



**CITY OF ELKHORN
COMMON COUNCIL MEETING AGENDA
May 20, 2024 ~ 5:30 p.m. or later,
depending upon the conclusion of the COW meeting
Council Chambers, City Administration Offices, 311 Seymour Ct., Elkhorn, Wisconsin**

- 1) **Call to Order**
- 2) **Pledge of Allegiance**
- 3) **Roll Call**
- 4) **Public Comment** *Public comments are limited to three minutes each. The public may speak on any item of City concern whether or not the topic is included on this agenda. However, if the topic does not pertain to an item listed on the Council agenda, the Council is not permitted to address or discuss the matter during this meeting. Under open meeting laws, the Council must notice an item on the agenda to allow discussion on that matter. If Council is not permitted to discuss your concerns, your comments will be considered and may be placed on a future agenda for further discussion.*
- 5) **Consent Agenda** *(One motion & a second will approve all of the following items listed. Any item may be pulled from the list and handled separately.)*
 - a) Meeting Minutes: Human Resources May 1 & 16, 2024; Committee of the Whole and Common Council May 6, 2024 and Public Safety May 9, 2024
 - b) Pay Request No. 1 from Rock Road Companies for the NE WTP Sewer & Water Extensions project in the amount of \$290,784.78
- 6) **Bills Payable**
 - a) Consideration and recommendation to pay
- 7) **Report of City Officers**
 - a) Mayor
 - i) Recognition of Municipal Court Clerk Claudia Last for 14 years of service
 - ii) Swearing in of Interim City Attorney Elaine S. Ekes
 - iii) Swearing in of Fire Chief Trent Eichmann
 - iv) Consider Candidates for District I Aldermanic Vacancy
 - b) City Administrator
- 8) **Reports of City Boards and Community Partners**
 - a) Fire Advisory
 - b) Library
 - c) Recreation Advisory
 - d) Chamber of Commerce
 - e) Community Grant Writer
- 9) **Committee Reports**
 - a) Human Resources
 - b) Committee of the Whole
 - c) Public Safety
- 10) **Presentation**
 - a) Karl Sorvick, Recreation Director
 - i) Elkhorn Community Band Shell: History and restoration efforts
- 11) **Unfinished Business**

- a) Discussion and possible decision regarding the Temporary Class “B” Beer license application for the Walworth County Agricultural Society at the Walworth County Fairgrounds event - Professional Champion Bull Riding on July 5 & 6, 2024; 5:00 – 10:00 pm and review the event emergency plan
- b) Discussion and possible decision regarding execution of a revised agreement with Visu-Sewer, LLC for the 2024 Sewer Rehabilitation Project in the amount of \$774,933.75

12) **New Business**

- a) Discussion and possible decision regarding whether to direct the city attorney to draft a proposed ordinance opting out of the state code revision allowing establishments who hold a Class “B”, “Class B” or “Class C” license to offer extended closing hours (between 4:00 a.m. and 6:00 a.m.) for the National Political Convention
- b) Discussion and possible decision regarding conditional use permit for JRS Holding to operate a transportation facility (in the form of bulk material trucking) at 702 Nathan Lane
- c) Discussion and possible decision regarding issuing proposed request for proposals (RFP) for needs analysis/study of fire station
- d) Discussion and possible decision regarding recommendations from Human Resources Committee regarding City employee health insurance plan for 2024-2025
 - i) Change broker from Rathsack & Associates to Gallagher Insurance, Risk Management & Consulting (effective immediately)
 - ii) Standardize health reimbursement arrangement for employees so that all employees receive \$500 (as opposed to previous split of \$500 for single employees and \$1,000 for employees with families)(starting January 1, 2025)
 - iii) Increase amount employees can contribute to flexible spending account from \$2,200 in 2024 to \$3,200 in 2025 (starting January 1, 2025)
 - iv) Collect monthly premium of 1% of expected plan cost for employees with additional plan participants (i.e., children or spouses)(starting January 1, 2025)

13) **Adjourn into Closed Session**

- a) Closed Session: The Common Council may entertain a motion to go into CLOSED SESSION pursuant to Wisconsin Statutes Section 19.85(1)(c) to consider the employment, promotion, compensation or performance evaluation of data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
 - i) Discussion regarding compensation for newly appointed Fire Chief Trent Eichmann
- b) Closed Session: The Common Council may entertain a motion to go into CLOSED SESSION pursuant to Wisconsin Statutes Section 19.85(1)(c)—to consider the employment, promotion, compensation or performance evaluation of data of any public employee over which the governmental body has jurisdiction or exercises responsibility—and pursuant to 19.85(1)(f)—to consider financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.
 - i) Discussion regarding findings from investigation ordered by Council on January 3, 2024

14) **Reconvene in Open Session** for possible action on Closed Session items

The Common Council shall RECONVENE INTO OPEN SESSION reserving the right to take action on the matters discussed in CLOSED SESSION and to move to the remaining meeting agenda(s) as posted.

- a) Discussion and possible decision regarding compensation for newly appointed Fire Chief Trent Eichmann
- b) Discussion and possible decision regarding findings from investigation ordered by Council on January 3, 2024

15) Adjourn

DATED at Elkhorn, Wisconsin, this 17th day of May 2024

Rebeca Perez, Deputy City Clerk

Should you have any questions or comments regarding any items on this agenda, please contact the City Clerk's office at (262) 723-2219. Upon reasonable notice to the City Clerk, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services.

CITY OF ELKHORN
Human Resources Committee Minutes
Council Chambers, 311 Seymour Ct., Elkhorn, Wisconsin

May 1, 2024

The Human Resources Committee meeting was called to order at 10:45 a.m. by Alderperson McClory followed by Roll Call.

Roll Call

Present: Alderpersons Scott McClory, Ron Dunwiddie and Gary Payson Jr.

Also present: Mayor Tim Shiroda, Administrator Adam Swann, City Clerk Lacey Reynolds, Human Resources Generalist Kacey Keogh, Police Chief Joel Christensen, Director of Public Works Matthew Lindstrom, Finance Director Corrie Daly, Recreation Director Karl Sorvick, Library Director Chad Robinson, Utility Field Office Coordinator Dawn Gall, Water Superintendent Tim Boss, Electric Superintendent BZ Kayser, Theresa Boeger.

Discussion and possible decision regarding employee health insurance plan for 2024-2025 plan year. City Administrator Adam Swann gave a brief overview of the financial status of the city's health insurance fund. Swann noted the health insurance costs have increased significantly over the past few years. Human Resources Generalist Kacey Keogh reviewed various options for employee health insurance. Discussion took place, the committee recessed from 11:55 am – 12:07 pm for city staff to update and provide more information regarding premium amounts then discussion continued. *Motion (Dunwiddie/Payson Jr.) to recommend a 1.75% premium and standardize the HRA amount for all employees to \$500. Voice vote, all approved, motion carried.*

Adjourn: Motion (Dunwiddie/Payson Jr.) to adjourn at 12:15 p.m.

Lacey L. Reynolds
City Clerk

CITY OF ELKHORN
Committee of the Whole Minutes
Common Council Chambers, 311 Seymour Ct., Elkhorn, Wisconsin

May 6, 2024

The Committee of the Whole meeting was called to order by Council President Payson Jr. at 4:45 p.m.

Roll Call

Present: Alderpersons Gary Payson Jr., Ron Dunwiddie, Scott McClory, Ken Meinel, Kurt Harkness and Mayor Tim Shiroda.

Others present: Administrator Adam Swann, City Clerk Lacey Reynolds, Director of Public Works Matthew Lindstrom, Safe Built and Willdan Representatives.

Interviews of firms that submitted proposals for building-inspection services in response to the City's RFP. Council President Payson Jr. asked questions of the SAFE Built representative regarding his firm, inspectors on staff, communication with residents, staff, contractors and other customers, prior litigation issues, and improving processes. Council President Payson Jr. asked the same questions of the Willdan representative regarding his firm, inspectors on staff, communication with residents, staff, contractors and other customers, prior litigation issues, and improving processes.

Closed Session: The Committee of the Whole may entertain a motion to go into CLOSED SESSION pursuant to Wisconsin Statutes Section 19.85(1)(e) in order to conduct specified public business, whenever competitive or bargaining reasons require. The Committee of the Whole may also entertain a motion to go into CLOSED SESSION pursuant to 19.85(1)(f) to consider financial, medical, social or personal histories of specific persons which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations. Review and discuss the proposals for building inspection services. *Motion (Dunwiddie/Harkness) to adjourn into closed session. Voice vote, all approved, motion carried.* Adjourn into closed session at 5:05 pm.

Reconvene in open session for possible action on closed session items at 5:25 pm. *Motion (Dunwiddie/Harkness) to reconvene in open session. Voice vote, all approved, motion carried.* The Common Council shall RECONVENE INTO OPEN SESSION reserving the right to take action on the matters discussed in CLOSED SESSION and to move to the remaining meeting agenda(s) as posted. Discussion and possible decision regarding proposals for building-inspection services. *Motion (McClory/Dunwiddie) to direct staff to negotiate with Safe Built Inspection Services. Roll call vote: McClory, yes; Dunwiddie, yes; Meinel, yes; Harkness, yes; Payson Jr., yes. Motion carried.*

Motion (Dunwiddie/Harkness) to adjourn at 5:27 pm. Voice vote, all approved, motion carried.

Lacey L. Reynolds
City Clerk

**CITY OF ELKHORN COMMON COUNCIL
MEETING MINUTES
May 6, 2024
COUNCIL CHAMBERS, 311 SEYMOUR CT., ELKHORN, WI 53121**

The Common Council meeting was called to order by Mayor Shiroda at 5:30 p.m. in the Council Chambers, followed by the Pledge of Allegiance.

ROLL CALL

Present: Mayor Tim Shiroda, Alderpersons Gary Lee Payson Jr., Ron Dunwiddie, Scott McClory, Ken Meinel, Kurt Harkness.

Others present: City Administrator Adam Swann, Attorney Elaine Ekes, City Clerk Lacey Reynolds, Police Chief Joel Christensen, Director of Public Works Matthew Lindstrom, Interim Fire Chief Trent Eichmann, Finance Director Corrie Daly, Utility Field Office Coordinator Dawn Gall, City Engineer Mike Timmers, other interested persons.

PUBLIC COMMENT

Dennis Karbowski and Chris Clapper spoke about ATV's and UTV's. John Henderson informed the Council he is in attendance as a representative for the Walworth County Food and Diaper Bank.

CONSENT AGENDA

Motion (Payson Jr./McClory) to approve the Common Council Meeting Minutes from April 16, 2024 and the Beekeeping Permit Application for Javan Wehmeier at 147 N. Water Crest Ct. Voice vote, all approved, motion carried.

Aldersperson Payson Jr. requested these items be postponed and the fairgrounds submit a safety plan. Motion (Payson Jr./Dunwiddie) to postpone to a later date of May 20, 2024 the temporary Class "B" Beer licenses for the Walworth County Agricultural Society at the Walworth County Fairgrounds, Bull Riding on July 5 & 6, 2024; 4:00 pm -11:00 pm and July 7, 2024; 1:00 pm - 9:00 pm and temporary Class "B" Beer license for the Walworth County Agricultural Society at the Walworth County Fairgrounds, Taco Fest on July 20, 2024; 11:00 am – 11:00 pm and July 21, 2024; 11:00 am - 9:00 pm. Voice vote, all approved, motion carried.

REPORT OF CITY OFFICERS

MAYOR'S REPORT

Mayoral Appointments - Boards, Commissions & Liaisons

Police and Fire Commissioners: Craig Rasmussen – member

Board of Appeals: Tom Stotko, Gary Welsh, James Boardman, Julie Taylor – members

Historic Preservation Commission: James Boardman - Plan Commission member, Julie Taylor, John Gunyon, Lisa Brellenthin, Gary Welsh, Jean Carroll - Citizen members

Motion (Dunwiddie/Meinel) to approve the mayoral appointments listed above. Voice vote, all approved, motion carried.

CITY ADMINISTRATOR'S REPORT – Administrator Swann reported grading work began at the Creekside Community Development, Electric Department staff member Nathan Porter completed his 4-year apprenticeship and is now a journeyman, the NEWTP project began and Cobb Rd. should be open by May 17th. Structures were removed from the City's new parcel on HWY 67 and letters of interest for the District 1 alderperson vacancy are due by May 15th. Director of Public Works Matthew Lindstrom shared an update on Centralia phase 2 and the HWY 11 closing.

NEW BUSINESS

Discussion and possible decision regarding amending 2024 budget to increase EEDA grant funds available by \$32,546.75, which is the amount of unused EEDA grant funds in 2022-2023. *Motion (Payson*

Jr./McClory) to approve amending the 2024 budget to increase EEDA grant funds available by \$32,546.75, which is the amount of unused EEDA grant funds in 2022-2023. Roll call vote: Payson Jr., yes; McClory, yes; Dunwiddie, yes; Meinel, yes; Harkness, yes. Motion carried.

Discussion and possible decision regarding proposed Resolution No. 24-11: A Resolution Approving the Engagement Agreement with Pruitt, Ekes & Geary, S.C., as the Interim City Attorney for the City of Elkhorn. *Motion (Meinel/McClory) to approve Resolution No. 24-11: A Resolution Approving the Engagement Agreement with Pruitt, Ekes & Geary, S.C., as the Interim City Attorney for the City of Elkhorn. Voice vote, all approved, motion carried.*

Discussion and possible decision regarding proposed Ordinance No. 24-04: An Ordinance Amending Section 1.03(2)(h)1 of the City of Elkhorn Municipal Code regarding the Appointment of the City Attorney and other Attorneys [*first and possible second reading*]. *Motion (Payson Jr./Dunwiddie) to waive the first reading of Ordinance No. 24-04: An Ordinance Amending Section 1.03(2)(h)1 of the City of Elkhorn Municipal Code regarding the Appointment of the City Attorney and other Attorneys. Voice vote, all approved, motion carried. Motion (Payson Jr./Dunwiddie) to approve Ordinance No. 24-04: An Ordinance Amending Section 1.03(2)(h)1 of the City of Elkhorn Municipal Code regarding the Appointment of the City Attorney and other Attorneys with the delegation wording to include Mayor and/or Administrator. Voice vote, all approved, motion carried.*

Discussion and possible decision regarding request for proposals for city attorney. *Motion (Payson Jr./Harkness) to approve the request for proposals for city attorney. Voice vote, all approved, motion carried.*

Discussion and possible decision regarding proposed Resolution 24-12: A Resolution Approving an Interfund Loan from the City Electric Fund to Tax Incremental District #4. *Motion (Dunwiddie/Meinel) to approve Resolution 24-12: A Resolution Approving an Interfund Loan from the City Electric Fund to Tax Incremental District #4. Roll call vote: Dunwiddie, yes; Meinel, yes; Harkness, yes; McClory, yes; Payson Jr., yes. Motion carried.*

Discussion and possible decision regarding the Conditional Use Permit for Outdoor dining located at 1 N Lincoln Street. *Motion (Meinel/Harkness) to approve the Conditional Use Permit for Outdoor dining located at 1 N. Lincoln Street. Voice vote, all approved, motion carried.*

Discussion and possible decision regarding City participation in “No Mow” May [*requested by Alderman Harkness*]. *Motion (Payson Jr./Dunwiddie) not to approve City participation in “No Mow” May. Roll call vote: Payson Jr., yes; Dunwiddie, yes; McClory, yes; Meinel, yes; Harkness, no. Motion carried 4-1.*

Closed Session: The Common Council may entertain a motion to go into CLOSED SESSION pursuant to Wisconsin Statutes Section 19.85(1)(e) to deliberate on offers to purchase public property for Lot 72 (Tax Key YA 396900001). Closed Session: The Common Council may entertain a motion to go into CLOSED SESSION pursuant to Wisconsin Statutes Section 19.85(1)(c)—to consider the employment, promotion, compensation or performance evaluation of data of any public employee over which the governmental body has jurisdiction or exercises responsibility—and pursuant to 19.85(1)(f)—to consider financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations to review of findings from investigation ordered by Council on January 3, 2024. Closed Session: The Common Council may entertain a motion to go into CLOSED SESSION pursuant to Wisconsin Statutes Section 19.85(1)(c) to consider the

employment, promotion, compensation or performance evaluation of data of any public employee over which the governmental body has jurisdiction or exercises responsibility for conducting annual performance review of City Administrator Adam Swann. *Motion (Payson Jr./Harkness) to adjourn to closed session. Voice vote, all approved, motion carried.* Adjourned to closed session at 5:59 p.m.

RECONVENE IN OPEN SESSION

Reconvened in open session at 6:29 pm.

The Common Council shall RECONVENE INTO OPEN SESSION reserving the right to take action on the matters discussed in CLOSED SESSION and to move to the remaining meeting agenda(s) as posted.

Discussion and possible decision regarding offer to purchase public property, Lot 72 (Tax Key YA 396900001). *Motion (McClory/Dunwiddie) to accept the offer subject to the right of first refusal under the City's standard policy and subject to review by the city attorney of the form contract. Voice vote, all approved, motion carried.*

Discussion and possible decision regarding findings from investigation ordered by Council on January 3, 2024. *Motion (Payson Jr./Harkness) to receive and file. Voice vote, all approved, motion carried.*

Discussion and possible decision regarding results of performance review of City Administrator Adam Swann. *Motion (Payson Jr./Dunwiddie) to approve the step increase that was discussed in closed session. Roll call vote: Payson Jr., yes; Dunwiddie, yes; McClory, yes; Meinel, yes; Harkness, yes. Motion carried.*

ADJOURN

Motion (Dunwiddie/Harkness) to adjourn at 6:33 p.m. Voice vote, all approved, motion carried.

Lacey L. Reynolds
City Clerk

CITY OF ELKHORN
Public Safety Committee Minutes
Council Chambers, 311 Seymour Ct., Elkhorn, Wisconsin

May 9, 2024

Public Safety Committee was called to order at 10:45 a.m. by Alderman Dunwiddie followed by roll call.

Roll Call

Present: Alderpersons Ron Dunwiddie, Kurt Harkness and Gary Lee Payson Jr.

Also Present: Mayor Tim Shiroda, City Clerk Lacey Reynolds, Deputy City Clerk Rebeca Perez, Police Chief Joel Christensen, Human Resources Generalist Kacey Keogh

Discussion and possible decision regarding Personal Appearance Standards. Police Chief Christensen informed the committee that currently the Police Department does not allow facial hair other than a mustache or tattoos. The department and PFC are looking to update the policies. Christensen asked the committee how they want the officers to present. Discussion took place regarding facial hair and length, tattoos and the location. Christensen added there will be a draft to review in the near future.

Discussion and possible decision regarding Police Department Policy Update Officer-Involved Shootings and Deaths #306. Police Chief Christensen shared the update is still in progress and there are two other policies that need to be updated along with this section. Christensen added the department had a training yesterday regarding this topic.

Adjourn

Motion (Payson Jr./Harkness) to adjourn at 11:01 am. Voice vote, all approved, motion carried.

Lacey L. Reynolds
City Clerk

CITY OF ELKHORN
Human Resources Committee Minutes
Council Chambers, 311 Seymour Ct., Elkhorn, Wisconsin

May 16, 2024

The Human Resources Committee meeting was called to order at 3:30 p.m. by Alderperson McClory followed by Roll Call.

