMPLETION

A tentative list of items to be completed or corrected is attached hereto. This list may not be all inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within \_\_\_\_\_ Days of the above date of Substantial Completion.

The following documents are attached to and made a part of this Certificate:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Effective as of the last date set forth below, the responsibilities between CITY and CONTRACTOR shall be as follows:

- |             |  |  |
|-------------|--|--|
| Security    | <input type="checkbox"/> City            | <input checked="" type="checkbox"/> Contractor |
| Operation   | <input checked="" type="checkbox"/> City | <input type="checkbox"/> Contractor            |
| Safety      | <input type="checkbox"/> City            | <input checked="" type="checkbox"/> Contractor |
| Maintenance | <input checked="" type="checkbox"/> City | <input type="checkbox"/> Contractor            |
| Heat        | <input type="checkbox"/> City            | <input type="checkbox"/> Contractor            |
| Utilities   | <input type="checkbox"/> City            | <input type="checkbox"/> Contractor            |
| Insurance   | <input type="checkbox"/> City            | <input type="checkbox"/> Contractor            |
| Warranties  | <input type="checkbox"/> City            | <input checked="" type="checkbox"/> Contractor |

Other Responsibilities:

City		Contractor

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of CONTRACTOR'S obligation to complete the Work in accordance with the Contract Documents.

---

CONTRACTOR accepts this Certificate of Substantial Completion on \_\_\_\_\_, 20\_\_\_\_\_

By: \_\_\_\_\_

CITY accepts this Certificate of Substantial Completion on \_\_\_\_\_, 20\_\_\_\_\_

By: \_\_\_\_\_

File:





**EXHIBIT F**  
**CERTIFICATE OF COMPLIANCE**

**UNDERGROUNDING ELECTRICAL SERVICES ON THE S 1ST STREET – STRAND STREET ROAD & UTILITIES  
EXTENSION PROJECT**

---

CIP Number: Project No. M-532

Contractor: MOORE EXCAVATION, INC.

PO BOX 789

FAIRVIEW, OR 97024

I, (We) hereby certify that all Work has been performed and materials supplied in accordance with the plans, specifications and Contract Documents for the above Project, and that:

1. Not less than the prevailing rates of wages have been paid to laborers, workmen and mechanics employed on this work.
2. There have been no unauthorized substitutions of materials; substitutions or assignment of subcontractors; nor have any subcontracts been entered into without the names of the subcontractors having been submitted to the City prior to the start of such subcontracted work.
3. All claims and indebtedness for material and labor and other service performed in connection with these specifications have been paid.
4. All moneys due the State Industrial Accident Fund, the State Unemployment Compensation Trust Fund, the State Department of Revenue (ORS 316.162 to 316.212) hospital associations and/or others (ORS 279C.530) have been paid.
5. All private property and easement areas have been satisfactorily restored in accordance with the Contract.
6. If Contractor is not domiciled in or registered to business in the State of Oregon, Contractor has reported to the Oregon Department of Revenue such information and in the manner as required by ORS 279A.120(3).

Contractor: \_\_\_\_\_

By: \_\_\_\_\_ Date \_\_\_\_\_

Title: \_\_\_\_\_



# EXHIBIT G

## CONTRACTOR'S RELEASE OF LIENS AND CLAIMS [PREREQUISITE TO CERTIFICATE OF FINAL COMPLETION]

To: City of St. Helens  
265 Strand Street  
St. Helens, OR 97051

From: MOORE EXCAVATION, INC.  
PO BOX 789  
FAIRVIEW, OR 97024

PROJECT: UNDERGROUNDING ELECTRICAL SERVICES ON THE S 1ST STREET - STRAND STREET ROAD & UTILITIES EXTENSION PROJECT  
PROJECT NO: M-532

In connection with our request for final payment for the above Project, I, \_\_\_\_\_, hereby state that:

- all subcontractors and suppliers on this Project have been paid in full, all obligations on the Project have been satisfied,
- all monetary claims and indebtedness on this Project have been paid, and all disputes with property owners have been resolved.
- There are no liens or claims of any kind outstanding or threatened against the Project.

Furthermore, I agree to indemnify and hold harmless City of St. Helens from any and all claims for labor or materials furnished under the Contract for the above Project.

