

*CITY OF POMPANO BEACH,
FLORIDA*

PROFESSIONAL CONSULTING AGREEMENT

with

McCafferty Brinson Consulting, LLC



***CONTINUING CONTRACT FOR ENGINEERING SERVICES
for
Water and Reuse Treatment Plant Projects***

CONTRACT FOR PROFESSIONAL CONSULTING SERVICES

This Contract is made on _____, by and between the CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, hereinafter referred to as "CITY," and McCafferty Brinson Consulting, LLC a Florida limited liability company, hereinafter referred to as the "Consultant".

WHEREAS, the Consultant is able and prepared to provide such services as City requires under the terms and conditions set forth herein; and

WHEREAS, the City Commission has approved the recommendation that Consultant be employed by the City and authorized the negotiation of contractual terms.

NOW, THEREFORE, in consideration of the mutual promises herein, the City and the Consultant agree as follows:

ARTICLE 1 – SERVICES/CONSULTANT AND CITY REPRESENTATIVES

The Consultant's responsibility under this Contract is to provide professional consulting services as more specifically set forth in RLI No. E-23-20 attached hereto as Exhibit A and incorporated herein in its entirety.

The Consultant's representative shall be Frank Brinson

The CITY's representative shall be City Engineer or designee,

ARTICLE 2 – TERM

The CONSULTANT shall adhere to the schedule given in each work authorization after receiving the "Notice to Proceed."

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in individual Work Authorizations as negotiated.

The Term of this Contract shall be for an initial period of five (5) years from the date of execution by both the City and the Consultant.

ARTICLE 3 – PAYMENTS TO CONSULTANT

A. City agrees to pay Consultant in consideration for its services described herein. It is the intention of the parties hereby to ensure that unless otherwise directed by the City in writing, Consultant will continue to provide services as specified in Exhibit A for the term of this Contract.

B. Price Formula. City agrees to pay Consultant as negotiated on a Work Authorization basis. Each work authorization shall specifically identify the scope of the work to be performed and the fees for said services. As set forth in RLI No. E-23-20, professional services under this contract will be restricted to those required for any project for which construction costs will not exceed four million dollars (\$4,000,000.00), and for any study activity fees shall not exceed five hundred thousand dollars (\$500,000.00).

C. Fee Determination. Each individual Work Authorization may be negotiated for fees to be earned by Time and Materials with a Not to Exceed Amount, Lump Sum, or a combination of both methods for subtasks contained therein. The total amount to be paid by the City under a Work Authorization shall not exceed specified amounts for all services and materials including “out of pocket” expenses as specified in Paragraph E below and also including any approved subcontracts unless otherwise agreed in writing by both parties. The Consultant shall notify the City’s Representative in writing when 90% of the “not to exceed amount” for the total Work Authorization has been reached. The Consultant will bill the City on a monthly basis, or as otherwise provided. Time and Materials billing will be made at the amounts set forth in Exhibit B for services rendered toward the completion of the Scope of Work. Where incremental billings for partially completed items are permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date. It is acknowledged and agreed to by the Consultant that the dollar limitation set forth in this section is a limitation upon and describes the maximum extent of City’s obligation to pay Consultant, but does not include a limitation upon Consultant’s duty to perform all services set forth in Exhibit A for the total compensation in the amount or less than the guaranteed maximum stated above.

D. Invoices received by the City from the Consultant pursuant to this Contract will be reviewed and approved in writing by the City’s Representative, indicating that services have been rendered in conformity with the Contract, and then will be sent to the City’s Finance Department for payment. All invoices shall contain a detailed breakdown of the services provided for which payment is being requested. In addition to detailed invoices, upon request of the City’s representative, Consultant shall provide City with detailed periodic Status Reports on the project. All invoice payments by City shall be made after the Work has been verified and completed. Unless disputed by City as provided herein, upon City’s receipt of a Proper Invoice as defined in §218.72, Florida Statutes, as amended, City shall forward Consultant payment for work performed within forty five (45) days for all goods and services provided.

City may temporarily remove for review any disputed amount, by line item, from an invoice and shall timely provide Consultant written notification of any such disputed charge. Consultant shall provide clarification and a satisfactory explanation to City, along with revised copies of all such documents if inaccuracies or errors are discovered, within ten (10) days of receipt of City’s notice of the disputed amount

In the event City has a claim against Consultant for Work performed hereunder which has not been timely remedied in accordance with the provisions of this Article 3, City may withhold payment for the contested amount, in whole or in part, to protect itself from loss on account of defective Work, claims filed or reasonable evidence indicating probable filing of claims by other parties against Consultant, and/or Consultant’s failure to make proper payments to subcontractors

or vendors for material or labor. When the reason(s) for withholding payment are removed or resolved in a manner satisfactory to City, payment shall be made.

E. “Out-of-pocket” expenses shall be reimbursed up to an amount not to exceed amounts included in each Work Authorization. All requests for payment of “out-of-pocket” expenses eligible for reimbursement under the terms of this Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the City’s Representative and to the Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in a Work Authorization and this Contract. All out-of-pocket, reimbursables and expenses shall be billed at actual amount paid by Consultant, with no markup.

F. Final Invoice. In order for both parties herein to close their books and records, the Consultant will clearly state “Final Invoice” on the Consultant’s final/last billing to the City. This final invoice shall also certify that all services provided by Consultant have been properly performed and all charges and costs have been invoiced to the City. Because this account will thereupon be closed, any and other further charges not properly included on this final invoice are waived by the Consultant.

ARTICLE 4 – TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the Consultant shall also act as the execution of a truth in negotiation certificate, certifying that the wage rates, overhead charges, and other costs used to determine the compensation provided for this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the Consultant’s most favored customer for the same or substantially similar service. Should the City determine that said rates and costs were significantly increased due to incomplete, non-current or inaccurate representation, then said rates shall be adjusted accordingly.

ARTICLE 5 – TERMINATION

City shall have the right to terminate this Contract, in whole or in part, for convenience, cause, default or negligence on Consultant’s part, upon ten (10) business days advance written notice to Consultant. Such Notice of Termination may include City’s proposed Transition Plan and timeline for terminating the Work, requests for certain Work product documents and materials, and other provisions regarding winding down concerns and activities.

If there is any material breach or default in Consultant’s performance of any covenant or obligation hereunder which has not been remedied within ten (10) business days after City’s written Notice of Termination, City, in its sole discretion, may terminate this Contract immediately and Consultant shall not be entitled to receive further payment for services rendered from the effective date of the Notice of Termination.

In the event of termination, City shall compensate Consultant for all authorized Work satisfactorily performed through the termination date under the payment terms set forth in Article 3 above and all Work product documents and materials shall be delivered to City within ten (10)

business days from the Notice of Termination. If any Work hereunder is in progress but not completed as of the date of the termination, then upon City's written approval, this Contract may be extended until said Work is completed and accepted by City.

This Contract may be cancelled by the Consultant, upon thirty (30) days prior written notice to the City's Representative, in the event of substantial failure by the City to perform in accordance with the terms of this Contract through no fault of the Consultant.

ARTICLE 6 – PERSONNEL

The Consultant is, and shall be, in the performance of all work services and activities under this Contract, an independent Contractor, and not an employee, agent or servant of the City. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Consultant's sole direction, supervision, and control and shall not in any manner be deemed to be employees of the City. The Consultant shall exercise control over the means and manner in which it and its employees perform the work. This contract does not create a partnership or joint venture between the parties.

The Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City, nor shall such personnel be subject to any withholding for tax, Social Security or other purposes by the City, nor be entitled to any benefits of the City including, but not limited to, sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation benefits, or the like from the City.

All of the services required hereunder shall be performed by the Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the Consultant's key personnel, as may be listed in Article 1, must be made known to the City's Representative at the time substitution becomes effective.

The Consultant warrants that all services shall be performed by skilled and competent personnel to the degree exercised by consultants performing the same or similar services in the same location at the time the services are provided.

ARTICLE 7 – SUBCONTRACTING

Consultant may subcontract any services or work to be provided to City with the prior written approval of the City's Representative. The City reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make determination as to the capability of the subcontractor to perform properly under this Contract. The City's acceptance of a subcontractor shall not be unreasonably withheld. The Consultant is encouraged to seek small business enterprises and to

utilize businesses that are physically located in the City of Pompano Beach with a current Business Tax Receipt for participation in its subcontracting opportunities.

ARTICLE 8 – FEDERAL AND STATE TAX

The City is exempt from payment of Florida State Sales and Use Taxes. The City will provide the Consultant with the current state issued exemption certificate. The Consultant shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the Consultant authorized to use the City's Tax Exemption Number in securing such materials.

The Consultant shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes and benefits with respect to this Contract

ARTICLE 9 – AVAILABILITY OF FUNDS

The City's performance and obligation to pay under this contract is contingent upon appropriation for various projects, tasks and other professional services by the City Commission.

ARTICLE 10 - INSURANCE REQUIREMENTS

The Consultant shall not commence work under this Contract until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the City, nor shall the Consultant allow any Subcontractor to commence work on its sub-contract until the aforementioned approval is obtained.

CERTIFICATE OF INSURANCE, reflecting evidence of the required insurance, shall be filed with the Risk Manager prior to the commencement of the work. The Certificate shall contain a provision that coverage afforded under these policies will not be cancelled, will not expire and will not be materially modified until at least thirty (30) days prior written notice has been given to the City. Policies shall be issued by companies authorized to conduct business under the laws of the State of Florida and shall have adequate Policyholders and Financial ratings in the latest ratings of A. M. Best and be part of the **Florida Insurance Guarantee Association Act**.

Insurance shall be in force until all work required to be performed under the terms of the Contract is satisfactorily completed as evidenced by the formal acceptance by the City. In the event the Insurance Certificate provided indicates that the insurance shall terminate and lapse during the period of this Contract, the Consultant shall furnish, at least ten (10) days prior to the expiration of the date of such insurance, a renewed Certificate of Insurance as proof that equal and like coverage for the balance of the period of the Contract and extension thereunder is in effect. The Consultant shall not continue to work pursuant to this Contract unless all required insurance remains in full force and effect.