Roll Call

Present: Alderpersons Scott McClory, Ron Dunwiddie and Gary Payson Jr.

Also present: Administrator Adam Swann, City Clerk Lacey Reynolds, Human Resources Generalist Kacey Keogh, Police Chief Joel Christensen, Director of Public Works Matthew Lindstrom, Utility Field Office Coordinator Dawn Gall, Finance Director Corrie Daly and other interested persons.

Discussion and possible decision regarding employee health insurance plan for 2024-2025 plan year. Administrator Swann informed the committee the stop loss carrier quote came in and the numbers are better than expected. Swann explained the City budgets off the expected plan costs not the potential maximum plan costs. Swann noted this because it is affecting the solvency of the fund and there is no guarantee claims will not exceed the amount budgeted. HR Generalist Keogh explained the timeline is tight and any updates need to be approved by next week. Keogh recapped the decisions made at the last HR meeting on May 1st and asked if the committee wanted to change brokers, maintain what the committee discussed at the last meeting, retaining the current plan schedule or looking at the alternate and an opt out incentive. Swann added changing brokers would be in the best interest of the City. Alderperson Payson Jr. asked to move forward with changing brokers, keeping the current plan schedule, implementing a 1% cost share, keeping the \$500 HRA and increasing the FSA to \$3,200. Alderperson McClory recommended not moving forward with an opt out option at this time. *Motion (Dunwiddie/Payson Jr.) to change the broker, add a 1% cost share for employees, retain the current plan schedule and not offer an opt out incentive. Voice vote, all approved, motion carried.*

Adjournment

Motion (Dunwiddie/Payson Jr.) to adjourn at 3:47 p.m. Voice vote, all approved, motion carried.

Lacey L. Reynolds
City Clerk



Owner: City of Elkhorn
9 S Broad St, Elkhorn, WI 53121

Engineer: Foth Infrastructure & Environment
7044 S Ballpark Drive
Franklin, WI 53132

Contractor: Rock Road Companies Inc.
W4814 County Highway A, Elkhorn, WI 53121

Project Title	NE WTP Sewer & Water Extensions
Owner Project No.	
Engineer Project No.	0021E010.02
Original Contract Amount	\$ 2,533,204.81
Original Contract Date	3/5/2024
Current Contract Amount	\$ 2,533,204.81
Pay Period	Start - 5/10/2024
Pay Request Number	1
Date	5/16/2024

1. ORIGINAL CONTRACT PRICE	\$2,557,000.00	
2. Net change by Change Orders	\$0.00	
3. Current Contract Price (Line 1 ± 2)	\$2,557,000.00	
4. TOTAL COMPLETED AND STORED TO DATE	\$306,089.24	
5. RETAINAGE:		
a. 5% x \$306,089.24	\$15,304.46	Work Completed
b. 5% x \$0.00	\$0.00	Stored to Date
c. Total Retainage	\$15,304.46	
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)	\$290,784.78	
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)	0	
8. AMOUNT DUE THIS APPLICATION	\$290,784.78	
9. BALANCE TO FINISH, PLUS RETAINAGE	\$2,281,519.68	

CHANGE ORDER SUMMARY		
	ADDITION	SUBTRACTION
Approved Change Order 1	\$0.00	\$0.00
Approved Change Order 2	\$0.00	\$0.00
Approved Change Order 3	\$0.00	\$0.00
Revised Contract Price	\$0.00	

The amount **\$290,784.78** is recommended for approval for payment in accordance with the terms of the Contract.

Approval	Signature	Name	Title	Date
Contractor Recommendation	<i>Raun Flowers</i> DocuSigned by: F488D2495A1C4A4...	Raun Flowers	Project Manager	5/17/24
Foth Recommendation	<i>Todd Deibert</i>	Todd Deibert	Project Manager	5/17/2024
Village Recommendation				
DNR Representative				



Project Title	NE WTP Sewer & Water Extensions
Owner Project No.	0
Engineer Project No.	0021E010.02
Original Contract Amount	\$ 2,533,204.81
Original Contract Date	3/5/2024
Current Contract Amount	\$ 2,533,204.81
Pay Period	Start - 5/10/2024
Pay Request Number	1
Date	5/16/2024

BID ITEMS								
Item No.	Item Code	Description	Unit	Est. Qty.	Unit Price	Extended Price	Quantity Completed	Value Completed
1		1 Mobilization/Demobilization	LS	1	\$144,437.00	\$144,437.00	0.50	\$72,218.50
2		2 Clearing and Grubbing	LS	1	\$1,000.00	\$1,000.00	0.75	\$750.00
3		3 Lift Station Removal	LS	1	\$9,400.00	\$9,400.00	0.00	\$0.00
4		4 Temporary Mailboxes	LS	1	\$150.00	\$150.00	1.00	\$150.00
5		5 Erosion Control	LS	1	\$22,580.00	\$22,580.00	0.75	\$16,935.00
6		6 Restoration	LS	1	\$62,206.11	\$62,206.11	0.00	\$0.00
7		7 Traffic Control	LS	1	\$5,000.00	\$5,000.00	0.25	\$1,250.00
8		8 Common Excavation	CY	600	\$22.00	\$13,200.00	313.29	\$6,892.38
9		9 Stripping, Stockpiling and Respreading Topsoil	LS	1	\$49,600.00	\$49,600.00	0.00	\$0.00
10		10 Stripping, Stockpiling and Respreading Wetland Soil	LS	1	\$37,900.00	\$37,900.00	0.00	\$0.00
11		11 Dewatering	LS	1	\$59,900.00	\$59,900.00	0.50	\$29,950.00
12		12 Tree Removal	LS	1	\$1,000.00	\$1,000.00	0.25	\$250.00
13		13 WTP Plumbing	LS	1	\$10,000.00	\$10,000.00	0.00	\$0.00
14		14 12" PVC Sanitary Sewer (<15' of Cover)	LF	3,810	\$110.90	\$422,529.00	738.00	\$81,844.20
15		15 12" PVC Sanitary Sewer (15> of Cover)	LF	3,640	\$177.40	\$645,736.00	0.00	\$0.00
16		16 Sanitary Sewer Manhole	VF	405	\$616.62	\$249,731.10	41.83	\$25,792.26
17		17 Sanitary Sewer Manhole Casting	EA	26	\$1,450.00	\$37,700.00	0.00	\$0.00
18		18 Remove and Replace Culvert Pipe (15", RCP)	LF	180	\$78.50	\$14,130.00	0.00	\$0.00
19		19 Apron Endwalls	EA	8	\$740.40	\$5,923.20	0.00	\$0.00
20		20 Remove and Replace Cuvert Pipe (15", HDPE)	LF	36	\$68.00	\$2,448.00	0.00	\$0.00
21		21 Remove and Replace Culvert Pipe (12", HDPE)	LF	36	\$68.00	\$2,448.00	0.00	\$0.00
22		22 Sawcut Pavement, Full Depth	LF	45	\$2.50	\$112.50	0.00	\$0.00
23		23 3/4" Base Aggregate Dense (Cobb Shoulders & WTP Drive)	TON	212	\$28.00	\$5,936.00	0.00	\$0.00
24		24 1 1/4" Base Aggregate Dense (Cobb Pavement & Shoulders)	TON	555	\$13.90	\$7,714.50	0.00	\$0.00
25		25 3" Base Aggregate Dense (Cobb Pavement & Shoulders)	TON	1,220	\$19.40	\$23,668.00	0.00	\$0.00
26		26 Geogrid	SY	2,130	\$9.50	\$20,235.00	0.00	\$0.00
27		27 HMA Binder Course	TON	230	\$99.00	\$22,770.00	0.00	\$0.00
28		28 HMA Surface Cours	TON	170	\$96.00	\$16,320.00	0.00	\$0.00
29		29 Bituminous Tack Coat	GAL	180	\$4.00	\$720.00	0.00	\$0.00
30		30 Excavation Below Subgrade	CY	120	\$19.90	\$2,388.00	0.00	\$0.00
31		31 12" PVC Water Main (STA 34+24-57+33) - Bid Alt 1	LF	2,375	\$104.20	\$247,475.00	0.00	\$0.00
32		32 6" PVC Water Main - Bid Alt 1	LF	24	\$100.60	\$2,414.40	0.00	\$0.00
33		33 Hydrant Assembly - Bid Alt 1	EA	4	\$7,200.00	\$28,800.00	0.00	\$0.00
34		34 12" Gate Valve and Box - Bid Alt 1	EA	6	\$4,709.00	\$28,254.00	0.00	\$0.00
35		35 12" PVC Water Main (STA 56+60-74+92) - Bid Alt 2	LF	1,910	\$111.00	\$212,010.00	0.00	\$0.00
36		36 12" PVC Water Main (74+92-82+91) - Bid Alt 3	LF	805	\$145.80	\$117,369.00	480.50	\$70,056.90
TOTAL						\$2,533,204.81		\$306,089.24

MEMO

TO: Mayor Tim Shiroda
Alderman Ronald Dunwiddie
Alderman Kurt Harkness
Alderman Scott McClory
Alderman Ken Meinel
Alderman Gary Payson, Jr.
Alderman for District 1 (vacant)

FROM: Adam Swann

DATE: May 17, 2024

RE: Common Council Meeting on May 20, 2024

City Administrator Report

- **Interim grading permit for Creekside Community Development**

Creekside Community Development provided the City with an escrow for their interim grading permit and have started preliminary grading of the Creekside Community Development site. City staff and the City engineers are continuing to meet weekly with Creekside Community Development to review and discuss the specific implementation plan, which still needs to be submitted to the Plan Commission and Council for approval.

- **Submission of application to amend specific implementation plan for Harvest Pointe Villas Condos**

Bielinski Homes has submitted an application to amend the specific implementation plan for Harvest Pointe Villas Condos. As Council will recall, Bielinski Homes had previously received approval in 2022 to construct 32 condos near the corner of Wisconsin St. and Harvest Way. Due to economic changes, Bielinski Homes is proposing to reduce the size of the condos from

1,460 SF to 1,342 SF. (The Olivia 1460 condo building will be replaced with the Lauren 1342 building.) Their hope is to break ground this summer or fall.

- **Update re implementation of ATV/UTV ordinance**

The Public Works Department has been installing the posts for the ATV/UTV signs, and the signs will be installed starting next week. ATVs/UTVs will be permitted on City streets (35 mph or less) once the signs have been installed and the City ordinance has been published.

The City has been advised by both the city attorney and legal counsel for Walworth County that the City has the right to regulate ATVs/UTVs on County highways within City limits and that if the City's ordinance limits ATVs/UTVs to roads/highways in the City of 35 mph or less, this would apply to County roads. As a result, pursuant to the ATV/UTV ordinance recently passed by the Council, ATVs/UTVs will not be permitted on County roads in City limits having speed limits of greater than 35 mph.

- **Board of Review scheduled for May 22, 2024**

This is a reminder that the Board of Review is scheduled for May 22, 2024 from 5:30-7:30 p.m. at the City Administration Building. This is the opportunity for City residents to appeal their 2024 property assessments (for taxes payable in 2025). Residents must contact the city assessor or city clerk at least 48 hours prior to the meeting to schedule a hearing time. For further info, please contact City Clerk Lacey Reynolds or the City appraiser, Dana Remien of Accurate Assessor.

- **Receipt of anonymous donation for LifeVac anti-choking devices**

The City has received a donation of \$790.31 for the Fire Department and Police Department to purchase 14 LifeVac devices. These devices are used to help babies who are choking. The donation was made anonymously by a parent whose baby was recently saved using one of these devices.

- **Appointment to Walworth County Workforce Housing Strategy Task Force**

I have been appointed by Walworth County to serve as one of two city administrator representatives on the Walworth County Workforce Housing Strategy Task Force. According to the County resolution creating the task force, the purpose of the task force is “[t]o identify and develop recommendations for a structure and/or action steps for the County to continue to engage in

workforce housing promotion following completion in 2024 of the current County Workforce Housing Initiative as contracted with the Walworth County Economic Development Alliance (WCEDA).” The task force is supposed to be temporary and conclude by the fall.

New Business

- **Discussion and possible decision regarding recommendations from Human Resources Committee regarding City employee health insurance plan for 2024-2025**

The City’s self-insured health plan for employees runs from July 1 of the current year to June 30 of the following year, so the renewal date is quickly approaching. The Council’s HR Committee recently met to discuss the City’s employee health insurance plan for July 1, 2024 to June 30, 2025 and voted to make the following recommendations:

- 1) Change broker from Rathsack & Associates to Gallagher Insurance, Risk Management & Consulting (effective immediately)

This proposed change would save the City Health Fund approximately \$37,000 over the next plan year.

- 2) Standardize health reimbursement arrangement for employees so that all employees receive \$500 (as opposed to previous split of \$500 for single employees and \$1,000 for employees with families)(starting January 1, 2025)

This proposed change would save the City approximately \$32,500 per year.

- 3) Increase amount employees can contribute to flexible spending account from \$2,200 in 2024 to \$3,200 in 2025 (starting January 1, 2025)

Employee FSA accounts are funded with payroll deductions (prior to taxes being deducted). There is no direct cost to the City unless an employee exhausts his/her FSA account prior to the end of the year prior to all payroll deductions being completed.

- 4) Collect monthly premium of 1% of expected plan cost for employees with additional plan participants (i.e., children or spouses)(starting January 1, 2025)

This proposed change would save the City approximately \$22,213.10 per year. Below is a breakdown of how this proposed change would equate to payroll deductions, although these numbers will be further reduced if the Council approves changing brokers. Additional information is included in the Council packet.

	Employee premium per payroll (based on 24 payroll deductions)
Employee only	\$0
Employee + spouse	\$10.73
Employee + child(ren)	\$10.73
Employee + family	\$16.04

Memo

To: Common Council

From: Karl Sorvick, Recreation Director

Date: May 16th, 2024

Re: Approve Restoric LLC for completion of Historical Structure Report for Elkhorn Bandshell

In March of 2024, the City of Elkhorn reached out to several agencies to request a proposal for a Historical Structure Report for the Elkhorn Bandshell. The city received one proposal from Restoric LLC. Included in this memo is the proposal from Restoric LLC.

The project fee is \$24,888 (not to exceed). The Wisconsin Historical Society awarded us with 50% grant funding not to exceed \$30,000. The project cost using Park Funds for the city would be \$12,444 (not to exceed) and the remaining would be matched by the Historical Society.

Restoric LLC is a trusted agency and approved by the Wisconsin Historical Society to be considered for future grant funding. Their profile of similar and large-scale projects also make them an exceptional fit for the Elkhorn Bandshell.

In addition to the HSR proposal, Restoric has also provided three additional options that the city may wish to pursue. Option A with a cost estimate of \$2,860 is considered most important. This option would provide an acoustical assessment & design for the bandshell.

Recommendation from Park and Recreation Board: Approve the contract to Restoric LLC for the Historical Structure Report with the use of Park Funds not to exceed \$12,444.



Elkhorn Bandshell

Sunset Park ~ Elkhorn, Wisconsin

Historic Structures Report Proposal



April 1, 2024



Elkhorn Bandshell

Sunset Park ~ Elkhorn, Wisconsin

Historic Structures Report Proposal

Restoric Enterprises, LLC (Restoric) is a restoration contracting and consulting company founded in 1998 specializing in the evaluation and restoration of historic buildings. Neal Vogel, Principal of Restoric shall serve as the primary author and editor and has been a preservation professional for over 36 years. In fact, the careers of all principal investigators and authors for the proposed HSR are measured in decades, not years. Operating as a “design build” historic restoration business, *Restoric* shall continue to assist the City of Elkhorn after the HSR is submitted as desired; providing support for grant applications and executing shop drawings, mock-ups, construction or project management services. *Restoric* shall survey the Elkhorn Bandshell with all team members and compile the various reports provided by individual experts to form a single “voice” in the final HSR. This shall include all research, documentation and coordination of material investigations including restoring any investigative probes to existing condition as defined in the RFP. We understand this HSR will include an assessment of the entire structure and its context within Sunset Park but will focus on the condition of the structure and sensitive structural, acoustical and illumination upgrades for its best use and performance (without diminishing its historic character). The bandshell shall be documented with CAD drawings and a rendering of the stage showing proposed restored features and improvements. *Restoric’s* experience restoring and historic buildings as construction managers and contractors will be especially helpful in developing accurate cost estimates and laying out the best approach for the Elkhorn Bandshell. The City of Elkhorn is encouraged to consider an acoustical engineer and lighting design consultant on the team.

PROPOSED SCHEDULE

The proposed schedule herein **assumes** an arbitrary notification date of April 21, 2024. The start date may be adjusted to suit the needs of the City of Elkhorn, however, *Restoric* agrees that the requested “60-day completion” is a realistic expectation that can be met pending options herein for the acoustics, lighting design or cultural landscape study.

By April 30, 2024:	Review all Available City of Elkhorn Materials on the Bandshell & Sunset Park
May 1, 2024:	Survey Structure with Consulting Team
May 2, 2024:	Interviews; Park & Recreation Board Members & City of Elkhorn Representatives
By May 3, 2024:	Obtain all Field Measurements
May 8, 2024:	Submit RFIs
May 13, 2024:	Submit HSR Outline
By June 7, 2024:	Meet with All Contractors for Input & Preliminary Cost Estimates
May 27, 2024:	Complete Research and CAD Drawings
June 12, 2024:	Submit 60% HSR Draft and Optional Lighting & Acoustical Assessments
June 26, 2024:	Submit 90% HSR Draft for Review w/Cost Estimates
*July 1, 2024:	Submit Final HSR

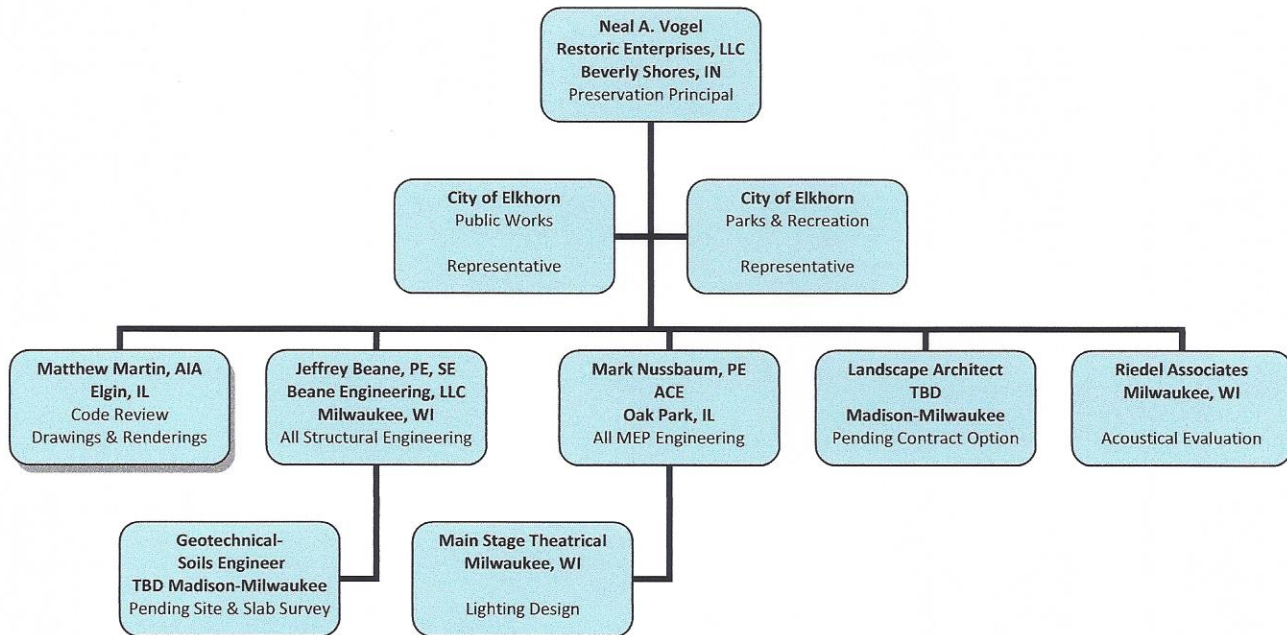
****Pending Completion of the Following Optional Services After CAD drawings are Completed:***

A) Acoustical Assessment & Cost Estimates; B) Lighting Design & Cost Estimates; C) Cultural Landscape Study and Related Cost Estimates

PROJECT TEAM & QUALIFICATIONS:

Neal A. Vogel, Principal, *Restoric*: Lead Investigator, Author, Estimator & Co-Editor (60 hours)
 Matthew Martin, AIA, Architect *Restoric*: Code Review, Accessibility & Renderings (40 Hours)
 Jeffrey Beane, P.E., S.E., *Beane Engineering*: Investigator, Author (30 hours combined)
 Mark Nussbaum, P.E., *ACE*: Investigator/Author for Electrical (10 hours w/Senior Designer)

These team members also developed the Keokuk Union Depot HSR (funded by the Jeffris Family Foundation) found on line at: www.keokukuniondepot.org (see link immediately above photo of National Register plaque in left hand column of opening page.)