### SWORN STATEMENT

**I hereby certify, under penalty of perjury and false swearing, that the foregoing statements are true and correct as I verily believe.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Contractor:  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OREGON

\_\_\_\_\_) )  
\_\_\_\_\_) ss  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared

\_\_\_\_\_  
\_\_\_\_\_ Whom I know personally  
\_\_\_\_\_ Whose identity proved on the basis of  
\_\_\_\_\_ Whose identity I proved on the oath/affirmation of  
\_\_\_\_\_, a credible witness to be the signer of the above document, and he/she acknowledged that he/she executed the same under oath/affirmation.

\_\_\_\_\_  
Notary Public for Oregon



# EXHIBIT H

## CERTIFICATE OF FINAL COMPLETION

Project Number: M-532

Project: UNDERGROUNDING ELECTRICAL SERVICES ON THE S 1ST STREET - STRAND STREET ROAD & UTILITIES EXTENSION PROJECT

Contractor: MOORE EXCAVATION, INC.

Contract Signed: \_\_\_\_\_ Contract Expires: \_\_\_\_\_

Contract Completed: \_\_\_\_\_ Delinquent: \_\_\_\_\_

I hereby certify that I have completed my Contract, furnished the materials, and performed the Work as shown by the final estimate, according to the Contract Documents.

\_\_\_\_\_  
*Contractor* Title Date

The City has determined the Project is 100% complete in compliance with all Contract Documents.

\_\_\_\_\_  
*Inspector/Supervisor* Date

\_\_\_\_\_  
*Project Engineer* Date

\_\_\_\_\_  
*City of St. Helens* City Administrator Title Date

Unless otherwise provided as a Special Provision, when City accepts the Certificate of Final Completion, the date the Contractor signs the Certificate of Final Completion shall be the date the City accepts ownership of the work and the start date of the warranty period.



## EXHIBIT I

### INSTRUCTION TO BIDDERS

The provisions of Oregon Administrative Rules Chapter 137, Divisions 46 and 49, apply to all bids and contracts which incorporate the Public Works Standards of the City of St. Helens into the contract documents of a project. The OAR provisions control over any conflicting language in the Public Works Standards and the OAR provisions are incorporated herein by this reference.

#### 1. SCOPE OF WORK

The work contemplated under this contract includes all permits, labor, tools, machinery, materials, transportation, equipment and services of all kinds required for, necessary for, or reasonable incidental to, the completion of all the work in connection with the project described in the contract documents, including the general conditions, all applicable special conditions, plans, specifications, or any supplemental documents.

#### 2. EEO AFFIRMATIVE ACTION

Bidders must comply with the City of St. Helens Equal Opportunity Policy for Contractors. The policy is included in and made a part of these Contract Documents and is attached hereto and made a part hereof as Attachment A. Contractor shall not discriminate against minorities, women or emerging small business enterprises in the awarding of subcontracts.

#### 3. BID PROVISIONS

- a. Each bid must contain a completed Bid including the following:
  - A. A Bid and Schedule of Prices.
  - B. Acknowledgement that the bidder has received and reviewed all Addenda for the bid.
  - C. A statement that all applicable provisions of ORS Chapters 279A-C, including ORS 279C.800 to 279C.870 (Contracting and Prevailing Wages) shall be complied with.
  - D. A statement by the bidder, as part of their bid, that the bidder agrees to be bound by and will comply with the provisions of ORS 279C.838 or 279C.840 or 40 U.S.C. 3141 to 3148, as applicable.
  - E. A statement as to whether the bidder is a resident bidder as defined in ORS 279A.120.
  - F. A statement as to whether or not the bidder is licensed under ORS 468A.720 for asbestos removal if applicable.
  - G. A statement that the bidder has a current and valid license with the Construction Contractor's Board and/or the State Landscape Contractors Board as required by ORS 671.530.
  - H. A statement confirming that the bidder has a Qualified Drug-testing Program for employees in place.
  - I. First Tier Subcontractor form for the project on the City form (physically received by City within 2 working hours of the bid submission deadline).
  - J. A Surety Bond, Cashier's check or Certified check in the amount of 10 percent of the submitted bid.
  - K. Certification: Non-discrimination
  - L. Certification: No Conflict of Interest
  - M. Certification: Not ineligible for Public Works Contracts
- b. The City will not mail notice of addenda but will publish notice of any addenda on City's website and post the notice of addenda at City Hall at <https://www.ci.st-helens.or.us/rfps>. The addenda may be downloaded or picked up at City Hall. Check the website and City Hall bulletin board frequently until the bid submission deadline.
- c. No bid will be received or considered by the City of St. Helens unless the bid contains a statement by the bidder as a part of its bid that the Contractor shall be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148. The statement shall be included in the Bid form. The existing prevailing rate of wage in the form of a BOLI document is included in the bid documents.