Limits of Liability for required insurance are shown in Exhibit C.

The City of Pompano Beach must be named as an additional insured for the Automobile and Commercial General Liability Coverage.

For Professional Liability, if coverage is provided on a claims made basis, then coverage must be continued for the duration of this Contract and for not less than one (1) year thereafter, or in lieu of continuation, provide an “extended reporting clause” for one (1) year.

Consultant shall notify the City Risk Manager in writing within thirty (30) days of any claims filed or made against the Professional Liability Insurance Policy.

For Workers’ Compensation Insurance, coverage shall be maintained during the life of this Contract to comply with statutory limits for all employees, and in the case of any work sublet, the Consultant shall require any Subcontractors similarly to provide Workers’ Compensation Insurance for all the latter’s employees unless such employees are covered by the protection afforded by the Consultant. The Consultant and his Subcontractors shall maintain during the life of this Contract Employer Liability Insurance.

ARTICLE 11 – INDEMNIFICATION

A. Consultant shall at all times indemnify, hold harmless the City, its officials, employees, volunteers and other authorized agents from and against any and all claims, demands, suit, damages, attorneys’ fees, fines, losses, penalties, defense costs or liabilities suffered by the City to the extent caused by any negligent act, omission, breach, recklessness or misconduct of Consultant and/or any of its agents, officers, or employees hereunder, including any inaccuracy in or breach of any of the representations, warranties or covenants made by the Consultant, its agents, officers and/or employees, in the performance of services of this contract. To the extent considered necessary by City, any sums due Consultant hereunder may be retained by City until all of City’s claims for indemnification hereunder have been settled or otherwise resolved, and any amount withheld shall not be subject to payment or interest by City.

B. Consultant acknowledges and agrees that City would not enter into this Contract without this indemnification of City by Consultant. The parties agree that one percent (1%) of the total compensation paid to Consultant hereunder shall constitute specific consideration to Consultant for the indemnification provided under this Article and these provisions shall survive expiration or early termination of this Contract.

C. Nothing in this Agreement shall constitute a waiver by the City of its sovereign immunity limits as set forth in section 768.28, Florida Statutes. Nothing herein shall be construed as consent from either party to be sued by third parties.

ARTICLE 12 – SUCCESSORS AND ASSIGNS

The City and the Consultant each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the City nor the Consultant shall assign, sublet, encumber,

Contract for Consulting/Professional Services with McCafferty Brinson Consulting, LLC

convey or transfer its interest in this Contract without prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the Consultant.

ARTICLE 13 – REMEDIES

The laws of the State of Florida shall govern this Contract. Any and all legal action between the parties arising out of the Contract will be held in Broward County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 14 – CONFLICT OF INTEREST

The Consultant represents that it has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in the Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes). The Consultant further represents that no person having any interest shall be employed for said performance.

The Consultant shall promptly notify the City's representative, in writing, by certified mail, of a potential conflict(s) of interest for any prospective business association, interest or other circumstance, which may influence or appear to influence the Consultant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Consultant may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Consultant. The City agrees to notify the Consultant of its opinion by certified mail within thirty (30) days of receipt of notice by the Consultant. If, in the opinion of the City, the prospective business association, interest, or circumstance would not constitute a conflict of interest by the Consultant, the City shall so state in the notice and the Consultant shall at its option, enter into said association, interest or circumstance and it shall be deemed not a conflict of interest with respect to services provided to the City by the Consultant under the terms of this Contract.

ARTICLE 15 – EXCUSABLE DELAYS

The Consultant shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Consultant or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God; natural or public health emergencies; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the Consultant's request, the City shall consider the facts and extent of any failure to perform the work and, if the Consultant's failure to perform was without it, or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the City's rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 16 – DEBT

The Consultant shall not pledge the City's credit or attempt to make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 17 – DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The Consultant shall deliver to the City's representatives for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the City under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the City or at its expense will be kept confidential by the Consultant and will not be disclosed to any other party, directly or indirectly, without the City's prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the City's expense shall be and remain the City's property and may be reproduced and reused at the discretion of the City.

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Consultant shall comply with Florida's Public Records Law, as amended. Specifically, the Consultant shall:

1. Keep and maintain public records required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Consultant, or keep and maintain public records required by

Contract for Consulting/Professional Services with McCafferty Brinson Consulting, LLC

the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

B. Failure of the Consultant to provide the above described public records to the City within a reasonable time may subject Consultant to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated thereby.

ARTICLE 18 – CONTINGENT FEES

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. Violation of this Article shall constitute a forfeiture of this Contract by Consultant.

ARTICLE 19 – ACCESS AND AUDITS

The Consultant shall maintain adequate records to justify all charges, expenses, and cost incurred in estimating and performing the work for at least three (3) years after completion of this Contract. The City shall have access to such books, records and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Consultant’s place of business.

ARTICLE 20 – NONDISCRIMINATION

The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status and sexual orientation.

ARTICLE 21 – INTERPRETATION

The language of this Contract has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied to either party hereto. The headings are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract. All personal pronouns used in this Contract shall include the other gender, and the singular, the plural, and vice versa, unless the context otherwise requires.

ARTICLE 22 – AUTHORITY TO PRACTICE

The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required conducting its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the City’s representative upon request.

ARTICLE 23 – SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 24 – ENTIRETY OF CONTRACTUAL AGREEMENT

The City and the Consultant agree that this Contract, together with the Exhibits hereto, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and off equal dignity herewith. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance

Contract for Consulting/Professional Services with McCafferty Brinson Consulting, LLC

with Article 25 – Modification of Work. In the event of any conflict or inconsistency between this Contract and the provisions in the incorporated Exhibits, the terms of this Contract shall supersede and prevail over the terms in the Exhibits.

ARTICLE 25 – MODIFICATION OF SCOPE OF WORK

The City reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the Consultant of the City’s notification of a contemplated change, the Consultant shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change; (2) notify the City of any estimated change in the completion date; and (3) advise the City if the contemplated change shall affect the Consultant’s ability to meet the completion dates or schedules of this Contract.

If the City so instructs in writing, the Consultant shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the City’s decision to proceed with the change.

If the City elects to make the change, the City shall initiate a Work Authorization Amendment and the Consultant shall not commence work on any such change until such written amendment is signed by the Consultant and the City Manager, and if such amendment is in excess of \$75,000, it must also first be approved by the City Commission and signed by the appropriate City Official authorized by the City Commission

The City shall not be liable for payment of any additional or modified work, which is not authorized in the manner provided for by this Article.

ARTICLE 26 – NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, to the following:

FOR CITY:

City Manager
City of Pompano Beach
Post Office Drawer 1300
Pompano Beach, Florida 33061

FOR CONSULTANT:

President/CEO
McCafferty Brinson Consulting, LLC
633 S. Andrews Ave. Ste. 402
Fort Lauderdale, FL 33301

ARTICLE 27 – OWNERSHIP OF DOCUMENTS

All finished or unfinished documents, data, reports, studies, surveys, drawings, maps, models and photographs prepared or provided by the Consultant in connection with this Contract shall become property of the City, whether the project for which they are made is completed or not, and shall be delivered by Consultant to City within ten (10) days of notice of termination. If applicable, City may withhold any payments then due to Consultant until Consultant complies with the provisions of this section.

ARTICLE 28 – PROMOTING PROJECT OBJECTIVES

Consultant, its employees, subcontractors, and agents shall refrain from acting adverse to the City’s interest in promoting the goals and objectives of the projects. Consultant shall take all reasonable measures necessary to effectuate these assurances. In the event Consultant determines it is unable to meet or promote the goals and objectives of the projects, it shall immediately notify the City and the City, may then in its discretion, terminate this Contract.

ARTICLE 29 – PUBLIC ENTITY CRIMES ACT

As of the full execution of this Contract, Consultant certifies that in accordance with §287.133, Florida Statutes, it is not on the Convicted Vendors List maintained by the State of Florida, Department of General Services. If Consultant is subsequently listed on the Convicted Vendors List during the term of this Contract, Consultant agrees it shall immediately provide City written notice of such designation in accordance with Article 26 above.

ARTICLE 30 – GOVERNING LAW

This Contract must be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

ARTICLE 31 - BINDING EFFECT

The benefits and obligations imposed pursuant to this Contract shall be binding and enforceable by and against the parties hereto.

THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK

“CITY”:

Attest:

CITY OF POMPANO BEACH

ASCELETA HAMMOND, CITY CLERK

By: _____
REX HARDIN, MAYOR

(SEAL)

By: _____
GREGORY P. HARRISON, CITY MANAGER

APPROVED AS TO DEPARTMENT HEAD:

By: _____

"CONSULTANT":

McCafferty Brinson Consulting, LLC

Witnesses:

Audra McCafferty
Signature

Audra McCafferty

Name Typed, Printed or Stamped

By: *Frank A Brinson*
Frank A. Brinson, Manager

Robert Landrum
Signature

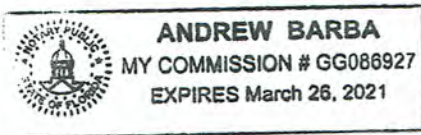
Robert Landrum

Name Type, Printed or Stamped

STATE OF FLORIDA
COUNTY OF Broward

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 15th day of December, 2020, by Frank A. Brinson, as Manager of McCafferty Brinson Consulting, LLC., a Florida limited liability company, on behalf of the company. He is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



Andrew Barba
NOTARY PUBLIC, STATE OF FLORIDA

Andrew Barba
(Name of Acknowledger Typed, Printed or Stamped)

GG086927
Commission Number



Exhibit B

**City of Pompano Beach, Florida
Continuing Contract for Engineering Services for Water and Reuse Treatment
Plant Projects
2020 Fee Schedule**

Staff Classification	Hourly Rate 2020
<i>Labor Rates:</i>	
Principal Engineer	\$ 275.00
Senior Engineer	\$ 200.00
Project Engineer	\$ 125.00
Engineer Intern/Staff Professional	\$ 110.00
CAD Designer	\$ 95.00
Project Administrator	\$ 65.00
Field Representative	\$ 115.00
<i>Reimbursable Expenses:</i>	
Direct Project Expense (multiplier)	1.00
Auto Mileage (per mile, IRS standard mileage rate)	\$0.575
Subcontractor (multiplier)	1.05

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/2/2020

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).