FIRM REFERENCES:

Tom M. Jeffris
 President
 Jeffris Family Foundation
 P.O. Box 1160
 Janesville, WI 53547-1160
 Phone (608) 757-1039

Janet Smith, Esq.
 President
 Keokuk Union Depot Foundation
 P.O. Box 463
 Keokuk, IA 52632
 Phone (781) 237-1587

Christie Weininger
 Executive Director
 Hayes Presidential Library & Museums
 Spiegel Grove
 Fremont, OH 43420
 Phone (419) 332-2081 ext. 220

Brian Reis
 Executive Director
 Indian Hill Manor
 6901 Kishwaukee Road
 Rockford, IL 61109
 Phone (815) 964-6464

PROJECT FEE

\$24,888 NTE (Not-to-Exceed, plus Options)

EXCLUDED: Rental lifts, scaffolding, or equipment testing beyond the scope of the proposed HSR.

OPTION A: ACOUSTICAL ASSESSMENT & DESIGN

Bandshell acoustical assessment to determine best way to enhance/amplify the sound when desired w/design & cost estimates.

Cost: \$2,860 NTE (Not-to-Exceed)

OPTION B: LIGHTING ASSESSMENT & DESIGN

Bandshell lighting assessment to determine best ways to enhance/supplement historic lighting, w/new design & related estimates.

Cost: \$2,490 NTE (Not-to-Exceed)

OPTION C: CULTURAL HISTORIC LANDSCAPE STUDY

Evaluate the historic landscape, determine features to be restored and related cost estimates.

Allowance: \$10,000 (final cost contingent upon site plans and records available with the Elkhorn Park District)

FEE SCHEDULE:

Principal	\$250/hour
Engineer	\$175/hour
Architect	\$140/hour
Researcher/Historian	\$95/hour
Drafter	\$80/hour

For additional services (i.e. on site investigations, presentations, etc.), mileage shall be billed at the current IRS allowable rate, all other travel expenses shall be billed at cost + 5%.

DELIVERABLES:

- One (1) electronic copy of the HSR submitted at 60%, 90% and 100% completion points
- One (1) electronic copy of measured drawings (3d BIM/AutoDesk Revit)

GENERAL TERMS & COPYRIGHT RELEASE:

Work shall commence no later than fourteen (14) calendar days of receipt of the signed Agreement. All materials shall be delivered no later than sixty (60) days thereafter. A 20% retainer of the proposed fee is required to commence work with progress payments as work is completed. Final payment is due Net-30 days after submittal of all materials. Either party may terminate this proposal upon seven (7) days written notice. In the event of termination by the Owner, the same shall pay *Restoric* for all services performed and reimbursable expenses due up to the date of termination. All completed documentation and drawings shall be provided to the City of Elkhorn with a full copyright release as a "work for hire" for the fair and intended use.

ACCEPTANCE:

To accept this proposal, please initial all desired services and remit the requested retainer along with one original copy of the signed proposal to *Restoric*.

Signed

Neal A. Vogel

Title.

Principal

Date

4/1/24



APPLICATION FOR TEMPORARY CLASS "B" (Beer) And/Or "CLASS B" (Wine) RETAILER'S LICENSE

For serving or selling alcohol, pursuant to Elkhorn Ordinance 12.03

The named organization applies for:

- A Temporary Class "B" license to sell fermented malt beverages at picnics or similar gatherings under WI Statute 125.26(6) (unlimited licenses allowed per year) **and/or**
- A Temporary "Class B" license to sell wine at picnics or similar gatherings under WI Statute 125.51(10) (two licenses allowed per year)

Please Print Clearly

Organization Type:
 Bona fide Club Church Lodge/Society Veteran's Association Fair Association Civic or Trade Organization

Organization Name Walworth County Agricultural Society	Address 411 E Court St	City & Zip Code Elkhorn, WI 53121
--	----------------------------------	---

Phone 262-723-3228	Email office@walworthcountyfair.com
------------------------------	---

Date Organized April 28, 1842	If Incorporated, date incorporated: April 5, 1965	Website walworthcountyfair.com
---	---	--

President David Adams	Vice President Jacob Polyock
---------------------------------	--

Secretary Eileen Walsh-Grzenia	Treasurer Susan Earle
--	---------------------------------

Name of Event Professional Champion Bull Riding	Date(s): July 5 & 6, 2024	Alcohol Sales Start Time: 5:00 pm	Alcohol Sales End Time: 10:00 pm
---	---	---	--

Event Address (see below if a Wine Walk with more than one location; up to 20 locations allowed) 411 E Court St. Elkhorn, WI 53121	Estimated Attendance 2,500 each Day
--	---

Describe Premises where beer/wine will be stored, sold and consumed (for Wine Walks, attach sheet listing each location address, premise description and licensed operator at each):
Walworth County Fairgrounds Grandstand

Licensed Operator (Must be present at all times, if not currently licensed in Elkhorn, complete Temporary Operator's Application): Larry Gaffey	Current City of Elkhorn Operator License No. 23-107-48
---	--

DECLARATION

The Officer(s) of the organization, individually and together, declare under penalties of law that the information provided in this application is true and correct to the best of their knowledge and belief. This organization agrees to comply with all law, resolution, ordinances and regulations (federal, state and local) affecting the sale of fermented malt beverages and/or wine if the license is granted.

Officer *David Adams* Date 5-16-2024 Officer *Larry Gaffey* Date 5-16-2024

NOTE: this application must be accompanied by a Special Events Permit Application to be considered. Fee may not be required.

Temporary B License Additional Information

May be Granted and Issued only to: (1) Bona fide clubs that have been in existence for at least 6 months prior to the date of application. "Club" means an organization, whether incorporated or not, which is the owner, lessee or occupant of a building or portion thereof used exclusively for club purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain and which only sells alcohol beverages incidental to its operation. (2) State, county, civic or trade organizations, local fair associations, or agricultural societies. (3) Church, lodge, or society that has been in existence for at least 6 months prior to the date of application. (4) Posts now or hereafter established of ex-servicemen's organizations.

Restrictions: (1) License may not be issued to individuals. (2) Licenses to organizations, other than ex-servicemen's organizations, can be issued only for a picnic or similar gathering. They may not be issued for business or social meetings of the organization. (3) Licenses for club or organization meetings may be issued only to ex-servicemen's posts. (4) License may cover either a specified area or the entire picnic grounds. (5) License issued to a county or district fair must cover the entire fairground (ss. 125.26(6) and 125.51(10), Wis. Stats.) (6) No license to clubs having any indebtedness to any wholesaler for more than 15 days for beer (s. 125.33(7), Wis. Stats.) and 30 days for wine (s. 125.69(4)(b), Wis. Stats.) (7) Licensed operator(s) must be present at all times (ss. 125.26(6), 125.32(2) - Beer; 125.51(10), 125.68(2) - Wine; 125.17) (8) The licensed club, club members, or any other persons are not permitted to possess intoxicating liquor on licensed premises on the Temporary Class "B"/"Class B" licensed picnic area. (s. 125.32(6), Wis. Stats.) (9) Not more than 2 wine licenses may be issued to any club, county or local fair association, agricultural association, church, lodge, society or veterans' post in any 12 month period. (10) Licensed organizations must purchase their product from a licensed wholesaler. (11) Wine Walk: up to 20 locations in one day; organization must charge an admission fee for participation in the event, and no additional fee may be charged for service of fermented malt beverage/wine.

NOTE: Most coolers presently on the market have fermented malt beverage base allowing sale under a beer license (Bartles & James, Seagrams, etc.). Most hard ciders are not a fermented malt beverage or wine and may not be sold with a Temporary "Class B" or Class "B" license.

Office Use Only Date Received: 5-16-24 Date Approved by Common Council: _____ License No. _____

Rcpt# R00884371 \$10.00 ck #48514
Wal co. Ag. Soc. Jms

**PROJECT MANUAL FOR THE CONSTRUCTION
OF THE**

2024 SEWER REHABILITATION

ELKHORN, WISCONSIN

November 2023



**APPLIED TECHNOLOGIES, INC.
13400 Bishop's Lane, Suite 270
Brookfield, WI 53005
(262) 784-7690**

© Applied Technologies, Inc. 2023
Project No. 6575

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AGREEMENT

THIS AGREEMENT is dated as of the 10th day of May in the year 2024 by and between the City of Elkhorn (hereinafter called Owner) and Visu-Sewer, LLC (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Furnish and install, complete, all labor, materials, equipment, tools, power, utilities, transportation, and all other items and services to perform construction of the complete project.

ARTICLE 2. THE PROJECT

2.01 The Project is generally described as follows:

The work, officially known as “2024 Sewer Rehabilitation” consists of the installation of cured-in-place lining and sealing of service connections on specified sanitary sewers within basin 2 of the City of Elkhorn. The work also includes any repairs and miscellaneous work necessary to complete the rehabilitation.

ARTICLE 3. ENGINEER

3.01 The project has been designed by Applied Technologies, Inc. who is hereinafter called Engineer and who is to act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4. CONTRACT TIMES

4.01 The Work will be **substantially complete by December 31, 2024**, as provided in Articles 4 and 15 of the General Conditions and completed and ready for final payment in accordance with Article 15 of the General Conditions by January 31, 2025.

00505-1

4.02 Liquidated Damages.

- A. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner Five Hundred and 00/100 Dollars (\$500.00) for each day that expires after the time specified above for Substantial Completion until the Work is substantially complete. After Substantial Completion if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner Two Hundred Fifty and 00/100 Dollars (\$250.00) for each day that expires after the time specified above for completion and readiness for final payment.

ARTICLE 5. CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds as follows:

TOTAL BASE BID: **\$774,933.75**

All specific cash allowances are included in the above price and have been computed in accordance with Article 13 of the General Conditions.

ARTICLE 6. PAYMENT PROCEDURES

6.01 Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments.

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, once each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in Article 2 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
- B. Prior to substantial completion, after each Application for Payment has been found acceptable by Owner, Owner will pay 95% of the estimated value less any previous payments to Contractor until the Project is 50% complete. At 50% completion, further partial payment shall be made in full to Contractor and no additional amounts may be retained unless Engineer certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to Contractor. At 50% completion or any time thereafter when the progress of the Work is not satisfactory, additional amounts may be

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retained but in no event shall the total retainage be more than 10% of the value of the Work completed.

- C. Upon substantial completion of the Work, an amount retained may be paid to the Contractor. When the work has been substantially completed except for Work which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of the Owner are valid reasons for non-completion, the Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the Work still to be completed or in the alternative may pay out the entire amount retained and receive from the Contractor guarantees in the form of a bond or other collateral sufficient to ensure completion of the job.

6.03 Final Payment.

- A. Upon final completion and acceptance of the Work in accordance with Article 15 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Article 15.

ARTICLE 7. INTEREST

7.01 All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest at the annual rate of five percent (5%).

ARTICLE 8. CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may in any manner may affect cost, progress, performance or furnishing of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may in any manner may affect cost, progress, performance or furnishing of the Work.
- D. Contractor has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Article 5 of the General Conditions, and accepts the determinations set forth in Article 5 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to rely.
- E. Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to above) which pertain to the

00505-3

subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Article 5 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

- F. Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Article 5 of the General Conditions.
- G. Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9. CONTRACT DOCUMENTS

9.01 The Contract Documents, which comprise the entire agreement between Owner and Contractor concerning the Work, consist of the following:

- A. This Agreement (pages 00505-1 to 00505-6, inclusive).
- B. Exhibits to this Agreement (pages _____ to _____, inclusive).
- C. Performance and Payment Bonds, identified as exhibits 00610 and 00615 and consisting of eight (8) pages.
- D. Notice of Award (not attached).
- E. General Conditions (pages C-700-1 to C-700-70, inclusive, not attached).
- F. Supplementary Conditions (pages 00800-1 to 00800-18, inclusive, not attached).
- G. Specifications consisting of Divisions and pages listed in Table of Contents of the Project Manual (not attached).

00505-4

- H. Drawings, consisting of sheets numbered 1-G-1 through 95-C-1, inclusive, (not attached) with each sheet dated 09-15-2023 bearing the following general title:

CITY OF ELKHORN
2024 SEWER REHABILITATION
ELKHORN, WISCONSIN

- I. Addenda numbers 1 to 2, inclusive (not attached).
- J. Instructions to Bidders (pages 00200-1 to 00200-14, inclusive, not attached).
- K. Contractor's Bid (pages 00410-1 to 00410-7).
- L. Documentation submitted by Contractor prior to Notice of Award (pages _____ to _____, inclusive).
- M. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Article 11 of the General Conditions.

9.02 The documents listed in paragraphs 9.01.A et seq. above are attached to this Agreement (except as expressly noted otherwise above).

9.03 There are no Contract Documents other than those listed in this Article 9. The Contract Documents may only be amended, modified or supplemented as provided in Article 11 of the General Conditions.

ARTICLE 10. MISCELLANEOUS

10.01 Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

00505-5

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor.

This Agreement will be effective on _____.

Owner _____

Contractor Visu-Sewer, LLC

By _____
[SEAL]

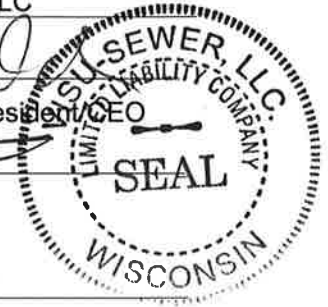
By *Keith M. Alexander*
[SEAL]
Keith M. Alexander, President/CEO

Attest _____

Attest *David L. Alexander*
David L. Alexander

Address for giving notices

Address for giving notices
W230 N4855 Betker Drive
Pewaukee, WI 53072



(If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement.)

License No. _____
(where applicable)

Agent for service of process: _____

(If Contractor is a corporation, attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: _____

Name: Josh Regner

Title: _____

Title: Project Manager

Address: _____

Address: W230 N4855 Betker Drive - Pewaukee, WI 53072

Phone: _____

Phone: (262) 695-2340

Facsimile: _____





Facsimile: (262) 695-2359

Email: _____

Email: visu-info@visu-sewer.com

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PERFORMANCE BOND

Contractor Name: Visu-Sewer, LLC Address (principal place of business): W230 N4855 Betker Drive Pewaukee, WI 53072	Surety Name: SiriusPoint America Insurance Company Address (principal place of business): 1 World Trade Center 285 Fulton Street, 47th Floor, Suite 47J New York, NY 10007
Owner Name: City of Elkhorn Mailing address (principal place of business): 311 Seymour Court Elkhorn, WI 53121	Contract Description (name and location): 2024 Sewer Rehabilitation Contract Price: \$774,933.75 Effective Date of Contract: May 10, 2024
Bond SPA150407_032 Bond Amount: \$774,933.75 Date of Bond: May 10, 2024 <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input checked="" type="checkbox"/> None <input type="checkbox"/> See Paragraph 16	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal Visu-Sewer, LLC <i>(Full formal name of Contractor)</i> By: <u></u> <i>(Signature)</i> Name: <u>KEITH M. ALEXANDER</u> <i>(Printed or typed)</i> Title: <u>PRESIDENT/CEO</u> Attest: <u></u> <i>(Signature)</i> Name: <u>DAVID L. ALEXANDER</u> <i>(Printed or typed)</i> Title: <u>SECRETARY</u>	Surety SiriusPoint America Insurance Company <i>(Full formal name of Surety) (corporate seal)</i> By: <u></u> <i>(Signature)(Attach Power of Attorney)</i> Name: <u>Angelica M. Lopez</u> <i>(Printed or typed)</i> Title: <u>Attorney-in-Fact</u> Attest: <u></u> <i>(Signature)</i> Name: <u>Christopher K. Hovden</u> <i>(Printed or typed)</i> Title: <u>Vice President - Surety</u>
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	



1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
 - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:


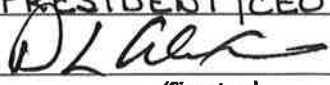
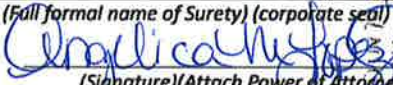

- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such

statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

- 14.1. *Balance of the Contract Price***—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 14.2. *Construction Contract***—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
 - 14.3. *Contractor Default***—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
 - 14.4. *Owner Default***—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 14.5. *Contract Documents***—All the documents that comprise the agreement between the Owner and Contractor.
- 15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.**
- 16. Modifications to this Bond are as follows: None.**

PAYMENT BOND

Contractor Name: Visu-Sewer, LLC Address (principal place of business): W230 N4855 Betker Drive Pewaukee, WI 53072	Surety Name: SiriusPoint America Insurance Company Address (principal place of business): 1 World Trade Center 285 Fulton Street, 47th Floor, Suite 47J New York, NY 10007
Owner Name: City of Elkhorn Mailing address (principal place of business): 311 Seymour Court Elkhorn, WI 53121	Contract Description (name and location): 2024 Sewer Rehabilitation Contract Price: \$774,933.75 Effective Date of Contract: May 10, 2024
Bond SPA150407_032 Bond Amount: \$774,933.75 Date of Bond: May 10, 2024 <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input checked="" type="checkbox"/> None <input type="checkbox"/> See Paragraph 18	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal Visu-Sewer, LLC <i>(Full formal name of Contractor)</i> By:  <i>(Signature)</i> Name: <u>KEITH M. ALEXANDER</u> <i>(Printed or typed)</i> Title: <u>PRESIDENT/CEO</u> Attest:  <i>(Signature)</i> Name: <u>DAVID L. ALEXANDER</u> <i>(Printed or typed)</i> Title: <u>SECRETARY</u>	Surety SiriusPoint America Insurance Company <i>(Full formal name of Surety) (corporate seal)</i> By:  <i>(Signature)(Attach Power of Attorney)</i> Name: <u>Angelica M. Lopez</u> <i>(Printed or typed)</i> Title: <u>Attorney-in-Fact</u> Attest:  <i>(Signature)</i> Name: <u>Christopher K. Hovden</u> <i>(Printed or typed)</i> Title: <u>Vice President - Surety</u>
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	



1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Contractor
 - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
 - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
 - 16.1.1. The name of the Claimant;
 - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - 16.1.4. A brief description of the labor, materials, or equipment furnished;

- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.1.7. The total amount of previous payments received by the Claimant; and
 - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. Modifications to this Bond are as follows: None

BID FORM

PROJECT IDENTIFICATION: 2024 Sewer Rehabilitation

THIS BID IS SUBMITTED TO: City of Elkhorn
311 Seymour Court
Elkhorn, WI 53121

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for the period of time specified in the Invitation to Bid after the day of Bid opening. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within 15 days after the date of Owner's Notice of Award.
3. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:
 - (a) Bidder has examined copies of all the Bidding Documents and of the following Addenda, receipt of all which is hereby acknowledged:

<u>Number</u>	<u>Date</u>
<u>1</u>	<u>12/14/23</u>
<u>2</u>	<u>12/18/23</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

- (b) Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
 - (c) Bidder has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Article 5 of the General Conditions and accepts the determination set forth in Article 5 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which Bidder is entitled to rely.
 - (d) Bidder has obtained and carefully studied all such examinations, investigations, explorations, tests and studies which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Bidder considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Article 5 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.