- d. Each Bidder must identify in the Bid whether the Bidder is a “resident bidder” as defined in ORS 279A.120.
- e. Unless specified in the ITB, and Contract Special Provisions, the bidder or subcontractor need not be licensed under ORS 468A.720 relating to asbestos abatement.
- f. No bid for a construction contract shall be received or considered by the City of St. Helens unless the bidder is licensed with the Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530.
- g. Each Bidder must demonstrate that its firm has a Qualified Drug Testing Program for employees in place and demonstrate compliance prior to award.
- h. Instructions for First-Tier Subcontractors Disclosure. Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is greater than \$100,000.

Specifically, when the contact amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to (i) 5% of the project bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the bidder must disclose the following information about that subcontract in its bid submission or within two (2) working hours after bid submission deadline:

- A. The subcontractor’s name,
- B. The dollar value of the subcontract, and
- C. The category of work that the subcontractor would be performing.

If the bidder will not be using any subcontractors that are subject to the above disclosure requirements, the bidder is required to indicate “NONE” on the accompanying form. Disclosure forms will be available for public inspection after the opening of the bids.

**THE CITY OF ST. HELENS MUST REJECT A BID AS NON-RESPONSIVE IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THE REQUIRED INFORMATION BY THE STATED DEADLINE.**

- i. Bid Security. No bid will be received or considered unless the Bid is accompanied by a certified check, cashier's check, (payable to the City of St. Helens), surety bond (in approved form)(f/k/a/ bid bond), or irrevocable letter of credit issued by an insured institution (in an approved form) in an amount equal to ten percent (10%) of the total amount bid. The successful bidder will be required to furnish a faithful performance bond and a labor and material payment bond each in the amount of one hundred percent (100%) of the amount of the contract. Said security shall be irrevocable for 60 days, unless specified otherwise. The bid security shall be forfeited, at the City’s option, as fixed and liquidated damages, if the bidder fails or neglects to furnish the required performance bond, the insurance, or to execute the contract within 10 working days after receiving the contract from the City for execution. When a bond is used for bid security, the bond shall be executed by a surety company authorized to transact business in the State of Oregon. **THE BIDDER SHALL HAVE THE SURETY USE THE SURETY BOND FORM PROVIDED HEREIN. IF THIS FORM IS NOT USED, THE BID WILL BE DEEMED NON-RESPONSIVE AND SHALL BE REJECTED.**

All such certified checks or surety bonds will be returned to the respective bidders within 10 working days after the bids are opened, except those of the two low bidders. The bid security of the two low bidders will be held by the City until the selected bidder has accomplished the following:

- A. Executed a formal contract;
- B. Executed and delivered to the City a Performance Bond and Payment Bond, both in the amount equal to 100% of the Contract Price;
- C. Furnish proof of public works bond filed with BOLI; and
- D. Furnish the required Certificates of Insurance.

Upon the execution and delivery to the City of St. Helens of the Contract and Performance Bond and Payment Bond and furnishing proof of a public works bond filed with BOLI by the successful bidder, the bid security shall be returned to the bidder. The bidder who has been awarded a contract and who fails or neglects to promptly and properly execute the contract or bonds shall forfeit the bid security that accompanied the bid. It is hereby specially provided that a forfeiture of said bid security be declared by the Council if the contract and performance bond and payment bond are not executed and delivered to the City within ten (10) working days of the day of the receipt by the successful bidder of the prepared contract. The Council, at its option, may determine that the bidder has abandoned the submitted accepted bid, in which case the bid security shall become the sole property of the City and shall be considered as liquidated damages and not as a penalty for failure of the bidder to execute the contract and bond. The security of unsuccessful bidders shall be returned to them after the contract has been awarded and duly signed.

- j. A Bidder submitting a bid thereby certifies that no officer, agent, or employee of the City who has a pecuniary interest in this bid has participated in the contract negotiations on the part of the City, that the Bid is made in good faith without fraud, collusion, or connection of any kind with any other Bidder for the same call for bids, and that the Bidder is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.
- k. The Bidder, in submitting the bid, certifies that the Bidder has not been disqualified and is eligible to receive a contract for a public work pursuant to ORS 279C.860 as well as the disqualification provisions of ORS 279C.440 and OAR 137-049-0370. Bidder agrees, if awarded a contract, that every subcontractor will not be ineligible to receive a contract for a public work pursuant to ORS 279C.860 and will otherwise not be disqualified under ORS 279C.440 and OAR 137-049-0370.

