

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)
**CONSULTANT SERVICES AGREEMENT
FOR PROFESSIONAL SERVICES
2026 ADA TRANSITION PLAN
TOWN PROJECT NO. SPEC0007**

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2026, by and between the **TOWN OF HORIZON CITY**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the "**City**", and ASA Architects hereinafter referred to as the "**Consultant**".

RECITALS

WHEREAS, on or about April 21, 2026, the City issued a Request for Qualifications ("RFQ") in accordance with The Texas Government Code Chapter 2254 (*The Professional Services Procurement Act*) and selected Consultant based upon their qualifications to perform the services described in the Request For Qualifications;

WHEREAS, the City desires to engage the services of an Architectural firm to provide Consultant Design and Support Services for the Project described herein; and

WHEREAS the Architect is qualified and was selected through the City's selection procedure, in accordance with all applicable state and local laws and ordinances and is willing to provide the services in accordance with the terms contained herein.

AGREEMENT

NOW, THEREFORE, for the consideration set forth in the Agreement, the City and the Consultant agree to the following terms and conditions.

**ARTICLE I.
ATTACHMENTS**

1.1 The below attachments are hereby attached to this Agreement for Consultant Design and Support Services – 2026 ADA Transition Plan, (Town Project No. SPEC0007), hereinafter referred to as the ("Project"), and are incorporated herein by reference for all purposes, as follows:

Attachment "A" Scope of Services and Project Budget
Attachment "B" Architect's Fee Proposal and Unit/Hourly Rates
Attachment "C" Insurance Certificates

ARTICLE II.
PROJECT COVERED UNDER THIS AGREEMENT

2.1 The City hereby agrees to retain the Consultant, and the Consultant agrees to perform professional services and review services as a professional for the Project covered by this Agreement. The Project shall consist of the Consultant completion of the Scope of Services as further described in **Attachment "A"**.

2.2 The Consultant shall serve as the City's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the City during the performance of services.

2.3 The City shall provide all available information to the Consultant as to the Project for which Consultant will provide the services for the City.

2.5 The City shall provide all available information to the Consultant as to the City's general requirements for the Project. Should the Consultant determine that the information provided is inadequate to proceed, Consultant shall notify the CIP Manager, who shall direct the Consultant on how to acquire or develop the needed information. The City shall also provide the Consultant all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site.

2.6 The City hereby designates the CIP Manager as the City's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The CIP Manager shall have complete authority to transmit instructions, receive information, interpret, and define the City's policies and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. The CIP Manager will render written decisions within a five (5) working daytime period.

ARTICLE III.
CONSULTANT FEES AND PROJECT'S BUDGET

3.1 PAYMENT TO CONSULTANT. The total amount of compensation for all phases of the Project is One Hundred Five Thousand Five Hundred Twenty Three Dollars and No Cents (\$105,523.00)

3.1.1 The Mayor may authorize additional services as identified in **Attachment "A"** for this Agreement in an amount not to exceed ten percent (10%) of the total estimated Project amount identified in Section 3.1. Should any additional services as identified in **Attachment "A"** be necessary and the cost of the services exceed the identified additional ten percent (10%) of the total estimated Project amount identified in Section 3.1, such additional services and payment must be approved by the City Council of the Town of Horizon City.

3.2 CONSULTANT'S SERVICES. The Scope of Services to be provided by the Consultant for the Project are attached hereto as **Attachment "A"**.

3.3 CONSULTANT'S INVOICES. The Consultant shall bill the City separately for the services under this Agreement not more often than monthly. Invoices shall indicate the costs for outside consultants, if any, with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing.

3.3.1 Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget(s), the total amount(s) authorized for the Architect, the current invoiced amount(s), and the amount(s) billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date, also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both Parties.

3.3.2 The City agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from receipt pursuant to the Texas State Prompt Payment Act. Upon dispute, however, the City may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Amendment, executed by both Parties.

3.4 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the City or otherwise paid by the City, unless a written amendment to this Agreement is executed by both Parties allowing for additional costs.

3.5 INDEPENDENT CONTRACTOR. In the performance of work or services hereunder, the Consultant shall be deemed an independent contractor, and any of its employees performing work required hereunder shall be deemed employees of the Consultant.

3.6 SUBCONSULTANTS. The Consultant shall not award any work to any subconsultant or replace any subconsultant without prior written approval of the City. The Consultant will provide to the City a written statement concerning the proposed award or substitution of a subconsultant, which will include a Statement of Qualifications for such subconsultant and such additional information as the City may require, and City may verify the subconsultant's current eligibility status.

The Consultant shall be as fully responsible to the City for the acts and omissions of its subconsultants, and of persons either directly or indirectly employed by them, as the Consultant is for the acts and omissions of persons directly employed by it.

The Consultant shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subconsultants to the Consultant by the terms of this Agreement insofar as applicable to the work of subconsultants (including but not limited to the indemnification and insurance), and to give the Consultant the same power as regards to the termination of any subcontract that the City may exercise over the Consultant under this Agreement.

Nothing contained in this Agreement shall create any contractual relation between any subconsultant and the City. The City shall have no responsibility to any subconsultant employed by the Consultant for performance of work on the Project contemplated by this Agreement but said subconsultants will look exclusively to the Consultant for any payments due. In the performance of work or services hereunder, the subconsultants shall each be deemed an independent contractor, and any of its employees performing work required hereunder shall be deemed solely employees of the subconsultant.

ARTICLE IV. PERIOD OF SERVICE AND TERMINATION

4.1 PERIOD OF SERVICE. The services called for under the Project shall begin upon the issuance of a Notice to Proceed from the CIP Manager. The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in **Attachment "B"**.