Table with 2 main sections: PRODUCER (Corporate Insurance Advisors, LLC) and INSURED (McCafferty Brinson Consulting, LLC). Includes contact information, policy numbers, and insurer details.

COVERAGES CERTIFICATE NUMBER: 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.

Main table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Lists various coverage types like Commercial General Liability, Automobile Liability, Umbrella, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Audra McCafferty and Frank Brinson are excluded from worker's compensation coverage
City of Pompano Beach is an Additional Insured with respects General Liability when required by written agreement (Form SPE0208-0115). Waiver of Subrogation applies in favor of the Additional Insured with respects to General Liability when required by written contract (Form SPE0214-0115). 30 Day notice of Cancellation, 10 day notice in regards to non-pay.

CERTIFICATE HOLDER CANCELLATION

Table with 2 columns: CERTIFICATE HOLDER (City of Pompano Beach) and 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. Includes signature of authorized representative).

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

SERVICE PROVIDERS ENVIRONMENTAL COVERAGE FORM

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Blanket when specifically required in a written contract with the named insured.	Blanket when specifically required in a written contract with the named insured.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "clean-up costs" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance And Deductible:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

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

All other terms and conditions remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

SERVICE PROVIDERS ENVIRONMENTAL COVERAGE FORM

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Blanket when specifically required in a written contract with the named insured.	Blanket when specifically required in a written contract with the named insured.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", "personal and advertising injury" or "clean-up costs" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury", "property damage" or "clean-up costs" 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.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance And Deductible:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

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

All other terms and conditions remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

SERVICE PROVIDERS ENVIRONMENTAL COVERAGE FORM

SCHEDULE

Name Of Person Or Organization:
Blanket when specifically required in a written contract with the named insured.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

In consideration of the premium charged, it is hereby agreed that Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** under **Section IV – Conditions** is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the above Schedule of this endorsement because of payments we make for injury or "damage" arising out of your ongoing operations, completed operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the above Schedule of this endorsement.

All other terms and conditions remain unchanged.

SERVICE PROVIDERS ENVIRONMENTAL COVERAGE FORM

Various provisions in this policy restrict coverage. This policy may provide claims-made and reported coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, 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 policy. 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 VI – Definitions**.

In consideration of the premium charged, and in reliance upon the statements and representations made in the Declarations, application, or other materials and information, submitted by you, and subject to the terms, conditions and exclusions of this policy, we agree as follows:

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

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

(1) The amount we will pay for "damages" is limited as described in **Section III – Limits Of Insurance And Deductible**; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A, B, D** or **E** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Supplementary Payments – Coverages A, B, D And E**.

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

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, 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. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, 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 policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred 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":

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

(2) Receives a written or verbal demand or "claim" for "damages" because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

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

2. Exclusions (Applicable to Coverage A Only)

This insurance does not apply to any "damages", "defense expenses", "bodily injury", "property damage" or any loss, cost or expense, or any "claim" or "suit":

a. Expected Or Intended Injury

Expected or intended from the standpoint of the insured, even if the resulting "bodily injury" or "property damage" is of a different kind or degree than intended or reasonably expected. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual 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 "damages":

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be "damages" because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which "damages" to which this insurance applies are alleged.

c. Liquor Liability

For which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

d. Workers' Compensation And Similar Laws

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

e. Employer's Liability

Arising out of or pertaining to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

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

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

f. Pollution

- (1) Based upon or arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) 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; or
 - (e) 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".
- (2) Based upon or arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) "Claim" or "suit" by or on behalf of a governmental authority for "damages" because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

g. Aircraft, Auto, Rail Or Watercraft

Based upon or arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto", locomotive, rail car, rolling stock, or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

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

This exclusion does not apply to:

- (1) A watercraft you do not own that is:
 - (a) Less than 26 feet long;
 - (b) Not being used to carry persons or property for a charge; and
 - (c) Being used in the course of "your work".
- (2) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (3) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (4) "Bodily injury" or "property damage" arising out of:
 - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
 - (b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

h. Mobile Equipment

Based upon or arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

However caused, based upon or arising, directly or indirectly, out of:

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

j. Damage To Property

Based upon or pertaining to:

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

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven (7) or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance And Deductible**.

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

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

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

k. Damage To Your Product

Based upon or arising out of "your product" or any part of it.

l. Damage To Your Work

Based upon or arising out of "your work" or any part of it and included in the "products-completed operations hazard".

However, this exclusion does not apply if the damaged work or the work out of which the "damages" arise was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

Based upon or arising out of "impaired property" or property that has not been physically injured, and arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

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.

n. Recall Of Products, Work Or Impaired Property

Based upon or arising out of any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

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

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

o. Personal And Advertising Injury

Based upon or arising out of "personal and advertising injury".

p. Electronic Data

Based upon or arising out of:

- (1) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data"; or
- (2) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information.

This exclusion applies even if "damages" are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of Paragraph (1) or (2) above.

q. Mold

Based upon or arising out of:

- (1) Any actual, alleged or threatened contact with, exposure to, or inhalation, ingestion, absorption, discharge, dispersal, seepage, migration, release, escape, presence, growth or reproduction of "mold";
- (2) Any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, abate, mitigate, remediate, dispose of, contain, treat, detoxify or neutralize, or in any way respond to or assess the concentration or effects of "mold"; or
- (3) Any testing for, monitoring, cleaning up, removing, abating, mitigating, remediating, disposing of, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the concentration or effects of "mold".

Paragraphs (2) and (3) above apply, without limitation, to any actual or alleged supervision, instruction, recommendations, warnings or advice provided, or which should have been provided, by any insured or others with respect to the actions described in Paragraphs (2) and (3) above.

This exclusion applies to:

- (1) "Bodily injury" and "property damage" regardless of whether such coverage is included within the "products-completed operations hazard";
- (2) Any obligation to share "damages" with or repay someone else who must pay "damages"; and
- (3) "Mold" existing, emanating from or moving anywhere indoors or outdoors.

r. Professional Services

Based upon or arising out of any insured's rendering of, or failure to render, any "professional services".

s. Asbestos

Based upon or arising out of:

- (1) Asbestos, asbestos fibers, asbestiform minerals or any material or substances containing asbestos, asbestos fibers or asbestiform minerals, or exposure to asbestos, asbestos fibers or asbestiform minerals in any form;
- (2) Any asbestos related injury, including but not limited to asbestosis, mesothelioma and bronchogenic carcinoma; or
- (3) The use, exposure, presence, existence, detection, removal, elimination or avoidance of asbestos, asbestos fibers, asbestiform minerals, or any materials containing asbestos, asbestos fibers or asbestiform minerals, in any building, structure, the atmosphere or any other part of the environment.

t. Lead

- (1) Based upon or arising out of, or related to, the ingestion, inhalation or absorption of lead or any product or material containing lead;
- (2) Based upon or arising out of, or related to, lead or any product or material containing lead;
- (3) Based upon or arising out of any loss, cost or expense arising out of any request, demand or order that any insured or any person test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the concentrations or effects of lead or any product or material containing lead; or
- (4) Based upon or arising out of any loss, cost or expense arising out of any "claim" or "suit" for "damages" because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the concentrations or effects of lead or any product or material containing lead.

u. Wrap-Ups

Based upon or arising out of any project in which the insured participated in any capacity for which an Owner Controlled Insurance Program (OCIP) or Contractor Controlled Insurance Program (CCIP) was in-force.

v. Executive Officers

Based upon or arising out of any insured's service as an "executive officer", director, partner, trustee, "employee" or "volunteer worker" of any organization, partnership, joint venture, limited liability company, trust, not for profit or other business enterprise that is not specifically named in the Declarations of this policy, or any amendment thereto.

w. Nuclear Energy

Based upon or arising out of:

- (1) Any insured who is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under such policy but for its termination upon exhaustion of its limits of liability;
- (2) The "hazardous properties" of "nuclear material" and with respect to:
 - (a) Any person or organization that is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - (b) Any person that is, or had this Policy not been issued, would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- (3) The "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization; or
- (4) The "hazardous properties" of "nuclear material" if:
 - (a) The "nuclear material" is at any "nuclear facility" owned or operated by, or on behalf of, any insured; or has been discharged or dispersed therefrom.
 - (b) The "nuclear material" is contained in "spent fuel" or "nuclear waste" at any time possessed, handled, used, processed, stored, transported or disposed of by, or on behalf, of any insured.
- (5) The furnishing of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility".

As used in this exclusion only, "damages" includes all forms of radioactive contamination.

x. Distribution Or Disclosure Of Materials In Violation Of Statutes

Based upon or arising out of any act, error or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA) or any law amendatory thereof;
- (2) The CAN-SPAM Act of 2003 or any law amendatory thereof;
- (3) Any statute, ordinance, law or regulation that prohibits or limits the sending, transmitting, communicating or distribution of material or information;
- (4) The Fair and Accurate Credit Transactions Act of 2003 or any law amendatory thereof; or
- (5) Any statute, ordinance, law or regulation that prohibits, restricts or governs the disclosure of material to prevent or minimize identity theft.

y. Punitive Or Multiplied Damages

Based upon or arising out of any punitive "damages" or the multiplied portion of treble or other multiplied "damages", or that arise out of that portion of any "claim" or "suit" seeking or awarding punitive "damages" or the multiplied portion of treble or other multiplied "damages".

z. Offshore Operations

Based upon or arising out of "your work", "your product" or "professional services" at, on, around, pertaining to or being the subject of any offshore oil, gas or energy production, drilling, mining facility, or transportation to or from any such facility.

aa. Hydrofracturing

Based upon or arising out of, directly or indirectly:

- (1) Any act of any "hydraulic fracturing" performed by you or on your behalf;
- (2) Any "wrongful act" arising out of any "professional services" in any way related to "hydraulic fracturing"; or
- (3) Any site, facility or location at which any "hydraulic fracturing" is taking place.