#### **4. PREOFFER CONFERENCE AND PREQUALIFICATION OF BIDDERS**

If a pre-bid conference is scheduled, notice will be provided in accordance with OAR 137-049-0200(1)(a)(B). If prequalification will be required it will be specifically stated in the Notice to Contractors and Invitation to Bid, including the date prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be pre-qualified. For example, the requirement for ODOT Prequalification reads as follows:

Bidders must be pre-qualified with the Oregon Department of Transportation or General Service per ORS 279C.435 to perform the type and size of work contemplated herein and shall submit, to the City upon request. The City will investigate and determine the qualifications for the apparent low bidder prior to awarding the contract.

Applications submitted without being designated for a project advertised for bid by the City will be considered as a general prequalification application and processed pursuant to ORS 279C.430 to 279C.450, and notice of prequalification status will be given within thirty (30) days of the receipt of the application. A notice of disqualification can be given orally. An oral disqualification notice will be followed by written notice and bear the date of the oral notice. (NOTE: No person may engage in any business within the City without first obtaining a City Business License and paying the fee prescribed pursuant to City of St. Helens Ordinance 1392 as amended.)

#### **5. FORM OF BID**

- a. Bids shall be submitted in sealed envelopes to:
  - City Administrator
  - City of St. Helens
  - 265 Strand Street
  - St. Helens, Oregon 97051
  - Attention: John Walsh

The outside of the transmittal envelope shall bear the following information:

- Name of Bidder
- Address and telephone number of Bidder
- Title of Project
- Date of opening
- The words "Sealed Bid"

If the sealed bid is forwarded by mail or messenger service, the sealed envelope containing the bid, and marked as above, must be enclosed in another envelope addressed as noted above. Facsimile and Electronic Data Interchange bids

shall not be accepted unless otherwise specified in the Special Provisions. No bid will be received or considered by the City unless the bid contains all the Required Bid Documents and Certifications.

- b. All bids must be clearly and distinctly typed or written with ink or indelible pencil and be on the Bid form furnished by Owner. The bid must be signed by the Contractor or a duly authorized agent. If erasures or other changes appear on the form, they shall be initialed in ink by the person who signs the bid. The bidder shall not alter, modify or change the Bid forms except as directed by addendum. All applicable blanks giving general information must be completed, in addition to necessary unit price items and total prices in the column of totals to make a complete bid. The Bid is the bidder's offer to enter into a contract which, if the Bid is accepted for award, binds the bidder to a contract and the terms and conditions contained in the Bid, as well as the Solicitation Documents. A bidder shall not make the Bid contingent upon the City's acceptance of specifications or contract terms which conflict with or are in addition to those advertised in the Notice to Contractors and Invitation to Bid. Any statement accompanying and tending to qualify a bid may cause rejection of such bid, unless such statement is required in a bid embracing alternative bids.
- c. Unless otherwise specified, Bidders shall bid on all bid items included in the bid and the low Bidder shall be determined. Except as provided herein, bids which are incomplete, or fail to reply to all items required in the bid may be rejected.
- d. Bidders shall state whether business is being done as an individual, a co-partnership, a corporation, or a combination thereof, and if incorporated, in what state, and if a co-partnership, state names of all partners. The person signing on behalf of a corporation, a co-partnership or combination thereof shall state their position with the firm or corporation, and state whether the corporation is licensed to do business in the State of Oregon.

#### **6. LATE BIDS**

Bids received after the scheduled bid submission deadline set forth in the invitation for bids will be rejected. Bids will be time and date stamped by City Hall personnel upon receipt. Such time and date stamps will govern the determination of on-time submission of bids. Bids received after the time so fixed are late bids. Late bids will be time and date stamped at the time of receipt by City personnel, marked as "Rejected as Late Bid" and will be returned, unopened, to the submitted.

#### **7. INTERPRETATION OF CONTRACT AND ADDENDA**

If a bidder finds error, discrepancies in, or omissions from the plans, specifications or contract documents, or has doubt as to their interpretation or meaning, the bidder shall at once notify the City Contact Person. The City will investigate and determine if an addendum will be issued.