4.2 TERMINATION. This Agreement for the Project may be terminated separately without affecting any other Agreement or amendment by and between the Parties for any other project, as provided herein. In the event of a termination of this Agreement, in whole or in part, the Consultant shall surrender all Project related documents to the City within five (5) business days of the effective date of the termination.

4.2.1 TERMINATION BY CITY. It is mutually understood and agreed by the Consultant and the City that the City may terminate this Agreement, in whole or in part for the convenience of the City, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the City's notice of termination. The City shall compensate Consultant in accordance with this Agreement; however, the City may withhold any payment to the Consultant that is held to be in dispute for the purpose of set-off until such time as the exact amount due the Consultant from the City is determined. Nothing contained herein, or elsewhere in this Agreement shall require the City to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

4.2.2 TERMINATION BY EITHER PARTY It is further understood and agreed by the Consultant and City that either Party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one Party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other Party.

No such termination shall be made unless the other Party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating Party prior to such termination. However, the City retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the City pursuant to this subsection, the City may withhold payments to the Consultant for the purpose of set-off until such time as the exact amount due the Consultant from the City is determined.

4.2.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE. Termination by either Party shall not be construed as a release of any claims that the terminating Party may be lawfully entitled to assert against the terminated Party. Further, the terminated Party shall not be relieved of any liability for damages sustained by the terminating Party by virtue of any breach of this Agreement. The provisions set forth in Section 5.2 shall survive the termination of this Agreement and continue to be applicable to the Agreement, unless otherwise specifically agreed to by the Parties.

ARTICLE V. INSURANCE AND INDEMNIFICATION

5.1 INSURANCE. The Consultant shall have **seven (7) calendar days** from date of award to obtain sufficient insurance as required herein. Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the City. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

5.1.1 WORKERS' COMPENSATION INSURANCE. The Consultant shall procure and shall maintain, at Consultant's sole expense, during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

"The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the City, its officers, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured."

5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE. The Consultant shall procure and shall maintain, at the Consultant's sole expense, and shall cause subconsultants to procure and maintain, during the life of this Agreement, such Commercial General Liability, Property Damage Liability, and Automobile Liability Insurance with the below coverages and limits

of insurance with insurers licensed to do business in the State of Texas. Certificates of such insurance and evidence of policy endorsement for additional insured(s) shall be executed by the insurer in a form satisfactory to the City. Such insurance shall also provide for the defense of the City as an additional insured. The minimum limits of liability and coverage shall be as follows:

a) **COMMERCIAL GENERAL LIABILITY**

\$500,000.00 per occurrence

\$1,000,000.00 General Aggregate

b) **AUTOMOBILE LIABILITY**

Combined Single Limit

\$1,000,000.00 per accident

5.1.3 PROFESSIONAL LIABILITY INSURANCE. The Consultant shall procure and shall maintain, at the Consultant's sole expense, and shall cause subconsultants to procure and maintain Professional Liability Insurance for the benefit of the City to cover the errors and omissions of the Consultant, its principals or officers, agents, or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) on a claims made basis.

5.1.4 CITY AS ADDITIONAL INSURED. The City shall be named as an Additional Insured on all of the Consultant's and subconsultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Agreement.

5.1.5 PROOF OF INSURANCE. The Consultant shall furnish the City with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this Agreement.

5.1.6 GENERAL INSURANCE PROVISIONS. All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "C"**. All certificates shall also include the name of the Project on the corresponding insurance certificate. Further, each certificate shall contain the following statement, and the policies shall be subject to such requirement:

"The insurance covered by this certificate will not be canceled, and there will be no change in coverage or deductibles, except after thirty (30) consecutive calendar days written notice of intent to cancel or change said insurance has been provided to the Town of Horizon City."

5.2 INDEMNIFICATION. THE CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM, ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO THE CONSULTANT'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE CONSULTANT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO THE CONSULTANT, OR ANY OTHER ENTITY OVER WHICH CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY THE CONSULTANT WITH THE CITY ATTORNEY IF THE CITY IS NAMED AS A DEFENDANT IN ANY LAWSUIT, AND THE CONSULTANT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE CITY ATTORNEY. THE CONSULTANT AND THE CITY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

ARTICLE VI. GENERAL PROVISIONS

6.1 CONSULTANT'S QUALITY OF WORK. The City's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant shall perform services with the professional skill and care ordinarily provided by competent Consultants practicing in the Town of Horizon City and the County of El Paso, Texas, and under the same or similar circumstances and professional license. The Consultant's services shall be performed as expeditiously as is prudent considering the ordinary skill and care of a competent Consultant and the orderly progress of the Project and in accordance with the time periods established in **Attachment "B"** and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the City's review, for the performance of the City's Engineers, if applicable, and for approval of submissions by authorities having jurisdiction over the Project. The Consultant understands that time is of the essence and the identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or the City.

6.3 AUDITING RECORDS FOR THIS PROJECT. The Consultant records subject to audit shall include but not be limited to records which, in the City's discretion, have a bearing on

matters of interest to the City in connection with the Consultant's work on the Project for the City and shall be open to inspection and subject to audit and/or reproduction by the City's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of: (a) the Consultant's compliance with contract requirements; and (b) compliance with provisions for computing Direct Personnel Expense with reimbursable expenses, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs as they may apply to costs associated with this Agreement. In those situations where the Consultant's records have been generated from computerized data, The Consultant agrees to provide the City's representatives with extracts of data files in computer-readable format on data disks or suitable alternative computer data exchange format.

The City or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photocopying (at the City's sole expense) of selected documents from time to time at reasonable times, places, and charges to the City, if the Consultant is making copies for the City, under this section at the request of the City.