For the purposes of this exclusion, "hydraulic fracturing" means the fracturing of rock by pressurized liquid and includes hydrofracturing, fracking, fracing and horizontal slickwell fracking operations and services.

bb. Employment Related Practices

Based upon, arising out of or pertaining to, directly or indirectly:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "damages" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share "damages" with or repay someone else who must pay "damages" because of the injury.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III – Limits Of Insurance And Deductible**.

COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

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

- (1) The amount we will pay for "damages" is limited as described in **Section III – Limits Of Insurance And Deductible**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A, B, D** or **E**, or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Supplementary Payments – Coverages A, B, D And E**.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions (Applicable to Coverage B Only)

This insurance does not apply to any "damages", "defense expenses", "personal and advertising injury" or any loss, cost or expense, or any "claim" or "suit":

a. Knowing Violation Of Rights Of Another

Based upon or arising out of "personal and advertising injury" caused by, or at the direction of, the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

Based upon or arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

Based upon or arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

Based upon or arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for "damages" that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

Based upon or arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

Based upon or arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

Based upon or arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

Based upon or arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

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

j. Insureds In Media And Internet Type Businesses

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, this exclusion does not apply to **Section VI – Definitions**, Paragraphs **25. a.**, **b.** and **c.** of "personal and advertising injury".

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

k. Electronic Chatrooms Or Bulletin Boards

Based upon or arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

I. Unauthorized Use Of Another's Name Or Product

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

m. Pollution

Based upon or arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Based upon or 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".

o. War

However caused, arising directly or indirectly out of:

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

p. Mold

Based upon or arising out of, or in any way related to, "mold".

q. Asbestos

Based upon or arising out of, or in any way related to, asbestos, asbestos fibers or asbestiform minerals or any materials or substances containing asbestos, asbestos fibers or asbestiform minerals.

r. Lead

Based upon or arising out of, or in any way related to, lead or any material containing lead.

s. Executive Officers

Based upon or arising out of any insured's service as an "executive officer", director, partner, trustee, "employee" or "volunteer worker" of any organization, partnership, joint venture, limited liability company, trust, not for profit or other business enterprise that is not specifically named in the Declarations of this policy, or any amendment thereto.

t. Nuclear Energy

Based upon or arising out of:

- (1) Any insured who is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under such policy but for its termination upon exhaustion of its limits of liability;
- (2) The "hazardous properties" of "nuclear material" and with respect to:
 - (a) Any person or organization that is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - (b) Any person that is, or had this Policy not been issued, would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- (3) The "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization; or
- (4) The "hazardous properties" of "nuclear material" if:
 - (a) The "nuclear material" is at any "nuclear facility" owned or operated by, or on behalf of, any insured; or has been discharged or dispersed therefrom.

- (b) The "nuclear material" is contained in "spent fuel" or "nuclear waste" at any time possessed, handled, used, processed, stored, transported or disposed of by, or on behalf, of any insured.
- (5) The furnishing of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility".

As used in this exclusion only, "damages" includes all forms of radioactive contamination.

u. Distribution Or Disclosure Of Materials In Violation Of Statutes

Based upon or arising out of any act, error or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA) or any law amendatory thereof;
- (2) The CAN-SPAM Act of 2003 or any law amendatory thereof;
- (3) Any statute, ordinance, law or regulation that prohibits or limits the sending, transmitting, communicating or distribution of material or information;
- (4) The Fair and Accurate Credit Transactions Act of 2003 or any law amendatory thereof; or
- (5) Any statute, ordinance, law or regulation that prohibits, restricts or governs the disclosure of material to prevent or minimize identity theft.

v. Punitive Or Multiplied "Damages"

Based upon or arising out of any punitive "damages" or the multiplied portion of treble or other multiplied "damages", or that arise out of that portion of any "claim" or "suit" seeking or awarding punitive "damages" or the multiplied portion of treble or other multiplied "damages".

w. Professional Services

Based upon or arising out of any insured's rendering, or failure to render, any "professional services".

x. Electronic Data

Based upon or arising out of:

- (1) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data"; or
- (2) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information.

This exclusion applies even if "damages" are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of Paragraph (1) or (2) above.

y. Employment Related Practices

Based upon, arising out of or pertaining to, directly or indirectly:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share "damages" with or repay someone else who must pay "damages" because of the injury.

COVERAGE C - MEDICAL PAYMENTS

1. Insuring Agreement

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- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
 provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
 - (1) First aid administered at the time of an accident;
 - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
 - (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions (Applicable to Coverage C only)

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured.

b. Hired Person

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

c. Injury On Normally Occupied Premises

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

d. Workers Compensation And Similar Laws

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

e. Athletics Activities

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

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Other Coverage Exclusions

Excluded under Coverages **A, D** or **E**.

COVERAGE D – CONTRACTOR’S POLLUTION LIABILITY

1. Insuring Agreement

- a. We will pay on behalf of the insured, in excess of the Deductible shown in the Declarations, those sums that the insured becomes legally obligated to pay as "damages" because of "bodily injury", "property damage" or "clean-up costs" resulting from a "pollution condition" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those "damages". However, we will have no duty to defend the insured against any "suit" seeking "damages" for "bodily injury", "property damage" or "clean-up costs" arising from a "pollution condition" to which this insurance does not apply. We may, at our discretion, investigate any "pollution condition" and settle any "claim" or "suit" that may result. But:
 - (1) The amount we will pay for "damages" is limited as described in **Section III – Limits Of Insurance And Deductible**; and
 - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A, B, D, E** or medical expenses under Coverage **C**.
 No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Supplementary Payments – Coverage A, B, D And E**.
- b. This insurance applies to "bodily injury", "property damage" and "clean-up costs" only if:

- (1) The "bodily injury", "property damage" or "clean-up costs" is caused by a "pollution condition" arising from "your work" away from premises you own, rent or occupy and that takes place in the "coverage territory";
 - (2) The "pollution condition" occurs during the policy period;
 - (3) The "pollution condition" was unexpected and unintended from the standpoint of any insured listed under Paragraph 1. of **Section II – Who Is An Insured** or any "responsible insured"; and
 - (4) Prior to the policy period, no insured listed under Paragraph 1. of **Section II – Who Is An Insured** and no "responsible insured" authorized by you to give or receive notice of a "pollution condition" or "claim", knew that the "pollution condition" had occurred, in whole or in part. If such a listed insured or "responsible insured" knew, prior to the policy period, that the "pollution condition" occurred, then any continuation, change or resumption of the "pollution condition" and any resulting "bodily injury", "property damage" or "clean-up costs" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury", "property damage" or "clean-up costs" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of **Section II – Who Is An Insured** or any "responsible insured" authorized by you to give or receive notice of a "pollution condition" or "claim", includes any continuation, change, migration, spreading or resumption of that "bodily injury", "property damage" or "clean-up costs" after the end of the policy period.
- d. "Bodily injury", "property damage" or "clean-up costs" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of **Section II – Who Is An Insured** or any "responsible insured" authorized by you to give or receive notice of a "pollution condition" or "claim":
- (1) Reports all, or any part, of the "bodily injury", "property damage" or "clean-up costs" to us or any other insurer;
 - (2) Receives a written or verbal demand or "claim" for "damages" because of "bodily injury", "property damage" or "clean-up costs"; or
 - (3) Becomes aware by any other means that "bodily injury", "property damage" or "clean-up costs" has occurred or has begun to occur.
- e. "Damages" because of "bodily injury" include "damages" claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions (Applicable to Coverage D only)

This insurance does not apply to any "damages", "defense expenses", "bodily injury", "property damage", "clean-up costs" or any loss, cost or expense, or any "claim" or "suit":

a. Expected Or Intended Injury

Expected or intended from the standpoint of a "responsible insured", even if the resulting "bodily injury", "property damage" or "clean-up costs" is of a different kind or degree than intended or reasonably expected.

b. Contractual 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 "damages":

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury", "property damage" or "clean-up costs" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be "damages" because of "bodily injury", "property damage" or "clean-up costs", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which "damages" to which this insurance applies are alleged.

c. Workers' Compensation And Similar Laws

Based upon or arising out of any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

d. Employer's Liability

To:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
 - (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.
- This exclusion applies:
- (1) Whether the insured may be liable as an employer or in any other capacity; and
 - (2) To any obligation to share "damages" with or repay someone else who must pay "damages" because of the injury.

e. Aircraft, Auto, Rail Or Watercraft

Based upon or arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto", locomotive, rail car, rolling stock, or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the "claims" against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "pollution condition" which caused the "bodily injury", "property damage" or "clean-up costs" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto", locomotive, rail car, rolling stock, or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft you do not own that is:
 - (a) Less than 26 feet long;
 - (b) Not being used to carry persons or property for a charge; and
 - (c) Being used in the course of "your work".
- (2) Liability assumed under any "insured contract" for the ownership, maintenance or use of watercraft;
- (3) "Bodily injury", "property damage" or "clean-up costs" arising out of:
 - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
 - (b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".
- (4) A "pollution condition" arising out of "loading or unloading" any "auto" or watercraft owned or operated by or rented or loaned to any insured away from any property or facility you own or rent; or
- (5) A "pollution condition" arising out of the transportation of materials, goods or wastes to or from a location where "your work" is being performed.

f. Mobile Equipment

Based upon or arising out of:

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

g. War

However caused, arising directly or indirectly out of:

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

h. Damage To Property

Based upon or arising out of:

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

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) or "clean-up costs" to premises, including the contents of such premises, rented to you for a period of seven (7) or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance**.