If it should appear to a Bidder that the work to be done or matters relative thereto are not sufficiently described or explained in the Contract Documents or that Contract Documents are not definite and clear, or the Bidder needs additional information or an interpretation of the contract, the Bidder may make written inquiry regarding same to the Engineer at least ten (10) days, unless otherwise specified, before the scheduled bid submission deadline for submission of bids.

If, in the opinion of the Engineer, additional information or interpretation is required, an addendum will be issued to all known specification holders.

Any addendum or addenda issued by the City which may include changes, corrections, additions, interpretations or information, and issued seventy-two (72) hours or more before the scheduled bid submission deadline for submission of bids, Saturday, Sunday and legal holidays not included, shall be binding upon the Bidder. City shall supply copies of such Addenda will not be mailed but will be posted on the website and available at City Hall; failure of the Contractor to receive or obtain such addenda shall not excuse them from compliance therewith if they are awarded the contract.

ORAL INSTRUCTIONS OR INFORMATION CONCERNING THE CONTRACT OR THE PROJECT GIVEN OUT BY OFFICERS, EMPLOYEES OR AGENTS OF THE CITY TO PROSPECTIVE BIDDERS SHALL NOT BIND THE CITY.

#### **8. EXAMINATION OF CONTRACT, SITE OF WORK AND SUBSURFACE DATA**

- a. Prior to submitting a bid, it is the responsibility of each Bidder to:
  - A. Examine the plans, specifications and contract documents thoroughly.
  - B. Become fully informed as to the quality and quantity of materials and the character of the work required.
  - C. Visit the site to become familiar with local conditions that may affect cost, progress, or performance of the work and sources and supply of materials.
  - D. Consider all federal, state and local laws, ordinances, rules and regulations that may affect cost, progress, or performance of the work, including environmental and natural resource ordinance and regulations
  - E. Consider identified site conditions and conduct pre-bid inspection to address environmental and natural resource laws implicated by the project.
  - F. Study and correlate the Bidder's observations, especially as regards site conditions with the Contract Documents.
  - G. Notify the Contact Person of all conflicts, errors, ambiguities or discrepancies discovered in the Contract Documents.
- b. Bidders shall determine for themselves all the conditions and circumstances affecting the project or the cost of the proposed work, including without limitation utility interferences, by personal examination of the site, careful review of the Contract and by such other means as the Bidder feels may be necessary. It is understood and agreed that information regarding subsurface or other conditions, or obstructions indicated in the Contract Documents, is provided by Owner only for the convenience of Bidders and may not be complete or accurate and such information is not expressly or tacitly warranted to accurately represent actual conditions. Bidder's use of such information shall be at Bidder's sole risk, and Bidder is responsible to confirm any information provided from such independent sources as Bidder feels may be necessary.
- c. Logs of test holes, test pits, soils reports, ground-water levels and other supplementary subsurface information are offered as information of underlying materials and conditions at the locations actually tested. Owner will not be liable for any loss sustained by the Bidder as a result of any variance between conditions contained in or interpretations of test reports and the actual conditions encountered during progress of the work.
- d. The submission of a Bid shall be conclusive evidence that the Bidder has investigated and is satisfied as to the site subsurface conditions to be encountered, as to the character, quality and quantities of work to be performed and materials to be furnished, and as to the requirements of the Contract.
- e. The City will not pay any costs incurred by any Bidder in the submission of a Bid, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the invitation to bid. When submitting a bid, the Bidder agrees that consideration has been given to the requirements and conditions contained throughout these bid documents.
- f. Notice: It is further understood that a bid awarded hereunder is subject to the City being able to comply with all zoning and land development ordinances or obtain rezoning of the property where necessary, and comply with local building code restrictions and conditions for structures contemplated in the project, any or all of which conditions may be contained in the contract or contract Special Provisions and if such conditions are not satisfied may result in termination of the contract.

**9. FAMILIARITY WITH LAWS AND ORDINANCES**

- a. The Bidder is presumed to be familiar with all Federal, State, and local laws, ordinances, and regulations which in any manner affect those engaged or employed in the work or the materials or equipment used in the proposed construction, or which in any way affect the conduct of the work. If the Bidder, or Contractor, shall discover any provision in the Contract which is contrary to or inconsistent with any law, ordinance or regulation, it shall immediately be reported to the Owner in writing.
- b. No person may engage in any business within the City without first obtaining a City business license and paying the fee prescribed pursuant to City of St. Helens Ordinance. The Contractor and their



subcontractors shall obtain a City of St. Helens business license prior to beginning any work within the City of St. Helens.