6.4 COPYRIGHT AND REPRODUCTION RIGHTS. Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for the Project, and any other work of the Consultant under this Agreement that results in the Creation of Drawings, Specifications, concepts and design, including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the City, who shall be vested with all common law and statutory rights. The City shall have the right to the use of the Drawings, Specifications, and other documents for the maintenance, repair, remodeling, and renovation of the Project; provided, however, the Consultant shall have no liability for any use of one or more of the Instruments of Service by the City for maintenance, repair, remodeling, and renovation of the Project. The rights granted to the City herein for the use of the Drawings, Specifications, and other documents for additional projects shall not grant the City any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications, and documents. The Consultant shall provide the City with copies of the Instruments of Service in both electronic form and in hard copy.

6.5 SUCCESSORS AND ASSIGNS. This Agreement shall be binding on the City and the Consultant, their successors, and assigns. Neither Party may assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other. Any attempt to assign, transfer or sublet without the prior written consent of the other will be void.

6.6 VENUE. For the purpose of determining the place and the law governing the same, this Agreement is entered into in the Town of Horizon City and in the County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El

Paso, Texas.

6.7 COMPLIANCE WITH APPLICABLE LAWS – FEDERAL AND STATE

FUNDING REQUIREMENTS. The Consultant, at the Consultant's sole expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with applicable laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county, and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the City or the Consultant with respect to the use of federal and state funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal and state funds.

6.8 GOVERNING LAW. The Consultant shall comply with applicable Federal, State, and local laws and ordinances applicable to the work contemplated herein.

6.9 CAPTIONS. The captions of this Agreement are for information purposes only and shall in no way affect the substantive terms or conditions of this Agreement.

6.10 SEVERABILITY. Should any section, paragraph, or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

6.11 NOTICES. Any notice, demand, request, consent, or approval that either Party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the City: Town of Horizon City
 Andres Renteria, Mayor
 14999 Darrington Road
 Horizon City, Texas 79928

With a Copy to: Town of Horizon City
 Capital Improvement Manager
 14999 Darrington Road
 Horizon City, Texas 79928

To the Consultant: ASA Architects
 519 Rio Grande Ave.
 El Paso, TX 79902

Changes may be made to the names and addresses noted herein through timely, written notice to the other Party.

6.12 CONFLICTING PROVISIONS - ATTACHMENTS. Any provision contained in any Attachments to this Agreement or the Initial Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or

inconsistency.

6.13 TEXAS TORT CLAIMS ACT. The Consultant expressly agrees that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. The Consultant further expressly agrees that every act or omission of the City which, in any way, pertains to or arises out of this Agreement falls within the definition of a governmental function.

6.14 PROHIBITION ON CONTRACTS BOYCOTTING ENERGY COMPANIES. If the Consultant is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, the Consultant verifies that the Consultant does not boycott energy companies during the term of this Agreement and will not boycott energy companies during the term of this Agreement. If the Consultant does not make that verification, the Consultant must notify the City and state why the verification is not required.

6.15 FIREARMS. If the Consultant is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, the Consultant verifies that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association; and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association. If the Consultant does not make that verification, the Consultant must notify the City and state why the verification is not required.

6.16 FOREIGN TERRORIST ORGANIZATIONS. The Consultant represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

6.17 BOYCOTTING OF ISRAEL. If the Consultant is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, the Consultant certifies that the Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement. If the Consultant does not make that certification, the Consultant must notify the City and state why the certification is not required.

6.18 ENTIRE AGREEMENT FOR PROJECT. This Agreement, along with the Initial Agreement, including attachments, constitutes and expresses the entire agreement between the Parties and supersedes all prior negotiations, representations, or agreements, whether written or oral, with respect to the Project defined under this Agreement. This Agreement shall not be amended or modified, except by written amendment, executed by both Parties.

EXECUTED AND EFFECTIVE THE _____ DAY OF _____, 202__.

TOWN OF HORIZON CITY

By: _____
Andres Renteria, Mayor

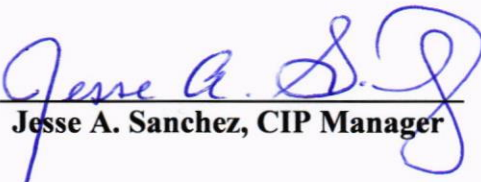
ATTEST:

By: _____
Elvia Schuller, TRMC
City Clerk

APPROVED AS TO FORM:

By: _____
Sylvia Borunda Firth
City Attorney

APPROVED AS TO CONTENT:

By:  _____
Jesse A. Sanchez, CIP Manager

CONSULTANT:

By: _____

Printed name: _____

Title: _____

Dated: _____, 2026

ACKNOWLEDGEMENTS

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____ 202_ by **Andres Renteria**, as **Mayor of the Town of Horizon City, Texas**.

Notary Public, State of Texas

My commission expires:

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____ 202_, by
_____, as _____ of

Notary Public, State of Texas

My commission expires:



August 24, 2026

The Town of Horizon City

14999 Darrington Road, Horizon City, Texas 79928

Attn: Jesse Sanchez, Capital Improvements Program Manager

Ref: **Town of Horizon City - SPEC0007 2026 ADA Transition Plan**

Dear Jesse,

Thank you for the opportunity to submit this proposal. ASA Architects is pleased to provide professional services to assist the Town of Horizon City in developing the SPEC0007 2026 ADA Transition Plan in accordance with Title II of the Americans with Disabilities Act (ADA) and the Texas Accessibility Standards (TAS).