00410-1

- (e) Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Article 5 of the General Conditions.
- (f) Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- (g) Bidder has given Engineer written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Bidder.
- (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.
- (i) Bidder has reviewed and understands the requirement for the use of American Iron and Steel (AIS) and certifies that all iron and steel products in the bid will be produced in the United States in a manner that complies with the AIS requirement.
- (j) Bidder certifies that the Bid conforms to the requirements of Davis-Bacon labor standards and wage determinations.

1. Bidder will complete the Work for the following prices:

TOTAL BASE BID:

The Bidder shall include in the Total Base Bid price for the Work the following lump sum amounts that include the major equipment provided by the “named” manufacturers listed in Schedule A – Major Equipment Schedule:

SECTION 1 – BASIN 2					
Item No.	Item Description	Unit	Estimated Quantity	Unit Price (Figures)	Extended Amount (Figures)
1-1	Remove and Seal Protruding Tap	EA	16	\$150	\$2,400.00
1-2	Sealing of Active Leaks	EA	15	\$840	\$12,600.00
1-2-8	8-Inch Sanitary Sewer Lining	LF	10,660	\$30	\$319,800.00
1-3-10	10-Inch Sanitary Sewer Lining	LF	980	\$36.40	\$35,672.00
1-3-12	12-Inch Sanitary Sewer Lining	LF	296	\$43.75	\$12,950.00
1-3-15	15-Inch Sanitary Sewer Lining	LF	4,562	\$69.25	\$315,918.50
1-4	Reinstate Sewer Lateral	EA	213	\$250	\$53,250.00
1-5	Lateral Connection Test and Seal	EA	0	--	--
1-6	Chemical Grout Material	GAL	24	\$9	\$216.00
1-7	Heavy Cleaning	Hrs	32	\$320	\$10,240.00
1-8	Point Repair Allowance	Allowance	1	\$11,887.25	\$11,887.25
SUBTOTAL					\$774,933.75

If the Contract is to be awarded, it will be awarded to the lowest, qualified, responsive and responsible Bidder based on the TOTAL BID AMOUNT whose evaluation by Owner indicates that the award will be in the best interests of the Project. The Owner reserves the right to award any combination of Sections based on budgetary constraints to the Contractor as described above.

2. Bidder agrees that the Work will be substantially complete as provided in Articles 4 and 15 of the General Conditions, and complete and ready for final payment in accordance with Article 15 of the General Conditions, by the dates identified in Article 4 of the Agreement.

Bidder accepts the provisions of the Agreement as to scheduling of the Work.

Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

6. The following documents are attached to and made a condition of this Bid:
- (a) Required Bid Security in the form of Bid Bond
 - (b) Subcontractor Listing
 - (c) Statement of the Bidder's qualification to do business in the state where the Project is located; or in the absence of such evidence, this bid constitutes Bidder's covenant to obtain such qualification prior to the award of the Contract.

7. Communications concerning this Bid shall be addressed to:

Name: Josh Regner

Company Name: Visu-Sewer, LLC

Address: W230 N4855 Betker Drive - Pewaukee, WI 53072

Telephone No.: (262) 695-2340

8. The terms used in this Bid, which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents, have the meanings assigned to them in the General Conditions.

SUBMITTED ON December 21, 2023

I hereby certify that as Bidder I/We have examined and carefully prepared this Bid from the Bidding Documents and have checked the same in detail before submitting this Bid, and that all statements herein are made on behalf of:

An Individual

By (Individual's Signature) _____ (SEAL)

Individual's Name (Print) _____

Doing business as (Firm Name) _____

Business address: _____

Phone No.: _____

A Partnership

By (Firm Name) Visu-Sewer, LLC

Signature of General Partner _____



Name of General Partner (Print) Keith M. Alexander

Business Address: W230 N4855 Betker Drive

Pewaukee, WI 53072

Phone No.: (262) 695-2340



A Corporation

By (Corporation Name) _____

State of Incorporation _____

Signature of Authorized Representative _____

Name of Authorized Rep. (Print) _____

Title _____

(SEAL)

Attest (Signature) _____

Name of Attester (Print) _____

Business address: _____

Phone No.: _____

A Joint Venture

By (Representative's Signature) _____ (SEAL)

Representative's Name & Title (Print) _____

Doing business as (Firm Name) _____

Business address: _____

Phone No.: _____

By (Representative's Signature) _____ (SEAL)

Representative's Name & Title (Print) _____

Doing business as (Firm Name) _____

Business address: _____

Phone No.: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above).

Sworn and subscribed to before me this

_____ day of _____, 20_____.

Notary or Other Officer Authorized To
Administer Oaths

My commission expires: _____

00410-6

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00410-8

VISU-SEWER LLC.

VISU-SEWER-NTDVBE-CITY OF ELKHORN-FOR, 2024 SEWER REHAB PROJECT.

Project Specs:

Notice ID #: 8482

Location: WI: Pewaukee

Bid Date: 12/21/2023

BDOQ: MBE, WBE, DBE

Type Of Notice: Sub-Bid Advertisement

Contact: See Notice Summary for details on how to respond to this notice.

Notice Summary:



Notice to Disadvantaged Businesses

Visu-Sewer, LLC W230 N4855 Betker Dr,

Pewaukee, WI 53072, Phone: 262-695-2340, Fax: 262-695-2359

is seeking **DBEs**, including **MBEs** and **WBEs** to submit proposals *for the City of Elkhorn, 2024 Sewer Rehabilitation*. Subcontracting opportunities in the following areas: traffic control, bypass pumping, and excavation repairs. All interested and qualified **DBEs** should contact, **IN WRITING**, (certified letter, return receipt requested), Josh Regner, to discuss the subcontracting opportunities.

All negotiations must be completed by
Wednesday, December 20th at 1pm.

The bid opening date is **Thursday, December 21st, 2023, at 10am.**

Classifieds

Classifieds

Notice To Bidders

Notice to Disadvantaged Businesses

Visu-Sewer, LLC W230 N4855 Betker Dr, Pewaukee, WI 53072,
Phone: 262-695-2340, Fax: 262-695-2359

Is seeking DBEs, including MBEs and WBEs to submit proposals for the City of Elkhorn, 2024 Sewer Rehabilitation.

Subcontracting opportunities in the following areas: traffic control, bypass pumping, and excavation repairs.

All interested and qualified DBEs should contact, in writing, (certified letter, return receipt requested), Josh Regner, to discuss the subcontracting opportunities.

All negotiations must be completed by Wednesday, December 20th at 1pm. The bid opening date is Thursday, December 21st, 2023, at 10am.

12/18, Advertisement

Notice To Bidders

Insituform Technologies USA, LLC intends to bid as a prime contractor on the upcoming project titled Elkhorn WI 2024 Sewer Rehabilitation.

We are seeking proposals from registered DBE contractors through the WisDOT and UCP to assist us in completing the requirements for this project.

Insituform Technologies USA LLC, an Aegion Company, is an Equal opportunity Employer.

We would be happy to work with your firm in breaking down these bid items to assist in your ability to quote some of this work.

If you need to obtain bonds, lines of credit, permits or insurance as required, assistance is available.

If you wish to provide us with a quote, please note that they are due by Wednesday, December 20th @ 9AM CST.

Please submit quotes to rkramer@acgion.com and/or ckoller@acgion.com

Please contact us to provide a link to view the specs and plans.

We would appreciate a quote from your firm.

Please contact us with any questions regarding this project at 314-343-9152.

12/18, Advertisement



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/10/2024

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 be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER R & R Insurance Services Inc PO Box 1610 Waukesha WI 53187-1610		CONTACT NAME: Deborah Madsen PHONE (A/C, No, Ext): (262)574-7000 FAX (A/C, No): (262)574-7080 E-MAIL ADDRESS: clcertificates@rrins.com	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Phoenix Ins Co (Travelers)	NAIC # 25623
		INSURER B: Charter Oak Fire Ins Co (Travelers)	25615
		INSURER C: Travelers Prop Cas Ins Co of America	25674
		INSURER D: Travelers Indemnity Co of Connecticut	25682
		INSURER E:	
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER: CL2431546577

REVISION NUMBER:


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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	X		CO-5968X624 #CGD604 02-19 (AI) #CGD316 02-19 (WOS) #CGT100 02-19 (WOS)	4/1/2024	4/1/2025	EACH OCCURRENCE	\$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
	<input checked="" type="checkbox"/> 10,000 Ded - PD Only						MED EXP (Any one person)	\$ 5,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
B	AUTOMOBILE LIABILITY	X		810-5968X624 #CAT353 02-15 (AI/WOS) #CAT499 02-16 (AI/PNC)	4/1/2024	4/1/2025	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident)	\$
							\$	
C	<input checked="" type="checkbox"/> UMBRELLA LIAB	X		CUP-0J357280 #EU0001 07-16 (AI/PNC/WOS)	4/1/2024	4/1/2025	EACH OCCURRENCE	\$ 15,000,000
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE	\$ 15,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000							\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	N/A	UB-3K116933	4/1/2024	4/1/2025	<input checked="" type="checkbox"/> PER STATUTE	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
B	Contractors Equipment			660-5167X974	4/1/2024	4/1/2025	Leased/Rented Equipment	300,000
B	Installation Floater			660-5167X974	4/1/2024	4/1/2025	Any One Jobsite & In Transit	500,000

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

Project: 2024 Sewer Rehabilitation. City of Elkhorn, Applied Technologies, Inc., Owner's subsidiaries, City of Appleton, and its officers, council members, agents, employees, and authorized volunteers are Additional Insureds on a primary and non-contributory basis for General Liability, including ongoing and completed operations, Auto Liability, and Umbrella Liability per forms listed above when required by a written contract. Umbrella is excess over the underlying General Liability, Auto Liability, and Employers' Liability limits. Builders Risk applies per policy 660-5167X974, \$774,934

CERTIFICATE HOLDER**CANCELLATION**

City of Elkhorn 311 Seymour Ct. Elkhorn, WI 53121	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Daniel Scheider/DM586 
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ACORD 25 (2014/01)

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INS025 (201401)

Additional Named Insureds

Other Named Insureds

Alex Rentals LLP

Visu-Sewer East LLC

Visu-Sewer Inc (Former Name)

Visu-Sewer Intermediate LLC

Visu-Sewer of Illinois LLC

Visu-Sewer of Mississippi LLC

Visu-Sewer of Missouri LLC

Visu-Sewer of Ohio LLC

VS Water Blasting LLC

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE – CONTRACTORS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

PROVISIONS

1. The following is added to Paragraph **c.** in **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

This includes any person or organization who you are required under a written contract or agreement, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph **a.** and paragraph **d.** of this part **5. Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is a named insured when a written contract or agreement with you, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

EXCESS FOLLOW-FORM AND UMBRELLA LIABILITY INSURANCE

THIS POLICY, IN PART, PROVIDES FOLLOW-FORM LIABILITY COVERAGE. COVERAGE WILL APPLY ON A CLAIMS-MADE BASIS WHEN FOLLOWING CLAIMS-MADE UNDERLYING INSURANCE.

COVERAGE WILL APPLY ON A DEFENSE-WITHIN-LIMITS BASIS WHEN FOLLOWING UNDERLYING INSURANCE UNDER WHICH DEFENSE EXPENSES ARE PAYABLE WITHIN, AND NOT IN ADDITION TO, THE LIMITS OF INSURANCE. WHEN FOLLOWING SUCH UNDERLYING INSURANCE, PAYMENT OF DEFENSE EXPENSES UNDER THIS POLICY WILL REDUCE, AND MAY EXHAUST, THE LIMITS OF INSURANCE OF THIS POLICY.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

Various provisions in this policy restrict 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**.

SECTION I – COVERAGES

A. COVERAGE A – EXCESS FOLLOW-FORM LIABILITY

1. We will pay on behalf of the insured those sums, in excess of the "applicable underlying limit", that the insured becomes legally obligated to pay as damages to which Coverage A of this insurance applies, provided that the "underlying insurance" would apply to such damages but for the exhaustion of its applicable limits of insurance. If a sublimit is specified in any "underlying insurance", Coverage A of this insurance applies to damages that are in excess of that sublimit only if such sublimit is shown for that "underlying insurance" in the Schedule Of Underlying Insurance.
2. Coverage A of this insurance is subject to the same terms, conditions, agreements, exclusions and definitions as the "underlying insurance", except with respect to any

provisions to the contrary contained in this insurance.

3. The amount we will pay for damages is limited as described in **SECTION III – LIMITS OF INSURANCE**.
4. For the purposes of Paragraph 1. above:
 - a. The applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance will be considered to be reduced or exhausted only by the following payments:
 - (1) Payments of judgments or settlements for damages that are covered by that "underlying insurance". However, if such "underlying insurance" has a policy period which differs from the policy period of this Excess Follow-Form And Umbrella Liability Insurance, any such payments for damages that would not be covered by this Excess

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Follow-Form And Umbrella Liability Insurance because of its different policy period will not reduce or exhaust the applicable limit of insurance stated for such "underlying insurance";

- (2) Payments of "medical expenses" that are covered by that "underlying insurance" and are incurred for "bodily injury" caused by an accident that takes place during the policy period of this Excess Follow-Form And Umbrella Liability Insurance; or
- (3) Payments of defense expenses that are covered by that "underlying insurance", only if such "underlying insurance" includes such payments within the limits of insurance. However, if such "underlying insurance" has a policy period which differs from the policy period of this Excess Follow-Form And Umbrella Liability Insurance, any such payments for defense expenses that would not be covered by this Excess Follow-Form And Umbrella Liability Insurance because of its different policy period will not reduce or exhaust the applicable limit of insurance stated for such "underlying insurance".

If the applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance is actually reduced or exhausted by other payments, Coverage A of this insurance is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had such limit not been actually reduced or exhausted by such other payments.

- b. If any "underlying insurance" has a limit of insurance greater than the amount shown for that insurance in the Schedule of Underlying Insurance, this insurance will apply in excess of that greater amount. If any "underlying insurance" has a limit of insurance, prior to any reduction or exhaustion by payment of damages, "medical expenses" or defense expenses described in Paragraph a. above, that is less than the amount shown for that insurance in the Schedule Of Underlying Insurance, this insurance will apply in excess of the amount shown for such insurance in the Schedule Of Underlying Insurance.

5. When the "underlying insurance" applies on a claims-made basis and includes a retroactive date provision, the retroactive date for Coverage A of this insurance is the same as the retroactive date of that "underlying insurance".

B. COVERAGE B – UMBRELLA LIABILITY

1. We will pay on behalf of the insured those sums in excess of the "self-insured retention" that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which Coverage B of this insurance applies.
2. Coverage B of this insurance applies to "bodily injury" or "property damage" only if:
 - a. The "bodily injury" or "property damage" is caused by an "occurrence" that takes place anywhere in the world;
 - b. The "bodily injury" or "property damage" occurs during the policy period; and
 - c. Prior to the policy period, no insured listed under Paragraph 1. in Paragraph B., **COVERAGE B – UMBRELLA LIABILITY**, 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, in whole or in part, 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.
3. Coverage B of this insurance applies to "personal injury" or "advertising injury" caused by an offense arising out of your business, but only if the offense was committed during the policy period anywhere in the world.
4. The amount we will pay for damages is limited as described in **SECTION III – LIMITS OF INSURANCE**.
5. "Bodily injury" or "property damage":
 - a. Which occurs during the policy period; and
 - b. Which was not prior to, but was during, the policy period known to have occurred by any insured listed under Paragraph 1. in Paragraph B., **COVERAGE B –**

UMBRELLA LIABILITY of **SECTION II – WHO IS AN INSURED**, or any "employee" authorized by you to give notice of an "occurrence" or claim;

includes any continuation, change or resumption of the "bodily injury" or "property damage" after the end of the policy period.

6. "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. in Paragraph B., **COVERAGE B – UMBRELLA LIABILITY**, of **SECTION II – WHO IS AN INSURED** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - a. Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - b. Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - c. Becomes aware by any other means that the "bodily injury" or "property damage" has occurred or has begun to occur.
7. 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".
8. Coverage B of this insurance does not apply to damages covered by any "underlying insurance" or that would have been covered by any "underlying insurance" but for the exhaustion of its applicable limit of insurance.

C. COVERAGE C – CRISIS MANAGEMENT SERVICE EXPENSES

1. We will reimburse the insured, or pay on the insured's behalf, "crisis management service expenses" to which Coverage C applies.
2. Coverage C of this insurance applies to "crisis management service expenses" that:
 - a. Arise out of a "crisis management event" that first commences during the policy period;
 - b. Are incurred by the insured, after a "crisis management event" first commences and before such event ends; and
 - c. Are submitted to us within 180 days after the "crisis management advisor" advises you that the "crisis management event" no longer exists.
3. A "crisis management event" will be deemed to:

- a. First commence at the time when any "executive officer" first becomes aware of an "event" or "occurrence" that leads to that "crisis management event"; and
- b. End when we decide that the crisis no longer exists or when the Crisis Management Service Expenses Limit has been exhausted, whichever occurs first.

4. The amount we will pay for "crisis management service expenses" is limited as described in **SECTION III – LIMITS OF INSURANCE**.