**10. UNIT BIDS**

- a. The estimate of quantities of work to be done under unit price bids is approximate and is given only as a basis of calculation for comparison of bids and award of the Contract. The City does not warrant that the actual amount of work will correspond to the amount as shown or estimated. Payment will be made at unit prices under a contract, only for work actually performed or materials actually furnished according to actual measurement that were necessary to complete the work.
- b. Bidders must include in their bid prices the entire cost of each item of work set forth in the bid, and when, in the opinion of the City, the prices in any bid are obviously unbalanced, such bid may be rejected.
- c. The unit contract prices for the various bid items of the contract shall be full compensation for all labor, materials, supplies, equipment, tools and all things of whatsoever nature are required for the complete incorporation of the item into the work the same as though the item were to read "In Place."

**11. WITHDRAWAL, MODIFICATION OR ALTERATION OF BID**

- a. Bids may be withdrawn on written request received from the bidders prior to the time fixed for opening. The request shall be executed by the bidder or a duly authorized representative. The withdrawal of a bid does not prejudice the right of the bidder to file a new bid. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened. The bid will be irrevocable until such time as the City:
  - A. Specifically rejects the bid, and
  - B. Awards the contract to another bidder and said contract is properly executed.

All bids shall remain subject to acceptance by the City for sixty (60) days after the date of the bid opening.

- b. Prior to Bid Opening, changes may be made provided the change is initialed by the Bidder or the Bidder's agent. If the intent of the Bidder is not clearly identifiable, the interpretation most advantageous to Owner will prevail.
- c. No Bidder may withdraw a bid after bid opening unless sixty (60) days have elapsed and the City has not awarded a contract.

**12. MISTAKES IN BIDS**

- a. To protect the integrity of the competitive solicitation process and to assure fair treatment of Bidders, City will carefully consider whether to permit waiver, correction or withdrawal for certain mistakes.
- b. Treatment of Mistakes. City shall not allow a Bidder to correct or withdraw a Bid for an error in judgment. If the City discovers certain mistakes in a Bid after Opening, but before award of the Contract, the City may take the following action:
  - A. City may waive, or permit a Bidder to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Bid, or an insignificant mistake that can be waived or corrected without prejudice to other Bidders. Examples of minor informalities include a Bidder's failure to:
    - 1) Return the correct number of Signed Bids or the correct number of other documents required by the Solicitation Document;
    - 2) Sign the Bid in the designated block, provided a Signature appears elsewhere in the Bid, evidencing an intent to be bound; and

- 3) Acknowledge receipt of an Addendum to the Solicitation Document, provided: it is clear on the face of the Bid that the Bidder received the Addendum and intended to be bound by its terms; and the Addendum involved did not affect price, quantity or delivery.
- B. City may correct a clerical error if the error is evident on the face of the Bid, or other documents submitted with the Bid, and the Bidder confirms the City's correction in Writing. A clerical error is a Bidder's error in transcribing its Bid. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Bid). In the event of a discrepancy, unit prices shall prevail over extended prices.
- C. City may permit a Bidder to withdraw a Bid based on one or more clerical errors in the Bid only if the Bidder shows with objective proof and by clear and convincing evidence:
- 1) The nature of the error;
  - 2) That the error is not a minor informality under this subsection or an error in judgment;
  - 3) That the error cannot be corrected or waived under subparagraph B of this subsection;
  - 4) That the Bidder acted in good faith in submitting a Bid that contained the claimed error and in claiming that the alleged error in the Bid exists;
  - 5) That the Bidder acted without gross negligence in submitting a Bid that contained a claimed error;
  - 6) That the Bidder will suffer substantial detriment if the City does not grant it permission to withdraw the Bid;
  - 7) That the City's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the City or the public it represents; and
  - 8) That the Bidder promptly gave notice of the claimed error to the City.
- D. The criteria in subsection C above shall determine whether a City will permit a Bidder to withdraw its Bid after the bid submission deadline. These criteria also shall apply to the question whether an City will permit a Bidder to withdraw its Bid without forfeiture of its bid bond (or other bid security), or without liability to the City based on the difference between the amount of the Bidder's Bid and the amount of the contract actually awarded by the City, whether by award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.
- E. The City shall reject any Bid in which a mistake is evident on the face of the Bid and the intended correct Bid is not evident or cannot be substantiated from documents accompanying the Bid, i.e., documents submitted with the Bid.