Title II of the ADA requires public entities employing fifty (50) or more people to conduct a self-evaluation of public programs, services, activities, and facilities and to develop an ADA Transition Plan identifying barriers to accessibility and establishing a schedule for corrective actions. Based on our understanding, the Town of Horizon City does not currently maintain an ADA Transition Plan.

ASA Architects proposes to conduct facility assessments, perform a website accessibility audit, identify accessibility barriers, prioritize corrective actions, and prepare a comprehensive ADA Transition Plan to assist the Town in achieving compliance with applicable federal and state accessibility requirements.

Scope of Services; ASA Architects will provide the following professional services:

ADA Self-Evaluation

- Conduct an ADA Self-Evaluation of designated Town facilities and parks.
- Identify architectural barriers that may limit accessibility.
- Evaluate existing conditions and document accessibility deficiencies.

Website Accessibility Evaluation

- Evaluate the Town's official website for compliance with applicable digital accessibility requirements.
- Identify accessibility issues affecting users with disabilities.
- Provide recommendations for corrective actions.

ADA Transition Plan Development

- Compile findings from facility assessments and website evaluation.
- Develop a prioritized barrier removal strategy.
- Establish implementation milestones and recommendations.
- Prepare a comprehensive ADA Transition Plan for Town adoption.

Applicable Standards; The ADA Transition Plan will be developed in accordance with:

- Americans with Disabilities Act (ADA), Title II
- 2010 ADA Standards for Accessible Design
- Texas Accessibility Standards (TAS)
- Applicable guidance issued by the U.S. Department of Justice.



August 24, 2026

The Town of Horizon City

14999 Darrington Road, Horizon City, Texas 79928

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- Americans with Disabilities Act (ADA), Title II
- 2010 ADA Standards for Accessible Design
- Texas Accessibility Standards (TAS)
- Applicable guidance issued by the U.S. Department of Justice.

**Facility Assessments:**

Public Parks; ASA Architects will perform on-site evaluations of the following public parks:

- Rancho Desierto Bello Park, 14345 Sabio Drive
- Horizon Town Center Park, 13741 Town Center Drive
- Horizon Town Center Park 2 (West), 13720 Town Center Drive
- Horizon Town Center Park 2 (East), 13720 Town Center Drive
- David Ortiz Park, 3244 Kevin Boothe Drive
- Golden Eagle Park, 14467 Alberton Avenue
- Horizon Mesa Park, 601 Desert Mist Drive
- Desmond P. Corcoran Park, 400/500 Rodman Street
- West Eastlake Estates II Park, 14390 Steve Joyce Parkway
- Claret Cup Park, 14565 Claret Cup Drive

Public Buildings: The following facilities will be evaluated as part of the ADA Self-Evaluation:

- Horizon City Senior Center, 13969 Venny Webb Street
- Finance and Human Resources Department, 14999 Darrington Road
- Building Permits and Inspections Department, 14999 Darrington Road
- Public Works Department, 14999 Darrington Road
- Municipal Court and Police Department Facilities, 15021 Darrington Road
- Horizon City Economic Development Corporation (EDC) Building, 1525 Oxbow Drive

Website Accessibility Audit Services:

As part of this project, ASA Architects will coordinate a digital accessibility audit of the Town's official website.

Phase 1 - Accessibility Audit - Project Coordination

A Project Manager will coordinate with Town staff to:

- Establish project goals and expectations.
- Confirm points of contact.
- Develop the project schedule.
- Coordinate information and website access requirements.

Website Accessibility Evaluation

The website will be evaluated using industry-standard accessibility testing methodologies, including:

- Screen-reader testing.
- Manual accessibility review.
- Evaluation of representative website templates and content.
- Identification of accessibility deficiencies.

Accessibility Audit Report

The report will include:

- Executive summary of findings.
- Description of identified accessibility deficiencies.
- Screenshots and supporting documentation.
- Recommended corrective actions.
- Prioritized remediation recommendations.

Implementation Support

Implementation of corrective actions shall be the responsibility of the Town and/or its website developer.

ASA Architects' website accessibility specialist will provide up to three (3) hours of consultation and support at no additional cost. Additional support services may be provided upon request and billed separately.



Phase 2 - Verification Testing

First Verification Audit

Upon implementation of the recommended corrections, a follow-up review will be conducted to verify remediation efforts and confirm compliance with the recommendations contained in the Accessibility Audit Report. Any remaining accessibility deficiencies will be documented and provided to the Town for corrective action.

Requirements:

- Corrections must be completed within ninety (90) calendar days of issuance of the original audit report.
- Verification review will be completed within forty-five (45) calendar days of receiving the request.

Second Verification Audit

If additional corrective actions are required following the First Verification Audit, a second verification review may be performed.

Any remaining deficiencies will be documented and provided to the Town and/or website developer for resolution.

Requirements:

- Corrections must be completed within thirty (30) calendar days following the First Verification Audit.
- Verification review will be completed within forty-five (45) calendar days of receiving the request.

Accessibility Certification / VPAT

Upon successful completion of all required corrective actions and verification testing, an Accessibility Certificate and/or Voluntary Product Accessibility Template (VPAT), if applicable, may be issued.

The Accessibility Certificate and/or VPAT will be issued within ten (10) business days following verification that all identified accessibility deficiencies have been satisfactorily corrected.

ADA Transition Plan Deliverables:

Upon completion of the facility assessments and website accessibility review, ASA Architects will provide:

Facility Assessment Deliverables

- Inventory of identified accessibility barriers.
- Documentation of existing conditions including photographs and field observations.
- Evaluation of compliance with applicable ADA and TAS requirements.
- Identification of accessibility deficiencies and obstacles.
- Recommended corrective measures.