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

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

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

i. Damage To Your Product

Based upon or arising out of "your product" or any part of it.

j. Damage To Your Work

Based upon or arising out of "your work" or any part of it and included in the "products-completed operations hazard".

However, this exclusion does not apply if the damaged work or the work out of which the "damages" arise was performed on your behalf by a subcontractor.

k. Damage To Impaired Property Or Property Not Physically Injured

Based upon or arising out of "impaired property" or property that has not been physically injured, and arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

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.

l. Recall Of Products, Work Or Impaired Property

Based upon or arising out of any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

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

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

m. Personal And Advertising Injury

Based upon or arising out of "personal and advertising injury".

o. Electronic Data

Based upon or arising out of:

- (1) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data"; or
- (2) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information.

This exclusion applies even if "damages" are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of Paragraph (1) or (2) above.

p. Professional Services

Based upon or arising out of any insured's rendering of, or failure to render, any "professional services". However, this exclusion shall not apply to any "clean-up costs" arising out of "professional services" which are covered under Coverage **E – Error And Omissions Liability** in this policy.

q. Executive Officers

Based upon or arising out of any insured's service as an "executive officer", director, partner, trustee, "employee" or "volunteer worker" of any organization, partnership, joint venture, limited liability company, trust, not for profit or other business enterprise that is not specifically named in the Declarations of this policy, or any amendment thereto.

r. Nuclear Energy

Based upon or arising out of:

- (1) Any insured who is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under such policy but for its termination upon exhaustion of its limits of liability;
- (2) The "hazardous properties" of "nuclear material" and with respect to:
 - (a) Any person or organization that is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - (b) Any person that is, or had this policy not been issued, would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- (3) The "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization; or
- (4) The "hazardous properties" of "nuclear material" if:
 - (a) The "nuclear material" is at any "nuclear facility" owned or operated by, or on behalf of, any insured; or has been discharged or dispersed therefrom.
 - (b) The "nuclear material" is contained in "spent fuel" or "nuclear waste" at any time possessed, handled, used, processed, stored, transported or disposed of by, or on behalf, of any insured.
- (5) The furnishing of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility".

As used in this exclusion only, "damages" includes all forms of radioactive contamination.

s. Distribution Or Disclosure Of Materials In Violation Of Statutes

Based upon or arising out of any act, error or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA) or any law amendatory thereof;
- (2) The CAN-SPAM Act of 2003 or any law amendatory thereof;
- (3) Any statute, ordinance, law or regulation that prohibits or limits the sending, transmitting, communicating or distribution of material or information;
- (4) The Fair and Accurate Credit Transactions Act of 2003 or any law amendatory thereof; or
- (5) Any statute, ordinance, law or regulation that prohibits, restricts or governs the disclosure of material to prevent or minimize identity theft.

t. Punitive Or Multiplied “Damages”

Based upon or arising out of any punitive “damages” or the multiplied portion of treble or other multiplied “damages”, or that arise out of that portion of any “claim” or “suit” seeking or awarding punitive “damages” or the multiplied portion of treble or other multiplied “damages”.

u. Offshore Operations

Based upon or arising out of “your work”, “your product” or “professional services” at, on, around, pertaining to or being the subject of any offshore oil, gas or energy production, drilling, mining facility, or transportation to or from any such facility.

v. Hydrofracturing

Based upon or arising out of, directly or indirectly:

- (1) Any act of any “hydraulic fracturing” performed by you or on your behalf;
- (2) Any “wrongful act” arising out of any “professional services” in any way related to “hydraulic fracturing”; or
- (3) Any site, facility or location at which any “hydraulic fracturing” is taking place.

For the purposes of this exclusion, “hydraulic fracturing” means the fracturing of rock by pressurized liquid and includes hydrofracturing, fracking, fracing and horizontal slickwell fracking operations and services.

w. Waste Facilities

Based upon or arising out of a “pollution condition” at or from any premises, site or location used by anyone at any time for the storage, handling, processing, treatment or disposal of any waste, garbage, refuse, recyclables, scrap, hazardous materials or used petroleum substances. This exclusion does not apply to “claims” arising from “your work” or “your product” that are intended to clean-up, construct, service, expand or remove such premises, site or location if the “pollution condition” commences or first occurs while “your work” is in progress or “your product” is being used. Nothing in this exclusion should be construed to grant coverage of any kind for the insured’s liability for disposing, processing, treating or storing of waste at any facility that is used primarily for those purposes.

x. Employment Related Practices

Based upon, arising out of or pertaining to, directly or indirectly:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person’s employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of “bodily injury” or “damages” to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share “damages” with or repay someone else who must pay “damages” because of the injury.

COVERAGE E – ERRORS AND OMISSIONS LIABILITY

This coverage part provides coverage on a claims-made and reported basis. Please read the entire form carefully

1. Insuring Agreement

- a. We will pay on behalf of the insured, in excess of the Deductible shown in the Declarations, those sums the insured becomes legally obligated to pay as “damages” because of a “wrongful act” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those “damages”. However, we will have no duty to defend the insured against any “suit” seeking “damages” for any “wrongful

act" to which this insurance does not apply. We may, at our discretion, investigate any "claim" or "suit" that may result. But:

- (1) The amount we will pay for "damages" is limited as described in **Section III – Limits Of Insurance And Deductible**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A, B, D, or E**, or medical expenses under Coverage **C** or "defense expenses" under Coverage **E**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Supplementary Payments – Coverages A, B, D And E**.

- b.** This insurance applies to "claims" for "damages" arising from a "wrongful act" only if the following conditions are met:

- (1) The "wrongful act" is caused by "professional services" that take place in the "coverage territory";
- (2) The "wrongful act" did not occur before the Retroactive Date shown in the Declarations or after the end of the policy period;
- (3) A "claim" for "damages" because of the "wrongful act" is first made against any insured, in accordance with Paragraph **c.** below, during the policy period, or any Extended Reporting Period we provide under **Section V – Extended Reporting Periods**.
- (4) No insured listed under Paragraph **1. of Section II – Who Is An Insured** or any "employee" authorized by you to give or receive notice of "wrongful acts" or "claims" had any knowledge prior to the policy period of a "wrongful act" that reasonably could give rise to a "claim" under this policy;
- (5) The "claim" or "wrongful act", nor any fact, incident, circumstance, transaction, advice or decision involved in the rendering of or failure to render "professional services" related to the "claim" or "wrongful act", was not reported in any manner to any insured or insurer under any policy in effect before the policy period.

- c.** A "claim" by a person or organization seeking "damages" will be deemed to have been made at the earlier of the following times:

- (1) When notice of such "claim" is received and recorded by any insured or by us, whichever comes first; or
- (2) When we make settlement in accordance with Paragraph **1.a.** of this Insuring Agreement above.

All "claims" for "damages" because of "wrongful acts" to the same person or organization will be deemed to have been made at the time the first of those "claims" is made against any insured.

2. Exclusions (Applicable to Coverage E only)

This insurance does not apply to any "damages", "defense expenses" or any loss, cost or expense, or any "claim" or "suit":

a. Electronic Data

Based upon or arising out of:

- (1) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data"; or
- (2) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information.

This exclusion applies even if "damages" are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of Paragraph **(1)** or **(2)** above.

b. Express Or Implied Warranties

Based upon or arising out of any express warranties or guarantees, provided that the "damages" would not have occurred in the absence of such express warranties or guarantees. This exclusion shall not apply to any determination by the insured of the presence or absence of "pollutants".

c. Faulty Workmanship

Based upon or arising out of the cost to repair or replace any faulty workmanship, construction or work not in accordance with your "professional services".

d. Insurance Or Bonds

Based upon or arising out of any insured's acts, errors or omissions with regard to the requiring of, or failure to require or advise, or failure to maintain or procure any form, type or amount of insurance, surety bond or financial guarantee of any kind at any time.

e. Products

Based upon or arising out of, in whole or in part, any goods or products sold, manufactured, fabricated, distributed, repaired or furnished by any insured or any entity operating pursuant to a lease or license granted by an insured.

f. Recall Of Products, Work or Impaired Property

Based upon or arising out of any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

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

g. Prior Acts, "Claims", Errors Or Omissions

Based upon or arising out of any act, error, omission or "claim" in rendering "professional services" made or committed prior to the inception date of this policy if any "responsible insured" knew or reasonably could have foreseen that such act, error, omission or "claim" took place or such act, error, omission or "claim" was reported to any insurer or regulatory agency.

h. Prior or Pending "Suits"

Based upon or arising out of any "suit" which was pending on, or existed prior to the inception date of this policy, or any "suit" arising out of the same or substantially the same facts, circumstances or allegations which are the subject of, or the basis for, such "suit".

i. Expected Or Intended

That, from the standpoint of the insured, could have reasonably been expected or intended. This exclusion applies even if the "damages" are of a different kind or degree than intended or expected.

j. Contractual Liability

For which the insured is obligated to pay by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for "damages":

(1) That the insured would have in the absence of the contract or agreement; or

(2) Assumed in a contract or agreement that is an "insured contract", provided the "damages" occur subsequent to the execution of the "insured contract". Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than the insured are deemed to be "damages", provided:

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which "damages" to which this insurance applies are alleged.

k. Workers Compensation And Similar Laws

Based upon or arising out of any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

l. Employers Liability

Based upon or arising out of:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

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

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

m. Property Damage

Based upon or arising out of:

- (1) Property you own, rent or occupy;
- (2) "Your product";
- (3) Premises or property you sell, give away or abandon;
- (4) Premises or property loaned to you; or
- (5) Premises or property in the care, custody or control of the insured.

n. Aircraft, Auto, Rail Or Watercraft

Based upon or arising out of the ownership, operation, maintenance, use, leasing, rental, lending or "loading or unloading" of any aircraft, "auto", locomotive, rail car, rolling stock, watercraft or "mobile equipment" of any kind.