5. A "self-insured retention" does not apply to "crisis management service expenses".

6. Any payment of "crisis management service expenses" that we make will not be determinative of our obligations under this insurance with respect to any claim or "suit" or create any duty to defend or indemnify any insured for any claim or "suit".

D. DEFENSE AND SUPPLEMENTARY PAYMENTS

1. We will have the right and duty to defend the insured:

a. Under Coverage A, against a "suit" seeking damages to which such coverage applies, if:

(1) The "applicable underlying limit" is the applicable limit of insurance stated for a policy of "underlying insurance" in the Schedule Of Underlying Insurance and such limit has been exhausted solely due to payments as permitted in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY** of **SECTION I – COVERAGES**; or

(2) The "applicable underlying limit" is the applicable limit of any "other insurance" and such limit has been exhausted by payments of judgments, settlements or medical expenses, or related costs or expenses (if such costs or expenses reduce such limits).

For any "suit" for which we have the right and duty to defend the insured under Coverage A, defense expenses will be within the limits of insurance of this policy when such expenses are within the limits of insurance of the applicable "underlying insurance"; or

b. Under Coverage B, against a "suit" seeking damages to which such coverage applies.

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2. We have no duty to defend any insured against any "suit":
 - a. Seeking damages to which this insurance does not apply; or
 - b. If any other insurer has a duty to defend.
3. When we have the duty to defend, we may, at our discretion, investigate and settle any claim or "suit". In all other cases, we may, at our discretion, participate in the investigation, defense and settlement of any claim or "suit" for damages to which this insurance may apply. If we exercise such right to participate, all expenses we incur in doing so will not reduce the applicable limits of insurance.
4. Our duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements, or defense expenses if such expenses are within the limits of insurance of this policy.
5. We will pay, with respect to a claim we investigate or settle, or "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. The cost of:
 - (1) Bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies; or
 - (2) Appeal bonds and 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 such claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.
 - d. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
 - 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 that accrues on the full amount of any judgment 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. If we do not pay part of the judgment for any reason other than it is more than the applicable limit of insurance, we will not pay any interest that accrues on that portion of the judgment.

With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY**, these payments will not reduce the applicable limits of insurance, but only if the applicable "underlying insurance" provides for such payments in addition to its limits of insurance. With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE B – UMBRELLA LIABILITY**, these payments will not reduce the applicable limits of insurance.

SECTION II – WHO IS AN INSURED

A. COVERAGE A – EXCESS FOLLOW-FORM LIABILITY

With respect to Coverage A, the following persons and organizations qualify as insureds:

1. The Named Insured shown in the Declarations; and
2. Any other person or organization qualifying as an insured in the "underlying insurance". If you have agreed to provide insurance for that person or organization in a written contract or agreement:
 - a. The limits of insurance afforded to such person or organization will be:
 - (1) The amount by which the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement exceed the total limits of insurance of all applicable "underlying insurance"; or
 - (2) The limits of insurance of this policy; whichever is less; and
 - b. Coverage under this policy does not apply to such person or organization if the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement are wholly within the total limits of insurance of all available applicable "underlying insurance".

B. COVERAGE B – UMBRELLA LIABILITY

With respect to Coverage B:

1. The Named Insured shown in the Declarations is an insured.
2. If you are:

- a. An individual, your spouse is also an insured, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, 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, your members are also insureds, but only with respect to the conduct of your business. Your managers are also insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, your "officers" and directors are also 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, your trustees are also insureds, but only with respect to their duties as trustees.
3. 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 "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 injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
- Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers" other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.
- (2) "Property damage" to property:
 - (a) Owned, occupied or used by; or
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;
 - you, any of your "employees" or "volunteer workers", any of your partners or members (if you are a partnership or joint venture), or any of your members (if you are a limited liability company).
 - b. Any person (other than your "employee" or "volunteer worker"), or any organization, while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That

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representative will have all your rights and duties under this insurance.

4. Any organization, other than a partnership, joint venture or limited liability company, of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, on the first day of the policy period is an insured and will qualify as a Named Insured. No such organization is an insured or will qualify as a Named Insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such organization.
5. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, is an insured and will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
 - b. Coverage for such organization does not apply to:
 - (1) "Bodily injury" or "property damage" that occurred; or
 - (2) "Personal injury" or "advertising injury" arising out of an offense committed;before you acquired or formed the organization.

No person or organization is an insured or will qualify as a Named Insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Paragraph B. of **SECTION II – WHO IS AN INSURED**.

C. COVERAGE C – CRISIS MANAGEMENT SERVICE EXPENSES

With respect to Coverage C, the following persons and organizations are insureds and will qualify as Named Insureds:

1. The Named Insured shown in the Declarations.

2. Any organization, other than a partnership, joint venture or limited liability company, of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, on the first day of the policy period. No such organization is an insured or will qualify as a Named Insured for "crisis management service expenses" arising out of a "crisis management event" that first commences after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such organization.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
 - b. Coverage for such organization does not apply to "crisis management service expenses" arising out of a "crisis management event" that occurred before you acquired or formed the organization, even if an "executive officer" only first becomes aware of an "event" or "occurrence" that leads to such "crisis management event" after the date you acquired or formed the organization.

No person or organization is an insured or will qualify as a Named Insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

- A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay for the amounts described below to which this insurance applies regardless of the number of:
 1. Insureds;
 2. Claims made or "suits" brought;
 3. Number of vehicles involved;
 4. Persons or organizations making claims or bringing "suits"; or
 5. Coverages provided under this insurance.

As indicated in Paragraph D.1. of **SECTION I – COVERAGES**, for any "suit" for which we have the right and duty to defend the insured under Coverage A, defense expenses will be within the

limits of insurance of this policy when such expenses are within the limits of insurance of the applicable "underlying insurance".

B. The General Aggregate Limit is the most we will pay for the sum of all:

1. Damages; and
2. Defense expenses if such expenses are within the limits of insurance of this policy;

except:

1. Damages and defense expenses because of "bodily injury" or "property damage" included in the "auto hazard";
2. Damages and defense expenses because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; or
3. Damages and defense expenses for which insurance is provided under any Aircraft Liability coverage included as "underlying insurance" to which no aggregate limit applies.

C. The Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all:

1. Damages; and
2. Defense expenses if such expenses are within the limits of insurance of this policy; because of "bodily injury" or "property damage" included in the "products-completed operations hazard".

D. Subject to Paragraph B. or C. above, whichever applies, the Occurrence Limit is the most we will pay for the sum of all:

1. Damages, and defense expenses if such expenses are within the limits of insurance of this policy, under Coverage A arising out of any one "event" to which the "underlying insurance" applies a limit of insurance that is separate from any aggregate limit of insurance; and
2. Damages under Coverage B because of all "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any one "occurrence".

For the purposes of determining the applicable Occurrence Limit, all related acts or omissions committed in the providing or failing to provide first aid or "Good Samaritan services" to any one person will be considered one "occurrence".

E. The Crisis Management Service Expenses Limit is the most we will pay for the sum of all "crisis management service expenses" arising out of all "crisis management events". Payment of such "crisis management service expenses" is in addition to, and will not reduce, any other limit of insurance of this policy.

F. The limits of insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations. If the policy period is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for purposes of determining the limits of insurance.

SECTION IV – EXCLUSIONS

This insurance does not apply to:

A. With respect to Coverage A and Coverage B:

1. Asbestos

- a. Damages arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos, provided that the damages are caused or contributed to by the hazardous properties of asbestos.
- b. Damages arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, and that are part of any claim or "suit" which also alleges any damages described in Paragraph a. above.
- c. Any loss, cost or expense arising out of any:
 - (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, asbestos, asbestos fibers or products containing asbestos; or
 - (2) Claim or "suit" by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibers or products containing asbestos.

2. Employment-Related Practices

Damages because of injury to:

- a. A person arising out of any:
 - (1) Refusal to employ that person;
 - (2) Termination of that person's employment; or

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(3) Employment-related practice, policy, act or omission, such as coercion, demotion, evaluation, reassignment, discipline, failure to promote or advance, harassment, humiliation, discrimination, libel, slander, violation of the person's right of privacy, malicious prosecution or false arrest, detention or imprisonment, applied to or directed at that person, regardless of whether such practice, policy, act or omission occurs, is applied or is committed before, during or after the time of that person's employment; or

b. The spouse, child, parent, brother or sister of that person as a consequence of injury to that person as described in Paragraphs a.(1), (2) or (3) above.

This exclusion applies:

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

3. ERISA, COBRA And Similar Laws

Any obligation of the insured under:

- a. The Employees Retirement Income Security Act Of 1974 (ERISA) or any of its amendments;
- b. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) or any of its amendments; or
- c. Any similar common or statutory law of any jurisdiction.

4. Medical Expenses Or Payments

Any obligation of the insured under any "medical expenses" or medical payments coverage.

5. Nuclear Material

Damages arising out of:

- a. The actual, alleged or threatened exposure of any person or property to; or
- b. The "hazardous properties" of; any "nuclear material".

As used in this exclusion:

- a. "Hazardous properties" includes radioactive, toxic or explosive properties;
- b. "Nuclear material" means "source material", "special nuclear material" or "by-product material"; and
- c. "Source material", "special nuclear material" and "by-product material" have

the meanings given them in the Atomic Energy Act of 1954 or any of its amendments.

6. Uninsured or Underinsured Motorists, No-Fault And Similar Laws

Any liability imposed on the insured, or the insured's insurer, under any of the following laws:

- a. Uninsured motorists;
- b. Underinsured motorists;
- c. Auto no-fault or other first-party personal injury protection (PIP);
- d. Supplementary uninsured/underinsured motorists (New York); or
- e. Medical expense benefits and income loss benefits (Virginia).

7. War

Damages arising out of:

- a. War, including undeclared or civil war; or
- b. 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
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

8. Workers Compensation And Similar Laws

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

B. With respect to Coverage B:

1. Expected Or Intended Bodily Injury Or Property Damage

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

2. Contractual Liability

"Bodily injury", "property damage", "personal injury" or "advertising injury" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

3. Liquor Liability

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

- a. Causing or contributing to the intoxication of any person, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises for consumption on your premises;
- b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

4. Employers Liability

"Bodily injury" to:

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

This exclusion applies:

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

5. Pollution

- a. "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".
- b. Any loss, cost or expense arising out of any:
 - (1) Request, demand, order or statutory or regulatory requirement that any insured or any other person or organization 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 any governmental authority or any other person or organization 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".

6. Aircraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft 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 that is owned or operated by or rented or loaned to any insured.

7. Auto

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any "auto". 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 "auto".

This exclusion does not apply to "bodily injury" or "property damage" caused by an "occurrence" that takes place outside of the United States of America (including its territories and possessions), Puerto Rico and Canada.

8. Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any 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,

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maintenance, use or entrustment to others of any watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to a watercraft:

- a. While ashore on premises owned by or rented to any insured; or
- b. That is 50-feet long or less and that:
 - (1) You own; or
 - (2) You do not own and is not being used to carry any person or property for a charge.

9. Electronic Data

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

10. Damage To Property, Products Or Work

"Property damage" to:

- a. Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person or organization, 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;
- b. Premises you sell, give away or abandon if the "property damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. Personal property in the care, custody or control of the insured;
- e. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations if the "property damage" arises out of those operations;
- f. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it;
- g. "Your product" arising out of "your product" or any part of it; or
- h. "Your work" arising out of "your work" or any part of it and included in the "products-completed operations hazard".

11. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property", or property that has not been physically injured, arising out of:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. A delay or failure by you, or anyone acting on your behalf, to fulfill the terms of a contract or agreement.

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.

12. Recall Of Products, Work Or Impaired Property

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

- a. "Your product";
- b. "Your work"; or
- c. "Impaired property";

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

13. Violation Of Consumer Financial Protection Laws

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any actual or alleged violation of a "consumer financial protection law", or any other "bodily injury", "property damage", "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such violation.

14. Unsolicited Communication

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any actual or alleged violation of any law that restricts or prohibits the sending, transmitting or distributing of "unsolicited communication".

15. Access Or Disclosure Of Confidential Or Personal Information

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information.

16. Knowing Violation Of Rights Of Another

"Personal injury" or "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 injury" or "advertising injury".

17. Material Published With Knowledge Of Falsity

"Personal injury" or "advertising injury" arising out of oral or written publication, including publication by electronic means, of material, if done by or at the direction of the insured with knowledge of its falsity.

18. Material Published Or Used Prior To Policy Period

- a. "Personal injury" or "advertising injury" arising out of oral or written publication, including publication by electronic means, of material whose first publication took place before the beginning of the policy period; or
- b. "Advertising injury" arising out of infringement of copyright, "title" or "slogan" in your "advertisement" whose first infringement in your "advertisement" was committed before the beginning of the policy period.

19. Criminal Acts

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

20. Breach Of Contract

"Personal injury" or "advertising injury" arising out of a breach of contract.

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

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

22. Wrong Description Of Prices

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

23. Intellectual Property

"Personal injury" or "advertising injury" arising out of any actual or alleged infringement or violation of any of the following rights or laws, or any other "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation:

- a. Copyright;
- b. Patent;

- c. Trade dress;
- d. Trade name;
- e. Trademark;
- f. Trade secret; or
- g. Other intellectual property rights or laws.

This exclusion does not apply to:

- a. "Advertising injury" arising out of any actual or alleged infringement or violation of another's copyright, "title" or "slogan" in your "advertisement"; or
- b. Any other "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation of another's copyright, "title" or "slogan" in your "advertisement".

24. Insureds In Media And Internet Type Business

"Personal injury" or "advertising injury" arising out of an offense committed by an insured whose business is:

- a. Advertising, "broadcasting" or publishing;
- b. Designing or determining content of web-sites for others; or
- c. An Internet search, access, content or service provider.

This exclusion does not apply to Paragraphs a.(1), (2) and (3) of the definition of "personal injury".

For the purposes of this exclusion:

- a. Creating and producing correspondence written in the conduct of your business, bulletins, financial or annual reports, or newsletters about your goods, products or services will not be considered the business of publishing; and
- b. The placing of frames, borders or links, or advertising, for you or others anywhere on the Internet will not, by itself, be considered the business of advertising, "broadcasting" or publishing.

25. Electronic Chatrooms Or Bulletin Boards

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

26. Unauthorized Use Of Another's Name Or Product

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

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C. With respect to Coverage C:

Newly Acquired, Controlled Or Formed Entities

"Crisis management service expenses" arising out of a "crisis management event" that involves any organization you newly acquire or form and that occurred prior to the date you acquired or formed that organization, even if an "executive officer" only first becomes aware of an "event" or "occurrence" that leads to such "crisis management event" after the date you acquired or formed such organization.

SECTION V – CONDITIONS

A. APPEALS

1. If the insured or the insured's "underlying insurer" elects not to appeal a judgment which exceeds the "applicable underlying limit" or "self-insured retention", we may do so.
2. If we appeal such a judgment, we will pay all costs of the appeal. These payments will not reduce the applicable limits of insurance. In no event will our liability exceed the applicable limit of insurance.

B. BANKRUPTCY

1. Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this insurance.
2. In the event of bankruptcy or insolvency of any "underlying insurer", this insurance will not replace such bankrupt or insolvent "underlying insurer's" policy, and this insurance will apply as if such "underlying insurer" had not become bankrupt or insolvent.

C. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this insurance by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this insurance by mailing or delivering to such first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 60 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to such first Named Insured's last mailing address known to us.

4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this insurance is cancelled, we will send such first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If such first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

D. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. No change can be made in the terms of this insurance except with our consent. The terms of this insurance can be amended or waived only by endorsement issued by us and made a part of this policy.

E. CURRENCY

Payments for damages or expenses described in Paragraph 5. of Paragraph D., **DEFENSE AND SUPPLEMENTARY PAYMENTS**, of **SECTION I – COVERAGES** will be in the currency of the United States of America. At our sole option, we may make these payments in a different currency. Any necessary currency conversion for such payments will be calculated based on the rate of exchange published in the Wall Street Journal immediately preceeding the date the payment is processed.

F. DUTIES REGARDING AN EVENT, OCCURRENCE, CLAIM OR SUIT

1. You must see to it that we are notified as soon as practicable of an "event" or "occurrence" which may result in a claim under this insurance. To the extent possible, notice should include:
 - a. How, when and where the "event" or "occurrence" took place;
 - b. The names and addresses of any persons or organizations sustaining injury, damage or loss, and the names and addresses of any witnesses; and
 - c. The nature and location of any injury or damage arising out of the "event" or "occurrence".
2. If a claim is made or "suit" is brought against any insured which may result in a claim under this insurance, you must see to it that we receive written notice of the claim or "suit" as soon as practicable.

3. With respect to Coverage **A**, the insured must:
 - a. Cooperate with us in the investigation, settlement or defense of any claim or "suit";
 - b. Comply with the terms of the "underlying insurance"; and
 - c. Pursue all rights of contribution or indemnity against any person or organization who may be liable to the insured because of the injury, damage or loss for which insurance is provided under this policy or any policy of "underlying insurance".
4. With respect to Coverage **B**, the insured must:
 - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - b. Authorize us to obtain necessary records and other information;
 - c. Cooperate with us in the investigation, settlement or defense of any claim or "suit"; and
 - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which Coverage **B** may apply.
5. No insured will, except at that insured's own expense, voluntarily make a payment, assume any obligation, make any admission or incur any expense, other than for first aid for "bodily injury" covered by this insurance, without our consent.
6. Knowledge of an "event", "occurrence", claim or "suit" by your agent, servant or "employee" will not constitute knowledge by you, unless your insurance or risk manager, or anyone working in the capacity as your insurance or risk manager, or anyone you designate with the responsibility of reporting an "event", "occurrence", claim or "suit":
 - a. Has received notice of such "event", "occurrence", claim or "suit" from such agent, servant or "employee"; or
 - b. Otherwise has knowledge of such "event", "occurrence", claim or "suit".

G. DUTIES REGARDING A CRISIS MANAGEMENT EVENT

You must:

1. Notify us within 30 days of a "crisis management event" that may result in "crisis management service expenses".
2. Provide written notice of the "crisis management event" as soon as practicable. To the extent possible, notice should include:
 - a. How, when and where that "crisis management event" took place;
 - b. The names and addresses of any persons or organizations sustaining injury, damage or loss, and the named and addresses of any witnesses;
 - c. The nature and location of any injury or damage arising out of that "crisis management event"; and
 - d. The reason that "crisis management event" is likely to involve damages covered by this insurance in excess of the "applicable underlying limit" or "self-insured retention" and involve regional or national media coverage.

H. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this insurance:

1. At any time during the policy period;
2. Up to three years after the end of the policy period; and
3. Within one year after final settlement of all claims under this insurance.