### 13. REJECTION OF BIDS

- a. The City may reject any bid upon a finding that the Bid meets the criteria specified in OAR 137-049-0440(1)(a) or (b) or has not provided the certification required under OAR 137-049-0440(3). The City shall reject a Bid from a Bidder who meets the criteria specified in OAR 137-049-0440(1)(c). The City may, for good cause, reject any or all bids upon a finding it is in the public interest to do so. In any case where competitive bids are required and all bids are rejected, and the proposed contract is not abandoned, new bids may be called for as in the first instance. The City may, at its own discretion, waive minor informalities.
- b. This invitation to bid does not commit the City to pay any costs incurred by any Bidder in the submission of a Bid, or in making necessary studies, subsurface investigations or designs for the preparation of a Bid, or for procuring or contracting for the items to be furnished pursuant to the Contract Documents.

- c. The City reserves the right to reject any or all bids when such rejection is in the best interest of the City of St. Helens. Bids may be rejected if they show any alteration of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind.
- d. When Bids are signed by an agent, other than the officer or officers of a corporation authorized to sign contracts on its behalf, or a member of a partnership, a "Power of Attorney" must be submitted with the Bid or on file with the City Administrator prior to opening of bids; otherwise, the Bid will be rejected as irregular.
- e. More than one Bid from an individual, firm, partnership, corporation, or combination thereof with an interest in more than one bid, for the items bid, will be cause for the rejection of all Bids in which such individual, firm, partnership, corporation, or combination thereof, is interested.
- f. **If there is reason to believe that collusion exists among bidders, none of the bids of the participants in such collusion will be considered, and all involved bids shall be rejected. Bids in which prices are obviously unbalanced may be rejected.**

**14. BID PROTEST.**

Bidders may, in writing protest or request changes of any specifications or contract terms in accordance with adopted City contracting rules. The written protest or request for changes must be received by the City no later than ten (10) calendar days prior to the Bid Submission Deadline. The written protest or request shall include the reasons for the protest or request, and any proposed changes to the bid specifications or contract terms and a description of the prejudice to the bidder. Envelopes containing bid protests shall be marked "Contract Provision Protects or Request" with the Bid Number and Bid Submission Deadline. No protest against award, owing to the content of the bid specifications or contract terms shall be considered after the deadline established for submitting protests of bid specifications or contract terms.

**15. ORS 654.150 SANITARY FACILITIES AT CONSTRUCTION PROJECTS STANDARDS, EXEMPTIONS**

If the contract price is estimated (itemized bid) or bid (lump sum) by Contractor at \$1,000,000 or more, Contractor shall be responsible for all costs (which costs shall be included in the bid whether or not a specific bid item is provided therefore) that may be incurred in complying with or securing exemption or partial exemption from the requirements of ORS 654.150 (Sanitary facilities at construction projects; standards, exemptions) and the rules adopted pursuant thereto. Determination of applicability of ORS 654.150 to the project is the sole responsibility of the Contractor.



## EXHIBIT J

### OREGON PREVAILING WAGE RATES

#### UNDERGROUNDING ELECTRICAL SERVICES ON THE S 1ST STREET – STRAND STREET ROAD & UTILITIES EXTENSION PROJECT PROJECT NO. M-532

- i. Workers must be paid not less than the applicable state prevailing rate of wage. ORS 279C.830(1)(c); OAR 839-025-0020(3)(a)
- ii. If the Contractor fails to pay for labor and services, the City can pay for them and withhold these amounts from payments to the contractor. ORS 279C.515; OAR 839-025-0020(2)(a)
- iii. The Contractor must pay daily, weekly, weekend and holiday overtime as required in ORS 279C.540. ORS 279C.520(1); OAR 839-025-0020(2)(b)
- iv. The employer must give written notice to the workers of the number of hours per day and days per week they may be required to work. ORS 279C.520(2); OAR 839-025-0020(2)(c)
- v. The Contractor must make prompt payment for all medical services for which the Contractor has agreed to pay, and for all amounts for which the contractor collects or deducts from the worker's wages. ORS 279C.530; OAR 839-025-0020(2)(d)
- vi. The Contractor is required to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt. ORS 279C.830(2)(a); OAR 839-025-0020(2)(e)(A)
- vii. The Contractor is required to include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt. ORS 279C.830(2)(b); OAR 839-025-0020(2)(e)(B)

Applicable Oregon prevailing wage rates are contained in the publication,  
Prevailing Wage Rates for Public Works Contracts in Oregon effective as of the date the Bidding Documents  
are first advertised.