o. Failure To Comply

Based upon or arising out of any "responsible insured's" intentional, willful or deliberate failure to comply with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental, public or regulatory agency.

p. Real Estate Development Or Brokering

Based upon or arising out of the development, sale, acquisition, transfer or sale of any real estate by you or on your behalf, or any defect or impairment to title for real property, including fixtures.

q. Antitrust

Based upon or arising out of any antitrust, unfair competition or restraint of trade.

r. Patent Infringement

Based upon or arising out of the intentional or unintentional infringement of any copyright, patent, trademark, trade secret or other intellectual property rights.

s. War

Based upon or arising, directly or indirectly, out of:

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

t. Cross Suits

Claimed by any of the following:

- (1) Any related business enterprise which is operated, managed or owned, in whole or in part, by any insured;
- (2) A parent company of the insured;
- (3) Any affiliated or subsidiary company of the insured; or
- (4) Any Named Insured against any other Named Insured.

u. Criminal, Fraudulent Or Dishonest Acts

Based upon or arising out of:

- (1) Any criminal, fraudulent or dishonest act, omission or offense committed by the insured. However, we shall defend any allegations:

- (a) Against the insured if such allegations involve a "claim" to which this insurance otherwise applies, until judgment or other final adjudication establishes, or if the insured admits, that such act, omission or offense was committed, or personally acquiesced in, by such insured.
- (2) Any act, omission or offense committed by the insured with knowledge of its wrongful nature or with the intent to cause "damages";
- (3) The obtaining by the insured of any profit, gain or advantage to which the insured is not legally entitled; or
- (4) Any violation by the insured of the provisions of the Racketeer Influenced And Corrupt Organization Act 18USC Sections 1961 et seq.

v. Executive Officers

Based upon or arising out of any insured's service as an "executive officer", director, partner, trustee, "employee" or "volunteer worker" of any organization, partnership, joint venture, limited liability company, trust, not-for-profit or other business enterprise that is not specifically named in the Declarations of this policy, or any amendment thereto.

w. Nuclear Energy

Based upon or arising out of:

- (1) Any insured who is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under such policy but for its termination upon exhaustion of its limits of liability;
- (2) The "hazardous properties" of "nuclear material" and with respect to:
 - (a) Any person or organization that is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - (b) Any person that is, or had this Policy not been issued, would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- (3) The "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization; or
- (4) The "hazardous properties" of "nuclear material" if:
 - (a) The "nuclear material" is at any "nuclear facility" owned or operated by, or on behalf of, any insured; or has been discharged or dispersed therefrom.
 - (b) The "nuclear material" is contained in "spent fuel" or "nuclear waste" at any time possessed, handled, used, processed, stored, transported or disposed of by, or on behalf, of any insured.
- (5) The furnishing of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility".

As used in this exclusion only, "damages" includes all forms of radioactive contamination.

x. Distribution Or Disclosure Of Materials In Violation Of Statutes

Based upon or arising out of any act, error or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA) or any law amendatory thereof;
- (2) The CAN-SPAM Act of 2003 or any law amendatory thereof;
- (3) Any statute, ordinance, law or regulation that prohibits or limits the sending, transmitting, communicating or distribution of material or information;
- (4) The Fair and Accurate Credit Transactions Act of 2003 or any law amendatory thereof; or
- (5) Any statute, ordinance, law or regulation that prohibits, restricts or governs the disclosure of material to prevent or minimize identity theft.

y. Punitive Or Multiplied "Damages"

Based upon or arising out of any punitive "damages" or the multiplied portion of treble or other multiplied "damages", or that arise out of that portion of any "claim" or "suit" seeking or awarding punitive "damages" or the multiplied portion of treble or other multiplied "damages".

z. Offshore Operations

Based upon or arising out of "professional services" at, on, around, pertaining to or being the subject of any offshore oil, gas or energy production, drilling, mining facility, or transportation to or from any such facility.

aa. Hydrofracturing

Based upon or arising out of, directly or indirectly:

- (1) Any act of any "hydraulic fracturing" performed by you or on your behalf;
- (2) Any "wrongful act" arising out of any "professional services" in any way related to "hydraulic fracturing"; or
- (3) Any site, facility or location at which any "hydraulic fracturing" is taking place.

For the purposes of this exclusion, "hydraulic fracturing" means the fracturing of rock by pressurized liquid and includes hydrofracturing, fracking, fracing and horizontal slickwell fracking operations and services.

bb. Bankruptcy

Based upon or arising out of the bankruptcy, insolvency or failure to pay debt of any kind by any insured or any other person or organization.

cc. Employment Related Practices

Based upon, arising out of or pertaining to, directly or indirectly:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "damages" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share "damages" with or repay someone else who must pay "damages" because of the injury.

SUPPLEMENTARY PAYMENTS – COVERAGES A, B, D AND E

1. We will pay, with respect to any "claim" we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the "claim" or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
 - e. All costs taxed against the insured in the "suit".
 - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Solely with respect to Coverage **A**, **B** and **D**, these payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks "damages" for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee.
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of **Section I – Coverage A – Bodily Injury And Property Damage Liability** or Paragraph **2.b.(2)** of **Section I – Coverage D – Contractor's Pollution Liability**, such payments will not be deemed to be "damages" for "bodily injury", "property damage" and "clean-up costs" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
 - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment

- b.** The General Aggregate Limit is the most we will pay for the sum of:
 - (1)** "Damages" under Coverage **A**, except "damages" because of "bodily injury" or "property damage" included in the "products-completed operations hazard";
 - (2)** "Damages" under Coverage **B**;
 - (3)** Medical expenses under Coverage **C**;
 - (4)** "Damages" under Coverage **D**, except "damages" because of "bodily injury", "property damage" or "clean-up costs" included in the "products-completed operations hazard"; and
 - (5)** "Damages" under Coverage **E**.
- c.** The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** and Coverage **D** for the sum of all "damages" because of "bodily injury", "property damage" and "clean-up costs" included in the "products-completed operations hazard".
- d.** Subject to **b.** above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all "damages" because of all "personal and advertising injury" sustained by any one person or organization.
- e.** Subject to **b.** or **c.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - (1)** "Damages" under Coverage **A**; and
 - (2)** Medical expenses under Coverage **C**; because of all "bodily injury" or "property damage" arising out of any one "occurrence".
- f.** Subject to **b.** or **c.** above, whichever applies, the Each Pollution Condition Limit is the most we will pay for the sum of "damages" under Coverage **D** because of "bodily injury", "property damage" and "clean-up costs" arising out of any one "pollution condition".
- g.** Subject to **b.** above, the Each Wrongful Act Limit is the most we will pay for the sum of "damages" and "defense expenses" under Coverage **E** arising out of any one "wrongful act".
- h.** Subject to **e.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for "damages" because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
- i.** Subject to **e.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.
- j.** The Limits of Insurance of this Coverage Part apply to the entire policy period shown in the Declarations. The Limits of Insurance of this Coverage Part do not reinstate annually, nor do they reinstate for any additional period or extension applied to the policy period after issuance.

2. Deductible

Our obligation under this policy to pay "damages" on your behalf applies only to the amount of "damages" in excess of any deductible amounts shown in the Declarations of this policy. Subject to the terms and conditions of any separate deductible endorsement(s) which shall control the deductible if inconsistent with the provisions herein:

- a.** With respect to Coverage **A**, the Commercial General Liability Deductible shown in the Declarations shall apply:
 - (1)** If on a Per Claim Basis, to all "damages" sustained by any one person because of all "bodily injury" and "property damage" combined as the result of any one "occurrence". If "damages" are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a "claim" for such "damages". With respect to "property damage", person includes an organization.
 - (2)** If on a Per Occurrence Basis, to all "damages" sustained because of all "bodily injury" and "property damage" combined as the result of any one "occurrence", regardless of the number of persons or organizations who sustain "damages" because of that "occurrence".
- b.** With respect to Coverage **B**, the Commercial General Liability Deductible shown in the Declarations shall apply:
 - (1)** If on a Per Claim Basis, to all "damages" sustained by any one person because of all "personal and advertising injury" as the result of any one offense.

- (2) If on a Per Occurrence Basis, to all "damages" sustained because of all "personal and advertising injury" as the result of any one offense, regardless of the number of persons or organizations who sustain "damages" because of that offense.
- c. With respect to Coverage **D**, the Contractor's Pollution Liability Deductible shown in the Declarations shall apply:
 - (1) If on a Per Claim Basis, to all "damages" sustained by any one person because of all "bodily injury", "property damage" and "clean-up costs" combined as the result of any one "pollution condition". If "damages" are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a "claim" for such "damages". With respect to "property damage" and "clean-up costs", person includes an organization.
 - (2) If on a Per Pollution Condition Basis, to all "damages" sustained because of all "bodily injury", "property damage" and "clean-up costs" combined as the result of any one "pollution condition", regardless of the number of persons or organizations who sustain "damages" because of that "pollution condition".
- d. With respect to Coverage **E**, the Errors And Omissions Liability Deductible shown in the Declarations shall apply:
 - (1) If on a Per Claim Basis, to all "damages" sustained by any one person or organization as the result of any one "wrongful act".
 - (2) If on a Per Wrongful Act Basis, to all "damages" sustained as the result of any one "wrongful act", regardless of the number of persons or organizations who sustain "damages" because of that "wrongful act".
- e. 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 in the event of an "occurrence", "pollution condition", "wrongful act", "claim" or "suit" apply irrespective of the application of the deductible amount.
- f. 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.

SECTION IV – CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part, except as otherwise excluded in Coverage **E**, Paragraph **2**. Exclusions, **aa. Bankruptcy**.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence", "pollution condition", "wrongful act" or an offense which may result in a "claim". To the extent possible, notice should include:
 - (1) How, when and where the "occurrence", "pollution condition", "wrongful act" 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", "pollution condition", "wrongful act" or offense.

Solely with respect to any coverage provided on a claims-made basis, notice of an "occurrence" or offense is not notice of a "claim".