ADA Transition Plan Deliverables

- Executive Summary.
- Description of assessment methodology.
- Inventory of facilities assessed.
- Facility barrier inventory.
- Photographic documentation.
- Recommended corrective actions.
- Barrier prioritization matrix.
- Recommended implementation schedule.
- Compliance milestones.
- Website accessibility findings.
- Draft ADA Transition Plan for review.
- Final ADA Transition Plan incorporating Town comments.



Project Schedule

ASA Architects anticipates completing the project within **one hundred fifty (150) calendar days** from issuance of the Notice to Proceed (NTP).

Schedule of Activities

Task	Schedule
Notice to Proceed (NTP)	Day 0
Project Kickoff Meeting and Data Collection	Days 1-15
Review of Existing Documents and Background Information	Days 1-30
Field Assessment of Public Parks	Days 16-45
Field Assessment of Public Buildings	Days 31-60
Website Accessibility Audit	Days 16-60
Analysis of Findings and ADA/TAS Compliance Review	Days 61-90
Development of Barrier Inventory and Prioritization Matrix	Days 76-105
Preparation of Draft ADA Transition Plan	Days 91-120
Internal Quality Control Review	Days 111-120
Submission of Draft ADA Transition Plan	Day 120
Town Review and Comment Period	Days 121-135
Incorporation of Town Comments	Days 136-145
Final Quality Control Review	Days 146-148
Final ADA Transition Plan Submission	Day 150

Detailed Project Schedule

Phase 1 – Project Initiation (Days 1-15)

- Conduct project kickoff meeting with Town staff.
- Collect available plans, reports, facility information, policies, and supporting documentation.
- Establish communication protocols and project coordination procedures.
- Confirm facility access and finalize assessment schedule.

Phase 2 – Facility and Website Assessments (Days 16-60)

Facility Assessments

- Conduct on-site evaluations of all identified public parks.
- Conduct on-site evaluations of all identified public buildings.
- Document accessibility barriers and existing conditions.
- Prepare photographic documentation and field observations.



Website Accessibility Audit

- Perform accessibility testing and evaluation.
- Conduct screen-reader testing and manual accessibility review.
- Identify and document digital accessibility deficiencies.
- Prepare preliminary accessibility findings and recommendations.

Phase 3 – Analysis and ADA Transition Plan Development (Days 61-120)

- Analyze field assessment findings.
- Evaluate compliance with ADA and Texas Accessibility Standards.
- Develop facility-specific barrier inventories.
- Prioritize corrective actions based on accessibility impact and implementation complexity.
- Establish recommended implementation schedules and compliance milestones.
- Prepare the Draft ADA Transition Plan.

Milestone: Draft ADA Transition Plan submitted on **Day 120**.

Phase 4 – Town Review (Days 121-135)

- Town staff review of Draft ADA Transition Plan.
- Conduct one review meeting with designated Town representatives.
- Receive, review, and consolidate Town comments.

Phase 5 – Final ADA Transition Plan (Days 136-150)

- Incorporate Town review comments.
- Conduct final quality assurance and quality control review.
- Prepare final electronic deliverables.
- Submit Final ADA Transition Plan.

Milestone: Final ADA Transition Plan submitted on **Day 150**.

Assumptions

This proposal is based on the following assumptions:

- The Town will provide reasonable access to all facilities as identified in this proposal.
- Existing plans, reports, studies, and available documentation will be provided by the Town when available.
- Site visits will occur during normal operating hours.
- A Town representative will be designated as the primary project coordinator.
- One (1) review cycle of the Draft ADA Transition Plan is included within this scope.



Compensation

ASA Architects proposes to perform the services described herein for a **Lump Sum Fee of One Hundred Five Thousand Five Hundred Twenty-Three Dollars and No/100 (\$105,523.00).**

Services requested beyond the scope described in this proposal shall be considered Additional Services and will be performed only upon written authorization by the Town.

Standard Hourly Billing Rates

Personnel Classification	Hourly Rate
Principal Architect / Engineer	\$240.00
Associate Architect / Engineer	\$200.00
Project Architect / Engineer	\$180.00
Registered Accessibility Specialist (RAS)	\$140.00
Drafting Technician	\$90.00
Clerical Support	\$80.00
Website Audit Accessibility Expert	\$150.00

Exclusions

The following services are specifically excluded from this proposal unless otherwise authorized in writing as Additional Services:

1. Preparation of construction documents, technical specifications, bidding documents, or permit drawings for accessibility improvements identified during the assessment process.
2. Detailed construction cost estimates, budgeting services, or life-cycle cost analyses for recommended accessibility improvements.
3. Land surveying, boundary surveys, topographic surveys, utility mapping, geotechnical investigations, environmental assessments, or subsurface investigations.
4. Website remediation, coding modifications, content updates, software development, or implementation of recommendations identified during the website accessibility audit.
5. Evaluation of third-party software platforms, online payment systems, external applications, social media platforms, or linked websites maintained by vendors or third parties.
6. Ongoing accessibility monitoring, annual compliance reviews, recurring audits, or post-project compliance management services.
7. Development of departmental policies, procedures, employment practices, personnel policies, or operational ADA compliance programs beyond recommendations included within the ADA Transition Plan.

ASA Architects appreciates the opportunity to assist the Town of Horizon City with this important accessibility initiative. We look forward to partnering with Town staff to develop a practical and effective ADA Transition Plan that supports compliance, enhances accessibility, and promotes inclusive access to public facilities, programs, services, and digital resources.

If you have any questions, please do not hesitate to call. Thank you Sincerely

A handwritten signature in blue ink, appearing to read 'Genaro R. Mier', is written over a horizontal line.