See Oregon Bureau of Labor and Industries website links at:  
<http://www.oregon.gov/BOLI/WHD/PWR/pages/index.aspx>

## **PWR REQUIRED POSTINGS ALL CONTRACTORS AND SUBCONTRACTORS**

### **PREVAILING WAGE RATES**

Each and every contractor and subcontractor engaged in work on a public works must post the applicable prevailing wage rates for that project in a conspicuous place at the work site, so workers have ready access to the information. ORS 279C.840(4); OAR 839-025-0033(1).

### **DETAILS OF FRINGE BENEFIT PROGRAMS**

When a contractor or subcontractor provides for or contributes to a health and welfare plan or a pension plan, or both, for the contractor or subcontractor's employees who are working on a public works project, the details of all fringe benefit plans or programs must be posted on the work site. The posting must include a description of the plan or plans, information about how and where claims can be made and where to obtain more information. The notice must be posted in a conspicuous place at the work site in the same location as the prevailing wage rates (see above). ORS 279C.840(5); OAR 839-025-0033(2)

### **WORK SCHEDULE**

Contractors and subcontractors must give workers the regular work schedule (days of the week and number of hours per day) in writing, before beginning work on the project. Contractors and subcontractors may provide the schedule at the time of hire, prior to starting work on the contract, or by posting the schedule in a location frequented by employees, along with the prevailing wage rate information and any fringe benefit information. If an employer fails to give written notice of the worker's schedule, the work schedule will be presumed to be a five-day schedule. The schedule may only be changed if the change is intended to be permanent and is not designed to evade the PWR overtime requirements. ORS 279C.540(2); OAR 839-025-0034.

## PUBLIC WORKS BONDS

EVERY CONTRACTOR AND SUBCONTRACTOR who works on public works projects subject to the prevailing wage rate (PWR) law is required to file a **\$30,000 "PUBLIC WORKS BOND"** with the Construction Contractor's Board (CCB). (ORS 279C.836) This includes flagging and landscaping companies, temporary employment agencies, and sometimes sole proprietors.

- This bond is to be USED EXCLUSIVELY FOR UNPAID WAGES determined to be due by the Bureau of Labor and Industries (BOLI).
- The bond MUST be filed BEFORE STARTING WORK on a prevailing wage rate project.
- The bond is in effect CONTINUOUSLY (do not have to have one per project).
- BEFORE PERMITTING A SUBCONTRACTOR TO START WORK on a public works project, CONTRACTORS MUST VERIFY their subcontractors have either filed the bond, or have elected not to file a public works bond due to a bona fide exemption.
- A public works bond is in addition to any other required bond the contractor or subcontractor is required to obtain.

### Exemptions:

- Allowed for a disadvantaged business enterprise, a minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business certified under ORS 200.055, for the first FOUR years of certification;
  - Exempt contractor must still file written verification of certification with the CCB, and give the CCB written notice that they elect not to file a bond.
  - The prime contractor must give written notice to the public agency that they elect not to file a public works bond.
  - Subcontractors must give written notice to the prime contractor that they elect not to file a public works bond.
  - For projects with a total project cost of \$100,000 or less, a public works bond is not required. (Note this is the total project cost, not an individual contract amount.)
  - Emergency projects, as defined in ORS 279A.010(f).

### ORS 279C.830(2) requires:

That the specifications for every contract for public works shall contain a provision stating that the contractor and every subcontractor must have a public works bond filed with the CCB before starting work on the project, unless otherwise exempt.

Every contract awarded by a contracting agency shall contain a provision requiring the contractor:

- To have a public works bond filed with the CCB before starting work on the project, unless otherwise exempt;
- To include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the CCB before starting work on the project unless otherwise exempt.

Every subcontract that a contractor or subcontractor awards in connection with a public works contract must require any subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the public works project, unless otherwise exempt.

## Part 3

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# 2021 Oregon Standard Specifications for Construction

[https://www.oregon.gov/odot/Business/Pages/Standard Specifications.aspx](https://www.oregon.gov/odot/Business/Pages/Standard_Specifications.aspx)

Part 4

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**City of St. Helens  
Engineering Standards  
Manual Municipal  
Code Title 18**

<https://www.codepublishing.com/OR/StHelens/>



Part 5

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# **Special Provisions & Technical Specifications**