I. EXTENDED REPORTING PERIOD OPTION

1. When the "underlying insurance" applies on a claims-made basis, any automatic or basic "extended reporting period" in such "underlying insurance" will apply to this insurance.
2. When the "underlying insurance" applies on a claims-made basis and you elect to purchase an optional or supplemental "extended reporting period" in such "underlying insurance," that "extended reporting period" will apply to this insurance only if:
 - a. A written request to purchase an Extended Reporting Period endorsement for this insurance is made by you and received by us within 90 days after the end of the policy period;

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- b. You have paid all premiums due for this policy at the time you make such request;
 - c. You promptly pay the additional premium we charge for the Extended Reporting Period endorsement for this insurance when due. We will determine that additional premium after we have received your request for the Extended Reporting Period endorsement for this insurance. That additional premium is not subject to any limitation stated in the "underlying insurance" on the amount or percentage of additional premium that may be charged for the "extended reporting period" in such "underlying insurance"; and
 - d. That Extended Reporting Period endorsement is issued by us and made a part of this policy.
3. Any Extended Reporting Period endorsement for this insurance will not reinstate or increase the Limits of Insurance or extend the policy period.
 4. Except with respect to any provisions to the contrary contained in Paragraphs 1., 2. or 3. above, all provisions of any option to purchase an "extended reporting period" granted to you in the "underlying insurance" apply to this insurance.

J. INSPECTIONS AND SURVEYS

1. We have the right but are not obligated to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
2. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. 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:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

K. LEGAL ACTION AGAINST US

1. No person or organization has a right under this insurance:
 - 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 insurance unless all of its terms have been fully complied with.
2. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured. We will not be liable for damages that:
 - a. Are not payable under the terms of this insurance; or
 - b. 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.

L. MAINTENANCE OF UNDERLYING INSURANCE

1. The insurance afforded by each policy of "underlying insurance" will be maintained for the full policy period of this Excess Follow-Form And Umbrella Liability Insurance. This provision does not apply to the reduction or exhaustion of the aggregate limit or limits of such "underlying insurance" solely by payments as permitted in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY of SECTION I – COVERAGES**. As such policies expire, you will renew them at limits and with coverage at least equal to the expiring limits of insurance. If you fail to comply with the above requirements, Coverage A is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had you complied with the above requirements.
2. The first Named Insured shown in the Declarations must give us written notice of any change in the "underlying insurance" as respects:
 - a. Coverage;
 - b. Limits of insurance;
 - c. Termination of any coverage; or
 - d. Exhaustion of aggregate limits.
3. If you are unable to recover from any "underlying insurer" because you fail to comply with any term or condition of the "underlying insurance", Coverage A is not invalidated. However, we will pay for any loss only to the extent that we would have paid had you complied with that term or condition in that "underlying insurance".

M. OTHER INSURANCE

This insurance is excess over any valid and collectible "other insurance" whether such "other insurance" is stated to be primary, contributing,

excess, contingent or otherwise. This provision does not apply to a policy bought specifically to apply as excess of this insurance.

However, if you specifically agree in a written contract or agreement that the insurance provided to any person or organization that qualifies as an insured under this insurance must apply on a primary basis, or a primary and non-contributory basis, then insurance provided under Coverage A is subject to the following provisions:

1. This insurance will apply before any "other insurance" that is available to such additional insured which covers that person or organization as a named insured, and we will not share with that "other insurance", provided that the injury or damage for which coverage is sought is caused by an "event" that takes place or is committed subsequent to the signing of that contract or agreement by you.
2. This insurance is still excess over any valid and collectible "other insurance", whether primary, excess, contingent or otherwise, which covers that person or organization as an additional insured or as any other insured that does not qualify as a named insured.

N. PREMIUM

1. The first Named Insured shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums.
2. If the premium is a flat charge, it is not subject to adjustment except as provided in Paragraph 4. below.
3. If the premium is other than a flat charge, it is an advance premium only. The earned premium will be computed at the end of the policy period, or at the end of each year of the policy period if the policy period is two years or longer, at the rate shown in the Declarations, subject to the Minimum Premium.
4. Additional premium may become payable when coverage is provided for additional insureds under the provisions of **SECTION II – WHO IS AN INSURED.**

O. PREMIUM AUDIT

The premium for this policy is the amount stated in Item 5. of the Declarations. The premium is a flat charge unless it is specified in the Declarations as adjustable.

P. PROHIBITED COVERAGE – UNLICENSED INSURANCE

1. With respect to loss sustained by any insured in a country or jurisdiction in which we are not licensed to provide this insurance, this insurance does not apply to the extent that insuring such loss would violate the laws or regulations of such country or jurisdiction.
2. We do not assume responsibility for:
 - a. The payment of any fine, fee, penalty or other charge that may be imposed on any person or organization in any country or jurisdiction because we are not licensed to provide insurance in such country or jurisdiction; or
 - b. The furnishing of certificates or other evidence of insurance in any country or jurisdiction in which we are not licensed to provide insurance.

Q. PROHIBITED COVERAGE – TRADE OR ECONOMIC SANCTIONS

We will provide coverage for any loss, or otherwise will provide any benefit, only to the extent that providing such coverage or benefit does not expose us or any of our affiliated or parent companies to:

1. Any trade or economic sanction under any law or regulation of the United States of America; or
2. Any other applicable trade or economic sanction, prohibition or restriction.

R. REPRESENTATIONS

By accepting this insurance, you agree:

1. The statements in the Declarations and any subsequent notice relating to "underlying insurance" are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this insurance in reliance upon your representations.

S. SEPARATION OF INSURED

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured shown in the Declarations, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom claim is made or "suit" is brought.

T. WAIVER OR TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

1. If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us and 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, and with respect to Coverage A, the "underlying insurer", enforce them.

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against that person or organization, but only for payments we make because of an "event" that takes place or is committed subsequent to the execution of that contract or agreement by such insured.

2. Reimbursement of any amount recovered will be made in the following order:
 - a. First, to any person or organization (including us or the insured) who has paid any amount in excess of the applicable limit of insurance;
 - b. Next, to us; and
 - c. Then, to any person or organization (including the insured and with respect to Coverage A, the "underlying insurer") that is entitled to claim the remainder, if any.
3. Expenses incurred in the process of recovery will be divided among all persons or organizations receiving amounts recovered according to the ratio of their respective recoveries.

U. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS INSURANCE

1. Your rights and duties under this insurance may not be transferred without our written consent except in the case of death of an individual Named Insured.
2. If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

V. UNINTENTIONAL OMISSION OR ERROR

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this

provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

W. WHEN LOSS IS PAYABLE

If we are liable under this insurance, we will pay for injury, damage or loss after:

1. The insured's liability is established by:
 - a. A court decision; or
 - b. A written agreement between the claimant, the insured, any "underlying insurer" and us; and
2. The amount of the "applicable underlying limit" or "self-insured retention" is paid by or on behalf of the insured.

SECTION VI – DEFINITIONS

A. With respect to all coverages of this insurance:

1. "Applicable underlying limit" means the sum of:
 - a. The applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance subject to the provisions in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY OF SECTION I – COVERAGES**; and
 - b. The applicable limit of insurance of any "other insurance" that applies.

The limits of insurance in any policy of "underlying insurance" will apply even if:

- a. The "underlying insurer" claims the insured failed to comply with any term or condition of the policy; or
 - b. The "underlying insurer" becomes bankrupt or insolvent.
2. "Auto hazard" means all "bodily injury" and "property damage" to which liability insurance afforded under an auto policy of "underlying insurance" would apply but for the exhaustion of its applicable limits of insurance.
 3. "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.
 4. "Event" means an "occurrence", offense, accident, act, error, omission, wrongful act or loss.

5. "Extended reporting period" means any period of time, starting with the end of the policy period of your claims-made insurance, during which claims or "suits" may be first made, brought or reported for that insurance.
6. "Medical expenses" means expenses to which any Medical Payments section of any policy of Commercial General Liability "underlying insurance" applies.
7. "Other insurance" means insurance, or the funding of losses, that is provided by, through or on behalf of:
 - a. Another insurance company;
 - b. Us or any of our affiliated insurance companies;
 - c. Any risk retention group;
 - d. Any self-insurance method or program, in which case the insured will be deemed to be the provider of such insurance; or
 - e. Any similar risk transfer or risk management method.

"Other insurance" does not include:

- a. Any "underlying insurance"; or
 - b. Any policy of insurance specifically purchased to be excess of the limits of insurance of this policy shown in the Declarations.
8. "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 the work called for in your contract has been completed;
 - (b) When all the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

- 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 a policy of Commercial General Liability "underlying insurance" states that products-completed operations are subject to the General Aggregate Limit.
9. "Suit" means a civil proceeding which alleges damages. "Suit" includes:
- a. An arbitration proceeding in which damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding to which the insured submits with our consent.
10. "Underlying insurance":
- a. Means the policy or policies of insurance listed in the Schedule Of Underlying Insurance.
 - b. Includes any renewal or replacement of such policies if such renewal or replacement is during the policy period of this Excess Follow-Form And Umbrella Liability Insurance.
 - c. Does not include any part of the policy period of any of the policies described in Paragraphs a. or b. above that began before, or that continues after, the policy period of this Excess Follow-Form And Umbrella Liability Insurance.
11. "Underlying insurer" means any insurer which provides a policy of insurance listed in the Schedule Of Underlying Insurance.

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B. With respect to Coverage **B** and, to the extent that the following terms are not defined in the "underlying insurance", to Coverage **A**:

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. "Advertising injury":

a. Means injury, other than "personal injury", caused by one or more of the following offenses:

- (1) Oral or written publication, including publication by electronic means, of material in your "advertisement" that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;
- (2) Oral or written publication, including publication by electronic means, of material in your "advertisement" that:
 - (a) Appropriates a person's name, voice, photograph or likeness; or
 - (b) Unreasonably places a person in a false light; or
- (3) Infringement of copyright, "title" or "slogan" in your "advertisement", provided that the claim is made or the "suit" is brought by a person or organization that claims ownership of such copyright, "title" or "slogan".

b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph **a.** above.

3. "Auto" means:

a. A land motor vehicle, trailer or semitrailer designed for travel on public roads,

including any attached machinery or equipment; or

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

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

4. "Bodily injury" means:

- a. Physical harm, including sickness or disease, sustained by a person; or
- b. Mental anguish, injury or illness, or emotional distress, resulting at any time from such physical harm, sickness or disease.

5. "Broadcasting" means transmitting any audio or visual material for any purpose:

a. By radio or television; or

b. In, by or with any other electronic means of communication, such as the Internet, if that material is part of:

- (1) Radio or television programming being transmitted;
- (2) Other entertainment, educational, instructional, music or news programming being transmitted; or
- (3) Advertising transmitted with any such programming.

6. "Consumer financial identity information" means any of the following information for a person that is used or collected for the purpose of serving as a factor in establishing such person's eligibility for personal credit, insurance or employment or for the purpose of conducting a business transaction:

- a. Part or all of the account number, the expiration date or the balance of any credit, debit, bank or other financial account;
- b. Information bearing on a person's credit worthiness, credit standing or credit capacity;
- c. Social security number;
- d. Driver's license number; or
- e. Birth date.

7. "Consumer financial protection law" means:

a. The Fair Credit Reporting Act (FCRA) and any of its amendments, including the Fair and Accurate Credit Transactions Act (FACTA);

- b. California's Song-Beverly Credit Card Act and any of its amendments; or
 - c. Any other law or regulation that restricts or prohibits the collection, dissemination, transmission, distribution or use of "consumer financial identity information".
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.
10. "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 the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.
11. "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".
12. "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".
13. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads.

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

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

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

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

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14. "Occurrence" means:

a. With respect to "bodily injury" or "property damage":

(1) An accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results in "bodily injury" or "property damage". All "bodily injury" or "property damage" caused by such exposure to substantially the same general harmful conditions will be deemed to be caused by one "occurrence"; or

(2) An act or omission committed in providing or failing to provide first aid or "Good Samaritan services" to a person by any of your "employees" or "volunteer workers" other than an employed or volunteer doctor, unless you are in the business or occupation of providing professional health care services;

b. With respect to "personal injury", an offense arising out of your business that results in "personal injury". All "personal injury" caused by the same or related injurious material, act or offense will be deemed to be caused by one "occurrence", regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making claims or bringing "suits"; and

c. With respect to "advertising injury", an offense committed in the course of advertising your goods, products and services that results in "advertising injury". All "advertising injury" caused by the same or related injurious material, act or offense will be deemed to be caused by one "occurrence", regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making claims or bringing "suits".

15. "Officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

16. "Personal injury":

a. Means injury, other than "advertising injury", caused by one or more of the following offenses:

(1) False arrest, detention or imprisonment;

(2) Malicious prosecution;

(3) 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, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;

(4) Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged; or

(5) Oral or written publication, including publication by electronic means, of material that:

(a) Appropriates a person's name, voice, photograph or likeness; or

(b) Unreasonably places a person in a false light.

b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.

17. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

18. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use will 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 will be deemed to occur at the time of the "occurrence" that caused it.

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

19. "Self-insured retention" is the greater of:

a. The amount shown in the Declarations which the insured must first pay under Coverage B for damages because of all

"bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any one "occurrence"; or

- b. The applicable limit of insurance of any "other insurance" that applies.

20. "Slogan":

- a. Means a phrase that others use for the purpose of attracting attention in their advertising.
- b. Does not include a phrase used as, or in, the name of:
 - (1) Any person or organization other than you; or
 - (2) Any business, or any of the premises, goods, products, services or work, of any person or organization other than you.

21. "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.

22. "Title" means the name of a literary or artistic work.

23. "Unsolicited communication" means any communication, in any form, that the recipient of such communication did not specifically request to receive.

24. "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 by you.

25. "Your product":

- a. Means:
 - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
 - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

- b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

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

26. "Your work":

- a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

- b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

(2) The providing of or failure to provide warnings or instructions.

C. With respect to Coverage C:

1. "Crisis management advisor" means any public relations firm or crisis management firm approved by us that is hired by you to perform "crisis management services" in connection with a "crisis management event".

2. "Crisis management event" means an "event" or "occurrence" that your "executive officer" reasonably determines has resulted, or may result, in:

- a. Damages covered by this Coverage A or Coverage B that are in excess of the total applicable limits of the "underlying insurance" or "self-insured retention"; and

- b. Significant adverse regional or national media coverage.

3. "Crisis management service expenses" means amounts incurred by you, after a "crisis management event" first commences and before such event ends:

- a. For the reasonable and necessary:

(1) Fees and expenses of a "crisis management advisor" in the performance for you of "crisis management services" solely for a "crisis management event"; and

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- (2) Costs for printing, advertising, mailing of materials or travel by your directors, officers, employees or agents or a "crisis management advisor" solely for a "crisis management event"; and
- b. For the following expenses resulting from such "crisis management event", provided that such expenses have been approved by us:
 - (1) Medical expenses;
 - (2) Funeral expenses;
 - (3) Psychological counseling;
 - (4) Travel expenses;
 - (5) Temporary living expenses;
 - (6) Expenses to secure the scene of a "crisis management event"; or
 - (7) Any other expenses pre-approved by us.
4. "Crisis management services" means those services performed by a "crisis management advisor" in advising you or minimizing potential harm to you from a "crisis management event" by maintaining or restoring public confidence in you.
5. "Executive officer" means your:
 - a. Chief Executive Officer;
 - b. Chief Operating Officer;
 - c. Chief Financial Officer;
 - d. President;
 - e. General Counsel;
 - f. General partner (if you are a partnership); or
 - g. Sole proprietor (if you are a sole proprietorship);or any person acting in the same capacity as any individual listed above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – AUTOMATIC STATUS IF REQUIRED BY WRITTEN CONTRACT (CONTRACTORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that:

- a. You agree in a written contract or agreement to include as an additional insured on this Coverage Part; and
- b. Has not been added as an additional insured for the same project by attachment of an endorsement under this Coverage Part which includes such person or organization in the endorsement's schedule;

is an insured, but:

- a. Only with respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. Only as described in Paragraph (1), (2) or (3) below, whichever applies:
 - (1) If the written contract or agreement specifically requires you to provide additional insured coverage to that person or organization by the use of:
 - (a) The Additional Insured – Owners, Lessees or Contractors – (Form B) endorsement CG 20 10 11 85; or
 - (b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 10 01, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 10 01;

the person or organization is an additional insured only if the injury or damage arises out of "your work" to which the written contract or agreement applies;

- (2) If the written contract or agreement specifically requires you to provide additional insured coverage to that person or organization by the use of:

- (a) The Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization endorsement CG 20 10 07 04 or CG 20 10 04 13, the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 07 04 or CG 20 37 04 13, or both of such endorsements with either of those edition dates; or

- (b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37, without an edition date of such endorsement specified;

the person or organization is an additional insured only if the injury or damage is caused, in whole or in part, by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies; or

- (3) If neither Paragraph (1) nor (2) above applies:
 - (a) The person or organization is an additional insured only if, and to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies; and
 - (b) Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether

COMMERCIAL GENERAL LIABILITY

this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.

b. The insurance provided to such additional insured does not apply to:

(1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

(a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and

(b) Supervisory, inspection, architectural or engineering activities.

(2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

c. The additional insured must comply with the following duties:

(1) Give us written notice as soon as practicable of an "occurrence" or an offense which may

result in a claim. To the extent possible, such notice should include:

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

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

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

(2) If a claim is made or "suit" is brought against the additional insured:

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

(b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.

(3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.

(4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict 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 V – Definitions.

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

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

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B 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.

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.

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

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

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

b. Contractual Liability

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

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided that 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 attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured will be deemed to be damages because of "bodily injury" or "property damage", provided that:
 - (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 attorneys' 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

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

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

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

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

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

e. Employer's Liability

"Bodily injury" to:

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

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

f. Pollution

- (1) "Bodily injury" or "property damage" 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. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that

is used to heat, cool or dehumidify the building, or produced by or originating from equipment that is used to heat water for personal use by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) If such "pollutants" 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;
- (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. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed

to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are or were at any time performing operations to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

- (b) Claim or suit by or on behalf of any governmental authority or any other person or organization 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 Or Watercraft

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of 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" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) 50 feet long or less; and
 - (b) Not being used to carry any person or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "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 as "mobile equipment" under the definition of "mobile equipment" if such land vehicle were not subject to a compulsory or financial responsibility law, or other motor vehicle insurance law, 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"; or

- (6) An aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

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

i. War

"Bodily injury" or "property damage" arising 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

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of 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 "premises damage". A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of 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" included in the "products-completed operations hazard".

k. Damage To Your Product

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

l. Damage To Your Work

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

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

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

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

(1) "Your product";

(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

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

p. Electronic Data

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

However, this exclusion does not apply to liability for damages because of "bodily injury".

q. Unsolicited Communication

"Bodily injury" or "property damage" arising out of any actual or alleged violation of any law that restricts or prohibits the sending, transmitting or distributing of "unsolicited communication".

r. Access Or Disclosure Of Confidential Or Personal Information

"Bodily injury" or "property damage" arising out of any access to or disclosure of any person's or organization's confidential or personal information.

s. Asbestos

(1) "Bodily injury" or "property damage" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos, provided that the "bodily injury" or "property damage" is caused or contributed to by the hazardous properties of asbestos.

- (2) "Bodily injury" or "property damage" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, and that are part of any claim or "suit" which also alleges any "bodily injury" or "property damage" described in Paragraph (1) above.
- (3) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, asbestos, asbestos fibers or products containing asbestos; or
 - (b) Claim or suit by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibers or products containing asbestos.

t. Employment-Related Practices

"Bodily injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practice, policy, act or omission, such as coercion, demotion, evaluation, reassignment, discipline, failure to promote or advance, harassment, humiliation, discrimination, libel, slander, violation of the person's right of privacy, malicious prosecution or false arrest, detention or imprisonment applied to or directed at that person, regardless of whether such practice, policy, act or omission occurs, is applied or is committed before, during or after the time of that person's employment; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the

employment-related practices described in Paragraph (a), (b), or (c) above is directed.