- b. If a "claim" is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the "claim" or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and

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

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

3. Legal Action Against Us

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

a. To join us as a party or otherwise bring us into a "suit" asking for "damages" from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for "damages" that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A, B, D** or **E** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

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

b. Excess Insurance

This insurance is excess over:

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

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

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

(c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to:

(i) **Section I – Coverage A – Bodily Injury And Property Damage Liability, 2. Exclusions, Exclusion g. Aircraft, Auto, Rail Or Watercraft;** or

(ii) **Section I – Coverage D – Contractor's Pollution Liability, 2. Exclusions, Exclusion e. Aircraft, Auto, Rail Or Watercraft.**

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

When this insurance is excess, we will have no duty under Coverages **A, B, D** or **E** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.
- d. Audits will not reduce the minimum earned premium or minimum retained premium. The due date for audit premiums is the due date shown on the audit invoice.

6. Representations

By accepting this policy, you agree:

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

7. 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.

8. Transfer Of Rights Of Recovery Against Others To Us

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

However, solely as specifically required by a written contract, we waive any right of recovery we may have against the other person(s) or organization(s) that are party to such written contract because of payments we make for "damages" arising out of "your work" or your "professional services" performed under such written contract. This shall not apply to "damages" resulting from the sole negligence of the other person(s) or organization(s) party to such written contract.

9. 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.

10. Headings

The descriptions contained within the headings and sub-headings of this policy are provided solely for convenience. The headings and sub-headings form no part of the terms or conditions of coverage provided by this policy.

11. Inspections & Surveys

We have the right, but not the duty, to:

- a. Make inspections and surveys at any time during this policy period;
- b. Give you reports on the conditions we find; and
- c. Recommend changes based upon such findings.

We are not obligated to make any inspections, surveys, reports or recommendations, and any such actions we do undertake relate only to our assessment of insurability and the calculation of premiums. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions are safe or healthful, or that conditions comply with laws, regulations, codes or standards.

12. Multiple Coverages

If one or more of the coverage sections (**A, B, C, D** or **E**) of this policy apply to an "occurrence", "pollution condition", "wrongful act" or offense, or related "occurrences", "pollution conditions", "wrongful acts" or offenses, then Coverage A, B and C shall not apply to the same or related "occurrences", "pollution conditions", "wrongful acts" or offenses.

If one or more coverage sections (**A, B, C, D** or **E**) of this policy, or any other policy issued to any insured by us, or by any of our affiliated companies, applies to the same or related "occurrences", "pollution conditions", "wrongful acts" or offenses, then the maximum limit of insurance under all such coverage sections shall not exceed the highest applicable limit of insurance available under any one applicable coverage section or policy, and the corresponding deductible for that coverage section shall apply.

This condition does not apply to any insurance policy or coverage section issued by us, or an affiliated company, specifically to apply as excess insurance over such coverage section or policy.

Subject to the terms, conditions and limits of insurance of individual coverage sections or policies, if we provide successive or overlapping coverage sections or policies that apply to more than one policy period, under no circumstances will we, or any affiliated company, be liable for coverage under more than one such coverage section or policy with respect to any continuous, progressive, repeated, intermittent or related "occurrence", "pollution condition", "wrongful act" or offense.

13. Fraudulent Acts

If the insured commits any act of fraud in proffering any "claim", this insurance shall become void from the date such fraudulent "claim" is proffered.

14. Assignment Of Interest

Your rights and duties under this policy may not be transferred without our written consent, except in the case of death of an individual named insured.

If any insured dies, that insured's rights and duties will be transferred to that insured's legal representative, but only while acting in the scope of duties as the legal representative. Until that insured's legal representative is appointed, any one having proper temporary custody or control of that insured's property will have that insured's rights and duties under this policy.

Assignment of interest under this policy shall not bind us unless we agree and endorse the assignment onto this policy.

15. Cancellation And Nonrenewal

The following provisions regarding cancellation and nonrenewal apply except to the extent that they, or any of them, are inconsistent with any applicable state laws or regulations applicable to surplus lines insurers, in which event, they will be deemed amended to be in conformity with such laws or regulations.

- a. This policy may be cancelled by the First Named Insured shown in the Declarations by surrender thereof to us or by mailing to us written notice stating when thereafter the cancellation shall be effective.
- b. We may cancel or non-renew this policy by mailing a written notice to the First Named Insured shown in the Declarations at the address shown in the Declarations of this policy and:
 - (1) Evidence of the mailing of notice of cancellation or nonrenewal shall be sufficient notice; and
 - (2) The effective date of cancellation stated in such notice shall be deemed to constitute the end of the policy period; and
 - (3) The effective date of cancellation shall be not less than:
 - (a) Ten (10) days for non-payment of premium; or
 - (b) Thirty (30) days for all other reasons,following the mailing of such notice of cancellation to the First Named Insured shown in the Declarations.
 - (4) Hand delivery of such written notice of cancellation or non-renewal, by us or by the First Named Insured shown in the Declarations (or by either's designee), shall be the equivalent of mailing.
 - (5) If this policy is issued to comply with any law or regulation that requires notice of cancellation or nonrenewal to any governmental body, such cancellation or non-renewal shall not be effective until the required notice has been provided by you or us.
- c. This policy is subject to a 10% short rate penalty if you cancel the policy or if we cancel the policy for non-payment of premium. We will treat your failure to timely reimburse us for any deductible amount to constitute non-payment of premium.

- d. If we cancel this policy for any reason other than non-payment of premium, we will return the pro rata amount of the unearned premium to the Named Insured shown in the Declarations.
- e. The applicable unearned premium, subject to paragraphs c. and d. above, shall be returned to the First Named Insured shown in the Declarations as soon as practicable following the effective date of cancellation. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of the effective date of cancellation.

16. Your Right To Claim And Occurrence Information

Solely with respect to any Coverage Part provided on a claims-made and reported basis, we will provide the first Named Insured shown in the Declarations the following information relating to this and any preceding general liability claims-made Coverage Part we have issued to you during the previous three years:

- a. A list or other record of each "occurrence", not previously reported to any other insurer, of which we were notified in accordance with Paragraph 2.a. of this **Section IV – Conditions**. We will include the date and brief description of the "occurrence" if that information was in the notice we received.
- b. A summary by policy year, of payments made and amounts reserved, stated separately, under any applicable General Aggregate Limit and Products-Completed Operations Aggregate Limit.

Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values.

You must not disclose this information to any claimant or any claimant's representative without our consent.

If we cancel or elect not to renew this Coverage Part, we will provide such information no later than 30 days before the date of policy termination. In other circumstances, we will provide this information only if we receive a written request from the first Named Insured within 60 days after the end of the policy period. In this case, we will provide this information within 45 days of receipt of the request.

We compile claim and "occurrence" information for our own business purposes and exercise reasonable care in doing so. In providing this information to the first Named Insured, we make no representations or warranties to insureds, insurers, or others to whom this information is furnished by or on behalf of any insured. Cancellation or nonrenewal will be effective even if we inadvertently provide inaccurate information.

SECTION V – EXTENDED REPORTING PERIODS

Solely with respect to any Coverage Part provided on a claims-made and reported basis:

1. We will provide one or more Extended Reporting Periods, as described below, if:
 - a. This Coverage Part is canceled or not renewed; or
 - b. We renew or replace this Coverage Part with insurance that:
 - (1) Has a Retroactive Date later than the date shown in the Declarations of this Coverage Part; or
 - (2) Does not apply to "bodily injury", "property damage", "personal and advertising injury", "clean-up costs" or other "damages" on a claims-made basis.
2. Extended Reporting Periods do not extend the policy period or change the scope of coverage provided. They apply only to "claims" for:
 - a. "Bodily injury", "property damage" or "clean-up costs" that occur before the end of the policy period but not before the Retroactive Date, if any, shown in the Declarations;
 - b. "Personal and advertising injury" caused by an offense committed before the end of the policy period but not before the Retroactive Date, if any, shown in the Declarations; or
 - b. "Damages" arising from a "wrongful act" committed before the end of the policy period but not before the Retroactive Date, if any, shown in the Declarations.

Once in effect, Extended Reporting Periods may not be canceled.

3. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for ninety (90) days with respect to "claims" arising from any "occurrence", "pollution condition", "wrongful act" or offense not previously reported to us.

The Basic Extended Reporting Period does not apply to "claims" that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such "claims".

4. The Basic Extended Reporting Period does not reinstate or increase the Limits of Insurance.
5. A Supplemental Extended Reporting Period of twenty-four (24) months is available, but only by an endorsement and for an extra charge. This supplemental period starts when the Basic Extended Reporting Period, set forth in Paragraph 3. above, ends. The supplemental period ends twenty-four (24) months after the end of the Basic Extended Reporting Period.

You must give us a written request for the endorsement within 60 days after the end of the policy period. The Supplemental Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- a. The exposures insured;
- b. Previous types and amounts of insurance;
- c. Limits of Insurance available under this Coverage Part for future payment of "damages";
- d. Your "claims" history; and
- e. Other factors that, in our judgment, may be appropriate.

The additional premium will not exceed 200% of the annual premium for this Coverage Part.

This endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Supplemental Extended Reporting Period, including a provision to the effect that the insurance afforded for "claims" first received during such period is excess over any other valid and collectible insurance available under policies in force after the Supplemental Extended Reporting Period starts.

6. Once purchased, we have no obligation to extend or renew any Supplemental Extended Reporting Period.
7. Neither the Basic Extended Reporting Period nor the Supplemental Extended Reporting Period, if purchased, reinstates or increases the Limits of Insurance.