Genaro R. Mier, AIA VP/Principal
ASA Architects



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/26/2026

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

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

PRODUCER Professional Liability Insurers Inc. Higginbotham Insurance Agency, Inc. 6101 Moon Street NE Suite 1000 Albuquerque NM 87111	CONTACT NAME: Eloise Hughes
	PHONE (A/C, No, Ext): 505-822-8114 FAX (A/C, No): 505-822-0341
	E-MAIL ADDRESS: ehughes@higginbotham.net
	INSURER(S) AFFORDING COVERAGE
	INSURER A: Transportation Insurance Company
	INSURER B: XL Specialty Insurance Co.
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

COVERAGES **CERTIFICATE NUMBER:** 1409881979 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						
	☐ CLAIMS-MADE ☐ OCCUR						EACH OCCURRENCE \$
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
							GENERAL AGGREGATE \$
							PRODUCTS - COMP/OP AGG \$
							\$
	AUTOMOBILE LIABILITY						
	☐ ANY AUTO						COMBINED SINGLE LIMIT (Ea accident) \$
	☐ OWNED AUTOS ONLY						BODILY INJURY (Per person) \$
	☐ HIRED AUTOS ONLY						BODILY INJURY (Per accident) \$
	☐ SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
	☐ NON-OWNED AUTOS ONLY						\$
							\$
	UMBRELLA LIAB						
	☐ OCCUR						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	☐ CLAIMS-MADE						\$
	☐ DED ☐ RETENTION \$						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐ Y ☐ N		7038419019	7/1/2026	7/1/2027	☒ PER STATUTE ☐ OTH-ER
	If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional Liability			DPR5052259	1/15/2026	1/15/2027	Each Claim Aggregate 2,000,000 4,000,000

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

Project: SPEC0007 2026 ADA Transition Plan. Waiver of subrogation applies to the certificate holder its officers, agents and employees for Workers Compensation as required by written contract.

CERTIFICATE HOLDER

Town of Horizon City 14999 Darrington Road Horizon City TX 79928	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/25/2026

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PRODUCER RSC Insurance Brokerage, Inc. 1690 S Telshor Blvd. Las Cruces NM 88011		CONTACT NAME: Jovanni Apodaca PHONE (A/C, No, Ext): 575-237-9342 E-MAIL ADDRESS: japodaca@risk-strategies.com FAX (A/C, No):	
INSURED ASA Architects, P.C. P.O. Box 146 Las Cruces NM 88004		INSURER(S) AFFORDING COVERAGE INSURER A: Cincinnati Insurance Company () INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
ASAARCH-01		NAIC # 10677	

COVERAGES

CERTIFICATE NUMBER: 371659448

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC ☐ OTHER:	Y	Y	ENP 0110292/EBA 0110292	1/1/2026	1/1/2027	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 500,000 PERSONAL & ADV INJURY \$ 10,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000 OTHER: \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY		Y	ENP 0110292/EBA 0110292	1/1/2026	1/1/2027	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Hired and Non-Owned \$ 1,000,000
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$			ENP 0110292/EBA 0110292	1/1/2026	1/1/2027	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 OTHER: \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐	N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Project: SPEC0007 2026 ADA Transition Plan

Town of Horizon City, its officers, agents and employees, and Owner are named as Additional Insured per Additional Insured Endorsement for ongoing and See Attached...

CERTIFICATE HOLDER**CANCELLATION**

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

AUTHORIZED REPRESENTATIVE

Town of Horizon City
14999 Darrington Road
Horizon City TX 79928

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/25/2026

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INSURED ASA Architects, P.C. P.O. Box 146 Las Cruces NM 88004	INSURER(S) AFFORDING COVERAGE INSURER A : Cincinnati Insurance Company () INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :	NAIC # 10677

COVERAGES**CERTIFICATE NUMBER:** 371659448**REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	ENP 0110292/EBA 0110292	1/1/2026	1/1/2027	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY		Y	ENP 0110292/EBA 0110292	1/1/2026	1/1/2027	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Hired and Non-Owned \$ 1,000,000
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			ENP 0110292/EBA 0110292	1/1/2026	1/1/2027	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

Project: SPEC0007 2026 ADA Transition Plan

Town of Horizon City, its officers, agents and employees, and Owner are named as Additional Insured per Additional Insured Endorsement for ongoing and See Attached...

CERTIFICATE HOLDER**CANCELLATION**

Town of Horizon City
14999 Darrington Road
Horizon City TX 79928

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AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

AGENCY RSC Insurance Brokerage, Inc.		NAMED INSURED ASA Architects, P.C. P.O. Box 146 Las Cruces NM 88004	
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

completed operation for General Liability as required by written contract. Town of Horizon City, its officers, agents and employees, and Owner are named as Additional Insured the General Liability policy per written contract. A waiver of subrogation exists in favor of Town of Horizon City, its officers, agents and employees, and Owner as to the general liability and auto policies per written contract. The general liability policy is primary and non-contributory. Thirty (30) day written notice of cancellation applies.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT - TEXAS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Endorsement - Table of Contents:

<u>Coverage:</u>	<u>Begins on Page:</u>
1. Employee Benefit Liability Coverage.....	2
2. Unintentional Failure To Disclose Hazards.....	8
3. Damage To Premises Rented To You.....	8
4. Supplementary Payments.....	10
5. Medical Payments.....	10
6. 180 Day Coverage For Newly Formed Or Acquired Organizations.....	10
7. Waiver Of Subrogation.....	10
8. Automatic Additional Insured - Specified Relationships:.....	10
(a) Managers Or Lessors Of Premises	
(b) Lessor Of Leased Equipment	
(c) Vendors	
(d) State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises	
(e) Mortgagee, Assignee Or Receiver	
9. Property Damage To Borrowed Equipment.....	13
10. Employees As Insureds - Specified Health Care Services And Good Samaritan Services.....	14
11. Broadened Notice Of Occurrence.....	14
12. Nonowned Aircraft.....	14
13. Bodily Injury Redefined.....	15
14. Expected Or Intended Injury Redefined.....	15
15. Former Employees As Insureds.....	15
16. Voluntary Property Damage Coverage and Care, Custody Or Control Liability Coverage.....	15
17. Broadened Contractual Liability - Work Within 50' Of Railroad Property.....	17
18. Alienated Premises.....	17