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

Exclusions c. through n. do not apply to "premises damage". A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of Section III – Limits Of Insurance.

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

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

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B 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.

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

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

This exclusion does not apply to "personal injury" caused by malicious prosecution.

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, including publication by electronic means, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Or Used Prior To Policy Period

- (1) "Personal and advertising injury" arising out of oral or written publication, including publication by electronic means, of material whose first publication took place before the beginning of the policy period; or
- (2) "Advertising injury" arising out of infringement of copyright, "title" or "slogan" in your "advertisement" whose first infringement in your "advertisement" was committed before the beginning of the policy period.

d. Criminal Acts

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

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed 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) Because of "personal injury" assumed by you in a contract or agreement that is an "insured contract", provided that the "personal injury" is caused by an offense committed subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed by you in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured will be deemed to be damages because of "personal injury", provided that:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed by you in the same "insured contract"; and
 - (b) Such attorneys' 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.

f. Breach Of Contract

"Advertising injury" arising out of a breach of contract.

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

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

h. Wrong Description Of Prices

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

i. Intellectual Property

"Personal and advertising injury" arising out of any actual or alleged infringement or violation of any of the following rights or laws, or any other "personal and advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation:

- (1) Copyright;
- (2) Patent;
- (3) Trade dress;
- (4) Trade name;
- (5) Trademark;
- (6) Trade secret; or
- (7) Other intellectual property rights or laws.

This exclusion does not apply to:

- (1) "Advertising injury" arising out of any actual or alleged infringement or violation of another's copyright, "title" or "slogan" in your "advertisement"; or
- (2) Any other "personal and advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation of another's copyright, "title" or "slogan" in your "advertisement".

j. Insureds In Media And Internet Type Businesses

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

- (1) Advertising, "broadcasting" or publishing;

- (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 Paragraphs **a.(1), (2) and (3)** of the definition of "personal injury".

For the purposes of this exclusion:

- (1) Creating and producing correspondence written in the conduct of your business, bulletins, financial or annual reports, or newsletters about your goods, products or services will not be considered the business of publishing; and
- (2) The placing of frames, borders or links, or advertising, for you or others anywhere on the Internet will not, by itself, be considered the business of advertising, "broadcasting" or publishing.

k. Electronic Chatrooms Or Bulletin Boards

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

l. Unauthorized Use Of Another's Name Or Product

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

m. Pollution

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

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of any governmental authority or any other person or organization 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

"Personal and advertising injury" arising 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. Unsolicited Communication

"Personal and advertising injury" arising out of any actual or alleged violation of any law that restricts or prohibits the sending, transmitting or distributing of "unsolicited communication".

q. Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information.

r. Asbestos

- (1) "Personal and advertising injury" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos, provided that the "personal and advertising injury" is caused or contributed to by the hazardous properties of asbestos.
- (2) "Personal and advertising injury" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, and that are part of any claim or "suit" which also alleges any "personal and advertising injury" described in Paragraph (1) above.
- (3) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or

assess the effects of, asbestos, asbestos fibers or products containing asbestos; or

- (b) Claim or suit by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibers or products containing asbestos.

s. Employment-Related Practices

"Personal injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practice, policy, act or omission, such as coercion, demotion, evaluation, reassignment, discipline, failure to promote or advance, harassment, humiliation, discrimination, libel, slander, violation of the person's right of privacy, malicious prosecution or false arrest, detention or imprisonment applied to or directed at that person, regardless of whether such practice, policy, act or omission occurs, is applied or is committed before, during or after the time of that person's employment; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal injury" to that person at whom any of the employment-related practices described in Paragraph (a), (b), or (c) above is directed.

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

COVERAGE C – MEDICAL PAYMENTS

1. Insuring Agreement

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

- (3) Because of your operations; provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) 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

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

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

c. Injury On Normally Occupied Premises

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

d. Workers' Compensation And Similar Laws

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

e. 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. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS

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 \$2,500 for the 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 \$500 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- 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.

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" or offense 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; and
 - (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** – Coverages – Coverage **A** – Bodily Injury And Property Damage Liability or Paragraph **2.e.** of Section **I** – Coverages – Coverage **B** – Personal And Advertising Injury Liability, such payments will not be deemed to be damages for "bodily injury", "property damage" or "personal injury", 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, settlements or medical expenses; 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 injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer

workers" while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

- (2) "Property damage" to property:
 - (a) Owned, occupied or used by;
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;
 - you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. Any person (other than your "employee" or "volunteer worker"), or any organization, while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.

venture or limited liability company that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Section II – Who Is An Insured.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph 2. 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 injury" and "advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C; because of all "bodily injury" and "property damage" arising out of any one "occurrence".

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises. The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit in the Declarations of this Coverage Part; or
 - b. \$300,000 if no amount is shown for the Damage To Premises Rented To You Limit in the Declarations of this Coverage Part.
7. Subject to Paragraph 5. 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.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

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

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

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- 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";

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- (2)** Authorize us to obtain records and other information;
 - (3)** Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4)** Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d.** No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.
- e.** The following provisions apply to Paragraph **a.** above, but only for purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph **1.** or **2.** of Section **II** – Who Is An Insured:
- (1)** Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, or limited liability company), any of your trustees who is an individual (if you are a trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.
 - (2)** If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:
 - (a)** Any individual who is:
 - (i)** A partner or member of any partnership or joint venture;
 - (ii)** A manager of any limited liability company;
 - (iii)** An executive officer or director of any other organization; or
 - (iv)** A trustee of any trust;that is your partner, joint venture member, manager or trustee; or
 - (b)** Any employee authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.
- (3)** Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraph **e.(1)** or **(2)** above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.
- However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph **e.** does not affect that requirement.
- ### 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 valid and collectible other insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as described in Paragraphs **a.** and **b.** below.

As used anywhere in this Coverage Part, other insurance means insurance, or the funding of losses, that is provided by, through or on behalf of:

- (i) Another insurance company;
- (ii) Us or any of our affiliated insurance companies, except when the Non cumulation of Each Occurrence Limit provision of Paragraph **5.** of Section **III** – Limits Of Insurance or the Non cumulation of Personal and Advertising Injury Limit provision of Paragraph **4.** of Section **III** – Limits of Insurance applies because the Amendment – Non Cumulation Of Each Occurrence Limit Of Liability And Non Cumulation Of Personal And Advertising Injury Limit endorsement is included in this policy;
- (iii) Any risk retention group; or
- (iv) Any self-insurance method or program, in which case the insured will be deemed to be the provider of other insurance.

Other insurance does not include umbrella insurance, or excess insurance, that was bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

As used anywhere in this Coverage Part, other insurer means a provider of other insurance. As used in Paragraph **c.** below, insurer means a provider of insurance.

a. Primary Insurance

This insurance is primary except when Paragraph **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 Paragraph **c.** below, except when Paragraph **d.** below applies.

b. Excess Insurance

- (1) This insurance is excess over:
 - (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

- (ii) That is insurance for "premises damage";
- (iii) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to any exclusion in this Coverage Part that applies to aircraft, "autos" or watercraft;
- (iv) That is insurance available to a premises owner, manager or lessor that qualifies as an insured under Paragraph **4.** of Section **II** – Who Is An Insured, except when Paragraph **d.** below applies; or
- (v) That is insurance available to an equipment lessor that qualifies as an insured under Paragraph **5.** of Section **II** – Who Is An Insured, except when Paragraph **d.** below applies.

- (b) Any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured, or is any other insured that does not qualify as a named insured, under such other insurance.
- (2) When this insurance is excess, we will have no duty under Coverages **A** or **B** 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.
- (3) 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:
 - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (4) 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.

d. Primary And Non-Contributory Insurance If Required By Written Contract

If you specifically agree in a written contract or agreement that the insurance afforded to an insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

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.

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.

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

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.

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.

SECTION V – DEFINITIONS

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Advertising injury":
 - a. Means injury caused by one or more of the following offenses:
 - (1) Oral or written publication, including publication by electronic means, of material in your "advertisement" that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;
 - (2) Oral or written publication, including publication by electronic means, of material in your "advertisement" that:
 - (a) Appropriates a person's name, voice, photograph or likeness; or
 - (b) Unreasonably places a person in a false light; or
 - (3) Infringement of copyright, "title" or "slogan" in your "advertisement", provided that the claim is made or the "suit" is brought by a person or organization that claims ownership of such copyright, "title" or "slogan".
 - b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph **a.** above.
3. "Auto" means:
 - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law, or other motor vehicle insurance law, where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".
4. "Bodily injury" means:
 - a. Physical harm, including sickness or disease, sustained by a person; or
 - b. Mental anguish, injury or illness, or emotional distress, resulting at any time from such physical harm, sickness or disease.
5. "Broadcasting" means transmitting any audio or visual material for any purpose:
 - a. By radio or television; or
 - b. In, by or with any other electronic means of communication, such as the Internet, if that material is part of:
 - (1) Radio or television programming being transmitted;
 - (2) Other entertainment, educational, instructional, music or news programming being transmitted; or
 - (3) Advertising transmitted with any of such programming.
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 Paragraph **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 Paragraph **a.** above;
 - (2) The activities of a person whose home is in the territory described in Paragraph **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 Paragraph **a.** above, or in a settlement we agree to.
7. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

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10. "Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

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

12. "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 the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

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

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

- (1)** That indemnifies a railroad for "bodily injury" 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 Paragraph **(2)** above and supervisory, inspection, architectural or engineering activities.

14. "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".

15. "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".

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

- a.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

- b.** Vehicles maintained for use solely on or next to premises you own or rent;

- c.** Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

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

e. Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (2) Cherry pickers and similar devices used to raise or lower workers;

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

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

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

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

17. "Occurrence" means:

a. An accident, including continuous or repeated exposure to substantially the same general harmful conditions; or

b. An act or omission committed in providing or failing to provide first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

18. "Personal and advertising injury" means "personal injury" or "advertising injury".

19. "Personal injury":

a. Means injury, other than "advertising injury", caused by one or more of the following offenses:

- (1) False arrest, detention or imprisonment;
- (2) Malicious prosecution;
- (3) 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, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;
- (4) Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged; or
- (5) Oral or written publication, including publication by electronic means, of material that:
 - (a) Appropriates a person's name, voice, photograph or likeness; or
 - (b) Unreasonably places a person in a false light.

b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph **a.** above.

20. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

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21. "Premises damage" means:

- a.** With respect to the first paragraph of the exceptions in Exclusion **j.** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**, "property damage" to any premises while rented to you for a period of seven or fewer consecutive days, including the contents of such premises; or
- b.** With respect to the exception to Exclusions **c.** through **n.** in the last paragraph of Paragraph **2.** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**, "property damage" to any premises while rented to you for a period of more than seven consecutive days, or while temporarily occupied by you with permission of the owner, caused by:
 - (1)** Fire;
 - (2)** Explosion;
 - (3)** Lightning;
 - (4)** Smoke resulting from fire, explosion or lightning; or
 - (5)** Water.

But "premises damage" under this Paragraph **b.** does not include "property damage" to any premises caused by:

- (1)** Rupture, bursting, or operation of pressure relief devices;
- (2)** Rupture or bursting due to expansion or swelling of the contents of any building or structure caused by or resulting from water; or
- (3)** Explosion of steam boilers, steam pipes, steam engines or steam turbines.

22. "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.

23. "Property damage" means:

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use will 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 will be deemed to occur at the time of the "occurrence" that caused it.

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

24. "Slogan":

- a.** Means a phrase that others use for the purpose of attracting attention in their advertising.
- b.** Does not include a phrase used as, or in, the name of:
 - (1)** Any person or organization, other than you; or
 - (2)** Any business, or any of the premises, goods, products, services or work, of any person or organization, other than you.

- 25.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a.** An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 26.** "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.
- 27.** "Title" means a name of a literary or artistic work.
- 28.** "Unsolicited communication" means any communication, in any form, that the recipient of such communication did not specifically request to receive.
- 29.** "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.
- 30.** "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.
- 31.** "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.

ture, as provided under s. 13.172 (2), regarding the status of the directory maintained under sub. (6), manufacturers and electronic vaping devices included in the directory, revenue and expenditures related to administration of this section, and enforcement activities undertaken pursuant to this section.

SECTION 64b. Tax 8.87 of the administrative code is repealed.

SECTION 64c. Nonstatutory provisions.

(1) TRANSFER OF ALCOHOL BEVERAGES REGULATION AND ENFORCEMENT FUNCTIONS.

(a) *Definitions.* In this subsection:

1. “Department” means the department of revenue.
2. “Division” means the division of alcohol beverages in the department.
3. “Secretary” means the secretary of revenue.

(b) *Assets and liabilities.* On the effective date of this paragraph, the assets and liabilities of the department primarily related to alcohol beverages regulation and enforcement under ch. 125, as determined by the secretary, become the assets and liabilities of the division.

(c) *Tangible personal property.* On the effective date of this paragraph, all tangible personal property, including records, of the department that is primarily related to alcohol beverages regulation and enforcement under ch. 125, as determined by the secretary, is transferred to the division.

(d) *Contracts.* All contracts entered into by the department in effect on the effective date of this paragraph that are primarily related to alcohol beverages regulation and enforcement under ch. 125, as determined by the secretary, remain in effect and are transferred to the division. The division shall carry out any obligations under those contracts unless modified or rescinded by the division to the extent allowed under the contract.

(e) *Position and employee transfers.* On the effective date of this paragraph, all positions, and the incumbent employees who hold those positions, in the department with duties that are primarily related to alcohol beverages regulation and enforcement under ch. 125, as determined by the secretary, are transferred to the division.

(f) *Employee status.* Employees transferred under par. (e) have all the rights and the same status under ch. 230 in the division that they enjoyed in the department immediately before the transfer. Notwithstanding s. 230.28 (4), no employee transferred under par. (e) who has attained permanent status in class is required to serve a probationary period.

(g) *Rules and orders.* All rules promulgated by the department that relate to alcohol beverages regulation and enforcement under ch. 125 and that are in effect on the effective date of this paragraph remain in effect until their specified expiration dates or until amended or repealed by the division. All orders issued by the department that relate to alcohol beverages regulation and enforcement under ch. 125 and that are in effect on the

effective date of this paragraph remain in effect until their specified expiration dates or until modified or rescinded by the division.

(h) *Pending matters.* Any matter pending with the department on the effective date of this paragraph that is primarily related to alcohol beverages regulation and enforcement under ch. 125, as determined by the secretary, is transferred to the division. All materials submitted to or actions taken by the department with respect to the pending matters are considered as having been submitted to or taken by the division.

(i) *Fees.* All fees established by the department related to permits issued under ch. 125 that are in effect on the day before the effective date of this paragraph shall remain in effect until modified or rescinded by the division.

(j) *Secretary to develop plan for orderly transfer.* The secretary shall develop a plan for an orderly transfer from the department to the division and shall resolve any disagreement between the department and the division with respect to any matter specified in this subsection. The secretary’s plan for orderly transfer shall include the transfer of positions under par. (e) plus the transfer of a sufficient number of currently vacant authorized FTE positions in the department to total 20.0 FTE positions in the division as well as initial staffing assignments in the division.

(2) TRANSITION; PERMIT ISSUER. On the effective date of this subsection, any permit issued by the department of revenue under ch. 125 prior to the effective date of this subsection shall be considered to have been issued by the division of alcohol beverages.

(3) EXPIRATION OF RETAIL LICENSES HELD BY PRODUCERS. Notwithstanding s. 125.04 (11) (b), any retail license issued under ch. 125 to a winery or a brewer shall expire on the effective date of this subsection and the license shall be nonrenewable.

(4) RETAIL CLOSING HOUR EXCEPTION FOR 2024 NATIONAL POLITICAL CONVENTION.

(a) In this subsection:

1. “Convention period” means the period beginning on the first day of a national political convention held in Milwaukee in the summer of 2024 until the day after the convention’s last day.

2. “Municipality” has the meaning given in s. 125.02 (11).

3. “Southeast Wisconsin municipality” means a municipality any part of which is located within Kenosha, Racine, Walworth, Rock, Milwaukee, Waukesha, Jefferson, Dane, Ozaukee, Washington, Dodge, Columbia, Sheboygan, or Fond du Lac County.

(b) 1. Notwithstanding s. 125.32 (3) (a), but subject to subs. 2. and 3., during the convention period, the closing hours for premises operating under a Class “B” license issued by a southeast Wisconsin municipality shall be between 4 a.m. and 6 a.m.

2. A southeast Wisconsin municipality may establish a process to designate, and may so designate, any licensee holding a license issued by the southeast Wisconsin municipality and to which subd. 1. would otherwise apply as ineligible or disqualified for the extended closing hour specified in subd. 1.

3. Notwithstanding s. 125.32 (3) (d), a southeast Wisconsin municipality may, by ordinance adopted after the effective date of this subdivision, opt out of subd. 1. and retain during the convention period the closing hours specified in s. 125.32 (3) (a).

(c) 1. Notwithstanding s. 125.68 (4) (c) 1., but subject to subds. 2. and 3., during the convention period, the closing hours for premises operating under a “Class B” or “Class C” license issued by a southeast Wisconsin municipality shall be between 4 a.m. and 6 a.m.

2. A southeast Wisconsin municipality may establish a process to designate, and may so designate, any licensee holding a license issued by the southeast Wisconsin municipality and to which subd. 1. would otherwise apply as ineligible or disqualified for the extended closing hour specified in subd. 1.

3. Notwithstanding s. 125.68 (4) (c) 5., a southeast Wisconsin municipality may, by ordinance adopted after the effective date of this subdivision, opt out of subd. 1. and retain during the convention period the closing hours specified in s. 125.68 (4) (c) 1.

(d) 1. Notwithstanding ss. 125.29 (8) (a), 125.52 (5) (a), and 125.53 (4) (a), but subject to subds. 2. and 3., during the convention period, the closing hours for a full-service retail outlet under s. 125.29 (7), 125.52 (4), or 125.53 (3), and the on-premises sales hours on brewery premises, manufacturing or rectifying premises, and winery premises, operating in a southeast Wisconsin municipality shall be between 4 a.m. and 6 a.m.

2. A southeast Wisconsin municipality may establish a process to designate, and may so designate, premises in the municipality of any permittee under s. 125.29, 125.52, or 125.53 to which subd. 1. would otherwise apply as ineligible or disqualified for the extended closing hour specified in subd. 1.

3. A southeast Wisconsin municipality may, by ordinance adopted after the effective date of this subdivision, opt out of subd. 1. and retain during the convention period the closing hours specified in ss. 125.29 (8) (a), 125.52 (5) (a), and 125.53 (4) (a), as unaffected by par. (b).

(5m) TRANSITION; INITIAL IMPLEMENTATION AUTHORITY. The administrator of the division of income, sales and excise tax in the department of revenue shall have interim authority to undertake all measures necessary to implement the changes in this act by the effective date of each change, including taking action in preparation for the creation of a division of alcohol beverages and appointment of a division administrator and bureau directors.