SECTION VI – 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. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement".
2. "Auto" means:
 - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.However, "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish, emotional distress or death resulting from any of these at any time.
4. "Claim" means a written or oral demand against an insured seeking "damages" to which this insurance applies.
5. "Clean-up costs" means reasonable and necessary expenses incurred for:

- a. The investigation, removal, remediation, response, associated monitoring, neutralization, detoxification, dilution, disposal of soil, surface water or groundwater impacted by a "pollutant" arising out of a covered "pollution condition":
 - (1) To the extent required by applicable environmental laws, or specifically mandated by court order, the government or any political subdivision or agency of the United States of America or any state or municipality thereof, or Canada or any province thereof; or
 - (2) Which have actually been incurred by the government or any political subdivision or agency of the United States of America or any state or municipality thereof, or Canada or any province thereof, or by any third party.
- b. The repair or replacement of real property unintentionally damaged during the performance of the clean-up activities specified in **a.** above. This does not include any expenses related to improvements or betterments constructed after the commencement of clean-up activities.

Such investigation, removal, remediation, response, associated monitoring, neutralization, detoxification, dilution or disposal of soil, surface water or groundwater shall be deemed to be complete, and we will have no further obligation to pay for "clean-up costs" upon final approval or determination of no further required action by any supervising regulatory agency or upon satisfaction of the requirements identified within the American Society of Testing and Materials Guide For Risk Based Corrective Action, whichever occurs first.

- 6. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or "damage" occurs in the course of travel or transportation between any places included in **a.** above; or
 - c. All other parts of the world if the injury or "damage" arises out of:
 - (1) Goods or products made or sold by you in the territory described in **a.** above;
 - (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication
provided the insured's responsibility to pay "damages" is determined in a "suit" on the merits, in the territory described in **a.** above or in a settlement we agree to.
- 7. "Damages" means the monetary amount of any judgment, award or settlement that an insured becomes legally obligated to pay as a result of a "claim" or "suit". "Damages" does not include equitable relief, non-pecuniary relief, disgorgement of profits, sanctions, fines or penalties.
- 8. "Defense expenses" means, with respect to any "claim", "occurrence", "pollution condition" or "wrongful act" that we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur;
 - b. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds;
 - c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the "claim" or "suit", including actual loss of earnings up to \$250 per day because of time off from work;
 - d. All costs taxed against the insured in the "suit";
 - e. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer;
 - f. All interest on the amount of any judgment that we pay which accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance; and
 - g. Those amounts paid by us under **2.a.** through **2.f.** of **Supplementary Payments – Coverages A, B, D And E.**
- 9. "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.

- 10.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 11.** "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 12.** "Hazardous properties" means radioactive, toxic or explosive properties of any substance.
- 13.** "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.
- 14.** "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 damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b.** A sidetrack agreement;
 - c.** Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d.** An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e.** An elevator maintenance agreement;
 - f.** That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" 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. However, this does not include that part of any contract or agreement:
 - (1)** That indemnifies a railroad for "bodily injury" or "property damage" 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;
 - (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; or
 - (3)** Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(2)** above and supervisory, inspection, architectural or engineering activities.
- 15.** "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" does not include a "temporary worker".
- 16.** "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".
- 17.** "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

- b.** Vehicles maintained for use solely on or next to premises you own or rent;
- c.** Vehicles that travel on crawler treads;
- d.** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1)** Power cranes, shovels, loaders, diggers or drills; or
 - (2)** Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e.** Vehicles not described in **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2)** Cherry pickers and similar devices used to raise or lower workers;
- f.** Vehicles not described in **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.
However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1)** Equipment designed primarily for:
 - (a)** Snow removal;
 - (b)** Road maintenance, but not construction or resurfacing; or
 - (c)** Street cleaning;
- (2)** Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

- 18.** "Mold" means any permanent or transient fungus, mold, mildew or mycotoxin, or any of the spores, scents or by-products resulting therefrom regardless of whether they are proved to cause disease, injury or damage.
- 19.** "Natural resource damages" means physical injury to or destruction of land, fish, wildlife, biota, air, water, groundwater and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States of America, any state or municipal government or agency, or any Indian tribe.
- 20.** "Nuclear facility" means:
 - a.** Any site containing an apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
 - b.** Any equipment or device designed or used for:
 - (1)** Separating the isotopes of uranium or plutonium;
 - (2)** Processing or utilizing "spent fuel"; or
 - (3)** Handling, processing or packaging "nuclear waste";
 - c.** Any equipment or device used for the processing, fabricating or alloying of special nuclear material as defined in the Atomic Energy Act of 1954 or in any law amendatory thereof, 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 for, or used for, the storage or disposal of "nuclear 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.
- 21.** "Nuclear material" means source material, special nuclear material or by-product material as defined in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- 22.** "Nuclear waste" means any waste material:

- a. Containing by-product material, as defined in the Atomic Energy Act of 1954 or any law amendatory thereof, other than tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, as defined in the Atomic Energy Act of 1954 or any law amendatory thereof; and
 - b. Resulting from the operation by any person or organization of any "nuclear facility".
- 23.** "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. "Occurrence" does not mean or include "pollution conditions".
- 24.** "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
- 25.** "Pollutants" means any solid, liquid, gaseous, thermal or biological irritant or contaminant, including, without limitation, "mold", bacteria, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste and any matter, that by its presence, corrupts, defiles, contaminates or is harmful to soil, air, water, living things or the environment. Waste includes materials to be recycled, reconditioned or reclaimed, but not material intentionally abandoned by an insured.
- It is understood that any substance or material that is a "pollutant" does not lose its status as a "pollutant" because:
- a. Such substance or material has, or may have, a useful function or purpose; or
 - b. The release, threatened release or presence of such substance or material in any locale is not regulated, prohibited, remedied by, or the subject of, one or more environmental laws.
- 26.** "Pollution condition" means the discharge, dispersal, seepage, migration, release, escape or movement of "pollutants" into or upon land, or any structure on land, the atmosphere, any watercourse or body of water, or groundwater, provided such "pollutants" are not naturally present in the environment in the concentrations or amounts discovered, unless such natural conditions are released or dispersed as a result of the performance of "your work", and such release or dispersal is unexpected and unintended from the standpoint of the insured.
- Two or more "pollution conditions" arising from the same, or related, acts of discharge, dispersal, seepage, migration, release, escape or movement of "pollutants" shall be deemed to be a single "pollution condition".
- "Pollution condition" does not mean or include "occurrence".
- 27.** "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 job site has been completed if your contract calls for work at more than one job 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;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.
28. "Professional services" means those services performed for others by you, or by others on your behalf, for a fee that are related to your practice as a consultant, engineer, architect, surveyor, technician, laboratory or construction manager.
29. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" or "pollution condition" that caused it;
 - c. "Natural resource damages".
- For the purposes of this insurance, "electronic data" is not tangible property.
30. "Responsible insured" means the manager or supervisor of the insured responsible for environmental affairs, permitting, control or compliance, or any manager, member, officer, director or partner of the insured.
31. "Restoration" means reasonable and necessary costs incurred by the insured with our written consent, which consent shall not be unreasonably withheld or delayed, to repair, replace or restore real or personal property to substantially the same condition it was in prior to being damaged during work performed in the course of incurring "clean-up costs" arising from a covered "pollution condition". "Restoration" does not include any costs associated with improvements or betterments.
32. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in or at a "nuclear facility".
33. "Suit" means a civil proceeding in which "damages" because of "bodily injury", "property damage", "personal and advertising injury", "clean-up costs" or "wrongful acts" 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; or
 - b. Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which the insured submits with our consent.
34. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
35. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
36. "Wrongful act" means an act, error or omission negligently made in the rendering, or failure to render, "professional services".
37. "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.

38. "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.

****** ATTENTION ******

The Compliance Proof of Coverage Search Page site has moved to

<https://ProofOfCoverage.fldfs.com>

Please update your bookmark. If you have questions, you can contact the Customer Service Unit at (850) 413 - 1609.



JIMMY PATRONIS
FLORIDA'S CHIEF FINANCIAL OFFICER

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Employer Detail Page

This database was last updated Wednesday, June 03, 2020 12:07 AM.

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Employer Information

Employer Name	Employer Type	NAICS Code
MCCAFFERTY BRINSON CONSULTING LLC	LIMITED LIABILITY CO.	541330

Coverage History

Governing Class Code*	Effective Date	Detailed Coverage Information	Carrier Office	Policy Number	Wrap Up
08601	Oct 30 2019	Detailed Coverage Information	TRANSPORTATION INSURANCE COMPANY	WC431076569	NO
08601	Oct 30 2018	Detailed Coverage Information	TRANSPORTATION INSURANCE COMPANY	WC431076569	NO
08601	Oct 30 2017	Detailed Coverage Information	TRANSPORTATION INSURANCE COMPANY	WC431076569	NO
08601	Oct 30 2016	Detailed Coverage Information	TRANSPORTATION INSURANCE COMPANY	WC431076569	NO
08601	Oct 30 2015	Detailed Coverage Information	TRANSPORTATION INSURANCE COMPANY	WC431076569	NO
08601	Oct 30 2014	Detailed Coverage Information	TRANSPORTATION INSURANCE COMPANY	WC431076569	NO
08601	Oct 30 2013	Detailed Coverage Information	TRANSPORTATION INSURANCE COMPANY	WC431076569	NO
08601	Oct 30 2012	Detailed Coverage Information	TRANSPORTATION INSURANCE COMPANY	WC431076569	NO
08601	Oct 30 2011	Detailed Coverage Information	TRANSPORTATION INSURANCE COMPANY	WC431076569	NO
08601	Oct 30 2010	Detailed Coverage Information	VALLEY FORGE INSURANCE COMPANY	WC422992967	NO
08601	Oct 30 2009	Detailed Coverage Information	VALLEY FORGE INSURANCE COMPANY	WC417844692	NO

*Represents the Governing Class Code associated with the Named Insured on the policy, as reported by the Insurance Carrier, and is not validated as correct.

Exemption Listings

Exemption Holder Name - Click on the name(s) below to view more detailed information

[AUDRA I MCCAFFERTY](#)

[FRANK A BRINSON](#)

Owner Election Listings

No Owner Election of Coverage Listings

Employer Name History

Employer Name	Name Type	Change Date
MCCAFFERTY BRINSON CONSULTING LLC	Legal	Nov 9 2009

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