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 D) and Care, Custody Or Control Liability Coverage

Limits Of Insurance

Voluntary Property Damage Coverage:

\$1,000 Each Occurrence

\$5,000 Aggregate

Care, Custody Or Control Liability Coverage:

\$5,000 Each Occurrence unless otherwise stated \$ _____

Deductible Amount (Each Occurrence)

Voluntary Property Damage Coverage: \$250

Care, Custody Or Control Liability Coverage: \$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		
Care, Custody Or Control Liability			\$
TOTAL ANNUAL PREMIUM			\$

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 **C. Coverages, 1. Employee Benefit Liability Coverage, c. Limits Of Insurance** of this endorsement; 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 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 insured listed under C. Coverages, 1. Employee Benefit Liability Coverage, b. Who Is An Insured, (1) of this endorsement or any "employee" authorized by you to give or receive notice of a claim or "suit".

- a) Reports all, or any part, of the act, error or omission to us or any other insurer; or
- b) Receives a written or verbal demand or claim for damages because of the act, error or omission.

(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 of 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 Of Investment/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".

(f) 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 un-

der 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, defamation, 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 - Supplementary Payments - Coverages A and B also apply to this Coverage, however 1.b. and 2. of the Supplementary Payments provision do not apply.

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 partners, and their spouses are also insureds but only with respect to the conduct of your business.

(c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

(d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

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

(2) Each of the following is also an insured:

(a) Each of your "employees" who is or was authorized to administer your "employee benefit program";

(b) Any persons, organizations or "employees" having proper 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 organization. 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** of this endorsement 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** of 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** of this endorsement 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 shown in Section **B. Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.
- (b) The Deductible Amount shown in Section **B. Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement applies to all damages sustained by any one "employee", including such "employee's" 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-

tification 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, Omission, 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 4. Other Insurance is replaced by the following:

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Employee Benefit Liability Coverage, 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 Paragraph b. below.

b. 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.

c. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is insurance purchased by you to cover damages for acts, errors or omissions that occurred prior to the "first effective date".

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 "employees", including 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 or 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 bene-

fits 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:

- 5. "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".

- 18. "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, 6. 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 **n.** do not apply to 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.

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 fungus, 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 **1.b.** is replaced by the following:
- Up to the limit shown in Section **B. Limits Of Insurance**, **4.a.** Bail Bonds of this endorsement 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.

- b. Paragraph 1.d. 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 shown 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. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

7. Waiver Of Subrogation

Section IV - Commercial General Liability Conditions, 8. Transfer Of Rights Of Recovery Against Others To Us is amended by the addition of the following:

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.

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 you are required per Paragraph 8.a.(1) of this endorsement to provide insurance, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with 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(s) or organization(s) from whom you lease equipment you are required 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) you are required per Paragraph 8.a.(1) of this endorsement to provide insurance, but only with respect to liability for "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 unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- 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 you are required 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 sub-

division 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, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;
- (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 you are required 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;
- (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, or 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. 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.

- 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 **4. 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 Section **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 shown in Section **B. Limits Of Insurance, 9. Property Damage To Borrowed Equipment** of this endorsement 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 damages for each "occurrence" which are in excess of the Deductible Amount shown 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:

- 1) 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
- 2) 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 any insured listed under Paragraph **1.** of Section **II - Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "occurrence" or offense.

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, 3. "Bodily injury"** is replaced by the following:

- 3. "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. Section I - Coverages** is amended to include the following:

COVERAGE D - VOLUNTARY PROPERTY DAMAGE COVERAGE

(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:

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

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

As used in this definition, electronic data means in-

formation, facts or programs, stored as or on, created or used on, 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.

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, Paragraphs (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 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 shown 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 shown in Section B. Limits Of Insurance, 16. Voluntary Property Damage Coverage and Care, Custody Or Control Liability Coverage. 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, 9. "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 2.j. 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.

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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 01-01-2024	Policy Number: EBA 011 02 92
Named Insured: ASA ARCHITECTS P C, GMAT LLC	
Countersigned by:	

(Authorized Representative)

The person or organization named in the following schedule is an "insured" to the extent of their liability for the conduct of another "insured" as provided in **SECTION II - LIABILITY COVERAGE, A. Coverage, 1. Who is an Insured, Paragraph c.**

Schedule

Additional Insured

EL PASO INDEPENDENT SCHOOL DISTRICT

Address:

6531 BOEING DR
EL PASO, TX 79925-1008

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET WAIVER OF SUBROGATION - AUTO

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 01-01-2024	Policy Number: EBA 011 02 92
Named Insured: ASA ARCHITECTS P C, GMAT LLC	
Countersigned by:	

(Authorized Representative)

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

1. 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 of the "insured contract".

COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM

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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:
 - a. Which is in excess of the "underlying insurance"; or
 - b. Which is either excluded or not insured by "underlying insurance".
2. If any limit of insurance, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "bodily injury", "personal and advertising injury" or "property damage" arising out of that exposure unless that limit of insurance is specified in the Schedule of Underlying Insurance.
3. This insurance applies to "bodily injury", "personal and advertising injury" or "property damage" only if:
 - a. The "bodily injury", "personal and advertising injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
 - b. The "bodily injury" or "property damage" occurs during the policy period shown in the Declarations; or
 - c. The "personal and advertising injury" results from an "occurrence" that takes place during the policy period shown in the Declarations; and
- d. Prior to the "coverage term" no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part, or that the "personal and advertising injury" offense had been committed, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the "coverage term", that the "bodily injury" or "property damage" occurred, or that the "personal and advertising injury" offense had been committed, then any continuation, change or resumption of such "bodily injury", "personal and advertising injury" or "property damage" during or after the "coverage term" will be deemed to have been known prior to the policy period.
4. "Bodily injury" or "property damage" which occurs during the "coverage term" and was not, prior to the "coverage term", known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "coverage term".
5. "Personal and advertising injury" caused by an offense which was committed during the "coverage term" and was not, prior to the "coverage term", known to have been committed by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "personal and advertising injury" offense after the end of the "coverage term".
6. "Bodily injury" or "property damage" will be deemed to have been known to have occurred, or a "personal and advertising injury" offense will be deemed to have been known to have been committed at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- a. Reports all, or any part, of the "bodily injury", "personal and advertising injury" or "property damage" to us or any other insurer;
 - b. Receives a written or verbal demand or claim for damages because of the "bodily injury", "personal and advertising injury" or "property damage"; or
 - c. Becomes aware by any other means that "bodily injury" or "property damage" had occurred or has begun to occur, or that the "personal and advertising injury" offense had been committed or has begun to be committed.
7. 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:

1. Asbestos

Any liability arising out of, attributable to or any way related to asbestos in any form or transmitted in any manner.

2. Breach of Contract, Failure to Perform, Wrong Description and Violation of Another's Rights

"Personal and advertising injury":

- a. Arising out of breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
- b. Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- c. Arising out of the wrong description of the price of goods, products or services stated in your "advertisement"; or
- d. 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":

- a. That the insured would have in the absence of the contract or agreement; or
- b. 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. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. 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:

- a. Property:
 - (1) 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; or
 - (2) Owned or transported by the insured and arising out of the ownership, maintenance or use of an "auto".
- b. Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. Personal property in the care, custody or control of the insured;

- e. 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
- f. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

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

Paragraphs **a.(2), c., d., e.** and **f.** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs **c.** and **d.** of this exclusion do not apply to liability assumed under a written Trailer Interchange agreement.

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

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 or Recording of Material or Information in Violation of Law

Any liability 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;
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- d. Any federal, state or local statute, ordinance or regulation, other than the

TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, 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".

However, this exclusion does not apply:

- (1) To liability for damages because of "bodily injury"; or
- (2) 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.

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, discrimination or malicious prosecution 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 12.a.(1), (2), or (3) above is directed.

This exclusion applies:

- a. Whether the injury-causing event described in Paragraphs 12.a.(1), (2), or (3) above occurs before employment, during employment or after employment of that person;
- b. Whether the insured may be liable as an employer or in any other capacity; and
- c. 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 in any manner 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 in any manner 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 websites 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. Under this exclusion, such other intellectual property

rights do not include the use of another's advertising idea in your "advertisement".

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 by the insured for movement 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 the 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 of fuels, 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 on your behalf by a contractor or 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";
- 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 metatag or any other similar tactics to mislead another's potential customers.

20. 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.

21. 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 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 Limit 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 (including bonds for related traffic law violations) required because of an "occurrence" we cover. 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 court costs taxed against the insured in the "suit". However, these payments do not include attorneys'

fees or attorneys' expenses taxed against the insured.

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 prejudgment 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":
- 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 and conditions of this insurance, any other person or organization not addressed by Paragraphs 1. and 2. above, but covered in the "underlying insurance" listed in the Schedule of Underlying Insurance are also insureds, but only to the extent that insurance is provided for such person or organization by the "underlying insurance".

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, "suits" brought or number of vehicles involved or insured; 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 at-

tributed 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.

- (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,

for 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, and included within, the Limit of Insurance described in 4. above, we will not pay more than the limit of insurance required for the layer of insurance provided by this Coverage Part on behalf of:

- a. An additional insured, as set forth in **SECTION II – WHO IS AN INSURED, Paragraph 3**; or
- b. A party you have agreed to indemnify in an "insured contract".

6. Subject to the limits described in 2., 3., 4. and 5. 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".

7. 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 premium 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 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.

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 I - 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 I - 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.
- e. You must notify us in writing as soon as practicable when any "underlying insurance" is no longer in effect or the limits or scope of coverage of any "underlying insurance" is changed.

9. Other Insurance

- a. 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.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends and coverage is otherwise applicable, we will have the right, but not the duty to undertake to do so, provided that whomever we agree to defend and the Named Insured assign their rights to us under the policies of the insurers who did not defend. Such assignment must be in writing.

- b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" 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.

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

- 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 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.

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 websites, only that part of a website 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 increment, 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, 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 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

- g. 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, roadbeds, 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 website 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 websites and web-banners; hosting websites; 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 website 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 harmless 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 Paragraph 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 Paragraph 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 vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Any land vehicle subject to a compulsory or financial responsibility law or other motor vehicle insurance law is considered an "auto".

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 taint 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.

- (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 vote for election of directors is owned or controlled, directly or indirectly, in any combination, by one or more of the Named Insureds.
22. "Suit" means a civil proceeding in which money damages because of "bodily injury", "personal and advertising injury" or "property damage" 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;
 - (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.

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 this Coverage Part 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 Coverage Part 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 of 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 territories 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 combination 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.