SECTION 64d. Initial applicability.

(1) SAFE RIDE SURCHARGE. The treatment of s. 346.657 (1) first applies to violations committed on the effective date of this subsection.

(2) JURISDICTION OVER OUT-OF-STATE PERMITTEES. The treatment of s. 125.535 (3) (b) 3., (c), (d), and (e), the renumbering of s. 125.58 (2), the renumbering and amendment of s. 125.30 (3), the amendment of s. 125.30 (2), and the creation of ss. 125.30 (2) (d) and (3) (b) and 125.58 (2) (b) and (c) first apply with respect to permits issued after the effective date of this subsection.

SECTION 65. Effective dates. This act takes effect on the first day of the 5th month beginning after publication, except as follows:

(1) RETAIL SALE OF ELECTRONIC VAPING DEVICES. The treatment of ss. 134.65 (title), (1), (1g), (1r), (2m), (3m), (4), (5m), and (8) and 134.66 (1) (g), the renumbering and amendment of s. 134.65 (1m), and the creation of s. 134.65 (1m) (a) 1. and 2. and (b) take effect on the 90th day after the day of publication.

(2m) DOR ENFORCEMENT; ALCOHOL VAPOR DEVICES. The treatment of ss. 40.02 (48) (am) 19. and (c), 71.78 (1), (1g), (4) (b) and (v), (5), and (6), 71.83 (6), 72.06, 73.03 (51b), 73.031, 77.61 (5) (am), (b) 2. and 15., (c), and (d), 78.80 (3), 125.02 (1c), 125.09 (8), 134.65 (1a), 139.11 (4) (a) (intro.), 139.38 (6), 139.44 (2), (2m), and (8) (a), (am), (b), (c), and (d), 139.82 (6), 230.36 (1m) (b) 2. (intro.) and (2m) (a) 9., 565.01 (6c), 565.02 (9) (intro.), 565.17 (5) (a) and (d), 565.40 (title) and (4), 565.50 (2), (2m), (3), and (4), 946.82 (4), and 995.15, the renumbering of s. 565.02 (8) (e), and the renumbering and amendment of s. 565.02 (8) (f) take effect on the day after publication.

(3m) TRANSITION; INITIAL IMPLEMENTATION AUTHORITY. SECTION 64c of this act takes effect on the day after publication.

(4m) FULFILLMENT HOUSES AND COMMON CARRIERS. The treatment of ss. 125.02 (6d), 125.025 (3) (by SECTION 21m), 125.12 (5) (a) (by SECTION 25L), 125.22, 125.23, 125.535 (7), 125.68 (10) (a) and (b), 139.08 (5), and 139.11 (1) (by SECTION 40o) and (4) (b) 2. takes effect on the first day of the 13th month beginning after publication.

(5m) NEW PERMIT FEES. The treatment of s. 125.04 (8) (title), the renumbering of s. 125.04 (8), and the creation of s. 125.04 (8) (b) take effect on the first day of the 13th month beginning after publication.

(6m) COOPERATIVE WHOLESALERS. The treatment of ss. 125.545 (title), (1) (a), (ar), (cm), (d), (e), and (em), (2) (a) 1., 3. b., and 4., (b), and (c), (3) (a) 2. (by SECTION 26hc) and 2m., (b), and (c), (4), (6) (a) 1. (by SECTION 26hk), 2m., 3m., and 4. (by SECTION 26hq), and (7) (by SECTION 26ht) and 185.043 (2) (by SECTION 49d) takes effect on the first day of the 13th month beginning after publication.

(7m) OPERATOR'S PERMIT. The treatment of ss. 125.02 (14m) (by SECTION 21g), 125.04 (3) (a) (intro.) (by SEC-

PLAN COMMISSION – FINDING OF FACT

DATE: May 16, 2024
PROJECT: Jeff Schultz, JRS Holdings- Transportation Facility
PC ID: E24.04.008
ACTION: Conditional Use Permit

The City of Elkhorn Plan Commission officially convened on May 2, 2024, to consider the Conditional Use Permit application submitted by Jeff Schultz, JRS Holdings for a transportation facility.

After considering the Conditional Use Permit application, the staff report, oral and written testimony, the Elkhorn 2040 Comprehensive Development Plan, the Zoning on the subject property, and other materials presented at the meeting, the Plan Commission does hereby make the following “finding of fact”:

FINDING OF FACT

- 1) The construction, maintenance, and operation of a transportation facility on the subject property, if properly conditioned, are in accordance with the intent and purpose of Chapter 17 (Zoning) of the City of Elkhorn Municipal Code.
- 2) The construction, maintenance, and operation of a transportation facility on the subject property, if properly conditioned, are compatible with other uses permitted in the same zone or vicinity.
- 3) The construction, maintenance, and operation of a transportation facility on the subject property, if properly conditioned, will not be hazardous, harmful, offensive, or otherwise adverse to the environment.
- 4) The construction, maintenance, and operation of a transportation facility on the subject property, if properly conditioned, will not be detrimental to the value of the neighborhood or community.

Based upon the “Findings of Fact”, the Plan Commission motioned, seconded, and voted to recommend **APPROVAL** of the Conditional Use Permit application to the Common Council.

**CITY OF ELKHORN
CONDITIONAL USE PERMIT No. 24-05**

JEFF SCHULTZ, JRS HOLDINGS/BULK MATERIAL TRUCKING – 702 S NATHAN LANE

Pursuant to Section 17.5-1 of the City of Elkhorn Municipal Code, A "Transportation Facility" located at 702 S Nathan Lane, Tax Key Parcel YU SW 00047D, shall be permitted as a Conditional Use. The operation at said location shall be subject to the following conditions:

1. The project shall be developed in accordance with the plan of operations. Any deviation from the approved plans shall require zoning administrator and/or Plan Commission approval.
2. Tires shall never be stored outdoors in public view.
3. Dumpsters shall be fully enclosed, and the property owner shall apply for applicable permits pertaining to fencing or screening.
4. The maximum number of semi-trucks and/or trailers combined shall never exceed 15.
5. Outdoor storage or parking of vehicles, semi-trucks, or trailers shall always be on a hard surface, and never on grass.
6. Mechanical work shall be exclusive to BMT and shall not be available to the general public.
7. Adequate loading areas shall be provided so that that all vehicles loading, maneuvering, or unloading are completely off public ways and so all vehicles never need to back up into public ways.
8. The operation shall not locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, toxicity, obnoxiousness, or temperature that might run off, seep, percolate, or wash or be harmful to human, animal, plant, or aquatic life.
9. Applicant shall provide reimbursement to the City, all costs incurred by the City for review of this conditional use including but not limited to engineering, legal and planning review that occurred prior to permit issuance and during the implementation of the plans and improvements on site.
10. The applicant accepts the conditional use approval/zoning permit and beginning the project means that you have read, understand, and agree to follow all conditions of this approval. Therefore, JRS Holdings, and Bulk Material Trucking their heirs, successors, and assigns are responsible for full compliance with the above conditions.

Failure to fully comply with the above stated conditions shall be considered grounds for revocation of this permit.

Common Council of the City of Elkhorn

By: _____
Tim Shiroda, Mayor

Attest: _____
Lacey L. Reynolds, City Clerk

State of Wisconsin
County of Walworth
Subscribed and sworn/affirmed to before me
this _____ day of _____ 20__

State of Wisconsin
County of Walworth
Subscribed and sworn/affirmed to before me
this _____ day of _____ 20__

Notary Public
My Commission Expires: _____

Notary Public
My Commission Expires: _____

By: _____
Owner

Tenant

Printed Name

Printed Name

State of Wisconsin
County of Walworth
Subscribed and sworn/affirmed to before me
this _____ day of _____ 20____,

Notary Public

My Commission Expires: _____

This instrument was drafted by:
Allison Schwark, Zoning Administrator

State of Wisconsin
County of Walworth
Subscribed and sworn/affirmed to before me
this _____ day of _____ 20____,

Notary Public

My Commission Expires: _____



CITY OF ELKHORN

**REQUEST FOR PROPOSALS (RFP)
NEEDS ANALYSIS/STUDY OF FIRE STATION**

Issued May 30, 2024

CITY OF ELKHORN
REQUEST FOR PROPOSALS
NEEDS ANALYSIS/STUDY OF FIRE STATION

May 30, 2024

The City of Elkhorn is seeking proposals from qualified firms for a comprehensive needs assessment of the Elkhorn Area Fire Department. The assessment shall identify the current state of the facility, identify deficiencies, and provide recommendations for improvements to the existing facility to meet current and future operational needs. If the analysis determines that the existing station can not be upgraded, renovated, or expanded to meet the required needs, the City is also seeking recommendations on possible locations for a new facility. The evaluation shall include cost estimates for each option considered by the firm, i.e. remodel of existing station or building a new facility. It is anticipated that the contract for this study will be approved on July 15, 2024. The study shall be completed no later than October 4, 2024.

Proposals may be mailed or delivered electronically. All proposals must be received by no later than noon on Thursday, June 20, 2024. Proposals delivered or received after the submittal deadline will be deemed late and rejected. There are no exceptions to this requirement.

If submitting a proposal by mail, the proposal must be placed in a sealed envelope, plainly marked “Sealed Proposal for Needs Analysis/Study of Fire Station” and addressed to the following:

Matthew Lindstrom
City of Elkhorn
Director of Public Works
PO Box 920 | 311 Seymour Ct.
Elkhorn, WI 53121

If submitting a proposal electronically, please send it to Matthew Lindstrom, Director of Public Works, at mlindstrom@cityofelkhorn.org.

Inquiries regarding this RFP may be directed to Matthew Lindstrom, Director of Public Works, either by phone at 262.723.2223 or e-mail at mlindstrom@cityofelkhorn.org.

BACKGROUND

Community Information

The City of Elkhorn is located in the center of Walworth County, Wisconsin, and serves as the county seat. Elkhorn has a population of approximately 10,240 people according to the most recent 2022 Census estimate. In the past year the City has seen an increase in commercial and industrial development that is expected to continue. There is a large mixed-use multi-family residential and commercial project under development. The City's desirable location near the crossroads of IH-43 and Highway 12 is likely to encourage growth in the City for the foreseeable future.

Fire Department Information

The Elkhorn Area Fire Department (EAFD) is comprised of two divisions: Fire Protection Services and Emergency Medical Services (EMS). Both divisions provide services for the City of Elkhorn along with the Townships of Sugar Creek, Geneva, and Lafayette, with a total coverage area of 103 square miles. Most personnel are cross trained in both disciplines Fire and EMS.

The EAFD currently runs all operations out of a single fire station, originally constructed in 1971, and located at 13 S. Broad St. in Downtown Elkhorn. Building additions were added, at unknown times, for EMS operations and apparatus storage off the rear and south side of the station. Said additions nearly span the entire footprint of the existing lot. Ingress/egress to rear apparatus storage is limited to a narrow alley on the north side of the station. The City purchased land and constructed a station parking lot off the south side of the station in 2022. The parking lot has (9) regular stalls and (1) handicap stall. It also includes a small existing storage garage. Other than a single off-street parking stall (marked for fire staff only), said lot is the only designated parking area solely for the EAFD staff.

Considering the age, size and limitations of the existing station and knowing it was originally designed and built to serve as an all-volunteer department, it has been determined that a needs analysis/study is warranted.

The EAFD is a combination department, transitioning towards a complete paid career department. The EAFD currently consists of 28 employees as follows: (1) Fire Chief, (1) Assistant Fire Chief, (1) Administrative Assistant, (24) Career personnel, and (1) Paid on Call. In 2023 EAFD responded to approximately 2,285 calls for service.

SCOPE OF SERVICES

The City of Elkhorn is seeking proposals from qualified firms for a comprehensive needs assessment of the Elkhorn Area Fire Department. The assessment shall identify the current state of the facility, identify deficiencies, and provide recommendations for improvements to the existing facility to meet current and future operational needs. If the analysis determines that the existing station can not be upgraded, renovated, or expanded to meet the required needs, the City is also seeking recommendations on possible locations for a new facility. The evaluation shall include cost estimates for each option considered by the firm, i.e. remodel of existing station or building a new facility. It is anticipated that the contract for this study will be approved on July 15, 2024. The study shall be completed no later than October 4, 2024.

- A. Meet with the Fire Chief and staff to discuss potential growth and areas of focus for plausible remodel.
- B. Prepare and present a summary plan outlining space needs and plausibility of remodeling the current facility to handle the required day-to-day operations of the fire department, presently and future considerations. The summary shall consider:
 - a. Facility Condition Asseddment (compliance with building codes/regulations, mechanical, electrical, plumbing, etc.)
 - b. Operational Needs (work space, training areas, living quarters, storage, apparatus bays, equipment storage needs, staff parking, decontamination space, shower facilities, etc.)
 - c. Safety and Compliance Review (health and safety hazards, compliance with OSHA and NFPA standards)
 - d. Community and Service Demand Analysis (consideration of community growth patterns and future development plans, stations' location to service coverage area)

- C. Summary Plan shall incorporate cost estimates for each improvement, renovation or expansion option considered. The Plan shall consider at least one option for “new facility location” with cost estimate.
- D. It is expected that the study will define and illustrate the space needs and conceptual layout from a personnel, training, equipment, storage and site operations perspective. This shall be a full-service facility that when designed and constructed shall take into account current needs, short-term future needs as well as a facility ready to handle long term expectations and technology/infrastructure that enhances the service our Fire Department provides to the community.
- E. This study is intended to be provided to the engineer/architectural firm to undertake design and development of this facility.
- F. Disclaimer
 - a. This section is not meant to provide an exhaustive and complete scope of service. Items may be added or removed to this scope of services. A final scope of services agreement will need to be arranged between the City and Consultant.

FORM OF PROPOSAL

Proposals may be mailed or delivered electronically. All proposals must be received by no later than noon on Thursday, June 20, 2024. Proposals delivered or received after the submittal deadline will be deemed late and rejected. There are no exceptions to this requirement.

All proposals shall be as follows:

1. Cover letter.
2. Provide a brief and concise statement of the understanding of the space needs analysis/study.
3. Identify the qualifications of the consultant, including relevant projects, particularly projects in providing services similar to those in Scope of Services for municipal clients.
4. Identify the project team and their expertise/experience with similar study's.

5. The proposals shall identify references from municipal clients for which the firm/individual to be assigned as the City's point of contact have worked on likewise project and study's. References must include the name, title, address, and phone number of the contact person.
6. Define the project approach and identify the specific tasks involved in the performance of the proposed work effort and how these tasks would be implemented.
7. Any additional information that the Consultant feels would aid the City in evaluating the firm's ability to meet the selection criteria.
8. The proposal shall include a quote for all costs associated with performing the proposed Space Needs Analysis/Study. If additional or alternative efforts are recommended these should be broken out separately from primary tasks.
9. Provide a timeline for the anticipated completion of the study.

City's Rights and Options

During the evaluation process, the City reserves the right to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. At the discretion of the City, Consultants submitting proposals may be requested to make oral presentations as part of the evaluation process.

The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether the proposal is selected. Submission of a proposal indicates acceptance by the Consultant of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the Consultant selected.

The City of Elkhorn reserves the right to reject any and all submittals, waive any irregularities, reissue all or part of this Request for Proposals, and not award any contract, all at its discretion and without penalty.

PROPOSAL SUBMISSION AND EVALUATION SCHEDULE

The following chart shows the anticipated schedule of events for submitting and evaluating proposals. This schedule is subject to change based on the City's needs and best interests.

City issues Request for Proposals	May 30, 2024
Deadline for submittal of proposals	June 20, 2024
Discussion and possible decision by Common Council regarding acceptance of a proposal from a Consultant	July 1, 2024
Discussion and possible decision by Common Council regarding execution of a Contract to perform Space Needs/ Analysis Study of Fire Station	July 15, 2024

Change in Broker Proposal

- **Current Broker = Peter Rathsack**

- Limited services provided
- Current commission is approximately \$80k/year - willing to lower to \$60k/year

- **Proposed Broker = A.J. Gallagher**

- Benefits consulting
- Compliance consulting
- Communication materials
- Provides Pay Transparency – invoices can be separate vs. now they are included in our costs to TPA
- Will negotiate for commission to be \$47k/year. Change needs to take place before stop loss renewal is signed.

Estimated Cost Savings – HRA



HRA only for Employees Option

Estimated HRA Savings (HRA for employees only)					
Single	500		EE Count	88	44,000
				Savings	\$32,500

Or

Reduce HRA

Estimated HRA Savings (Reducing HRA contribution to half)					
Family	500		EEs on Family	65	32,500
Single	250		EEs on Single	23	5,750
				Savings	38,250

Or

Remove HRA

Estimated HRA Savings (Removing HRA)					
Family	1000		EEs on Family	65	65,000
Single	500		EEs on Single	23	11,500
				Savings	76,500

Estimated Cost Savings – Adding a Premium

Final Proposal Numbers

	Total Expected Cost per EE
Single	1062.06
Family	3207.3

*** Total expected cost per EE may change if new broker is approved, as commission will decrease.**

EE Cost Per Pay Period includes 24 periods versus 26 as deductions would be taken on the 1st and 2nd payroll of each month.

Monthly Premiums	5% of Total Expected Cost	EE Cost Per Pay Period	2.5% of Total Expected Cost	EE Cost Per Pay Period	2% of Total Expected Cost	EE Cost Per Pay Period	1.75% of Total Expected Cost	EE Cost Per Pay Period	1.5% of Total Expected Cost	EE Cost Per Pay Period	1% of Total Expected Cost	EE Cost Per Pay Period
Employee Only	0	0	0	0	0	0	0	0	0	0	0	0
Employee + Spouse	107.26	53.63	53.63	26.82	42.90	21.45	37.54	18.77	32.18	16.09	21.45	10.73
Employee + Child(ren)	107.26	53.63	53.63	26.82	42.90	21.45	37.54	18.77	32.18	16.09	21.45	10.73
Employee + Family	160.37	80.18	80.18	40.09	64.15	32.07	56.13	28.06	48.11	24.05	32.07	16.04

Estimated Premium Savings													
		5% Premium		2.5% Premium		2% Premium		1.75% Premium		1.5% Premium		1% Premium	
Coverage	# of Employees	Overall Savings per Month	Overall Savings per Year	Overall Savings per Month	Overall Savings per Year	Overall Savings per Month	Overall Savings per Year	Overall Savings per Month	Overall Savings per Year	Overall Savings per Month	Overall Savings per Year	Overall Savings per Month	Overall Savings per Year
Single	23	0	0	0	0	0	0	0	0	0	0	0	0
Family	43	6,896	82,748	3,448	41,374	2,758	33,099	2,413	28,962	2,069	24,825	1,379	16,550
EE + Spouse	12	1,287.14	15,446	643.57	7,723	514.86	6,178	450.50	5,406	386.14	4,634	257.43	3,089
EE + Children	10	1,072.62	12,871	536.31	6,436	429.05	5,149	375.42	4,505	321.79	3,861	214.52	2,574
			111,065.51		55,532.75		44,426.20		38,872.93		33,319.65		22,213.10