

CONTRACT FOR ENGINEERING SERVICES

This Contract for engineering services for the Rehabilitation of Lift Stations 8, 40, 47 and 53 ("Contract") is entered into this 11TH day of MARCH, 2025, by and between the Oklahoma City Water Utilities Trust, a municipal trust ("Trust"), and Ardurra Group, Inc. ("Engineer").

WITNESSETH:

PROJECT NO. SC-1141 LIFT STATION REHABILITATION FOR LIFT STATIONS 8, 40, 47 AND 53 ESTIMATED CONSTRUCTION COST- TO BE DETERMINED

WHEREAS, the Trust intends to direct the Engineer to provide for design and all other engineering services related to rehabilitation of Lift Stations 8, 40, 47 and 53, various locations within the city limits ("project"); and

WHEREAS, the Engineer will provide professional services for the project in accordance with this Contract, including the scope of work incorporated herein and as set forth in Exhibit A attached hereto; and

WHEREAS, this Contract may be amended in the future to engage the Engineer's services for preparation of Final Plans and Specifications, Bidding, Construction Administration and other services related to this project; and

WHEREAS, the Engineer has been selected under the standards adopted and the procedures prescribed by the resolution establishing procedures for selection of architects and engineers adopted by the City Council on July 23, 1974, amended on December 31, 1974, February 21, 1978, January 22, 1980, November 18, 1986, and August 29, 2023, which resolution, with its amendments, is made a part of this Contract by reference.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter relating to the project, the parties agree to the following:

1. **Definitions.** All terms and phrases not expressly defined herein shall have their ordinary meanings, consistent with Oklahoma and Oklahoma City law, except where the context clearly indicates a different meaning. For purposes of this Contract, the following terms and phrases shall have the meaning subscribed herein:

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| A. <i>Bidding Documents</i> | Those documents required to construct, renovate and/or modernize the project, including but not limited to standard provisions, special provisions, drawings, plans and specifications. |
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- B. *City Engineer* The officer of the City of Oklahoma City or designee, e.g., "Project Manager" in charge of engineering, construction and maintenance contracts on public rights-of-way, on public lands and capital improvement projects.
- C. *General Manager of the Trust* The officer of the Trust assigned by the Trust to administer the business of the Trust, herein called the "General Manager."
- D. *Estimated Construction Cost* Not-to-exceed amount which has been designated as the maximum amount for the construction cost of the project.

2. **Basic Services.** The Engineer is hereby engaged and employed by the Trust to perform in accordance with good engineering practices and in the best interest of the Trust in accordance with the professional standard of care all of the work as set out herein and including Exhibit A, which is attached hereto and incorporated as a part of this Contract. The Engineer will provide services associated with research, development, design and construction, alteration, and/or repair of real property and improvements thereon, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including but not limited to studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, design development, plans and specifications, cost estimates, observations, shop drawing reviews, sample recommendations, assemble operating and maintenance manuals, site visits and other related services: In addition, the Engineer will provide:

A. **Preliminary Report Services - Task 1**

- (1) Prepare and make all necessary preliminary surveys, investigations, studies, reports and preliminary general plans and specifications. The preliminary investigation shall include a topographical survey of the site, layout of any existing, proposed, and/or recommended sanitary sewers, water lines, storm sewers, all other underground obstructions, street improvements, site drainage and detention studies, as appropriate, any and/or all of which might affect the construction of the project. The preliminary general plans and specifications shall be approved by the City Engineer. All plans shall be submitted with the appropriate title sheet as indicated on the Public Works web page: www.okc.gov/pw (OKC Autocad Standards link).
- (2) Prepare a utility and right-of-way plan showing recommended alignment for relocation of utilities and recommended right-of-way needs. The plan shall include existing and proposed easements. The plan shall show ownership of

all properties affected by the project. The Engineer shall acquire the limited ownership list. The Engineer shall complete and submit the limited ownership list within thirty (30) calendar days of the date of a written work order.

- (3) Prepare a construction cost estimate of the improvements, extensions and repairs, and an estimate of all engineering fees, testing costs, right-of-way costs, and inspection fees in connection therewith.
- (4) Hold all necessary conferences with the Trust and all other interested parties (inclusive is the requirement for the Engineer to ensure all utility and right-of-way/easement requirements are well established prior to Preliminary Report submittal). This includes the conduct of a Utility Conference by the Engineer at a location determined by the Trust.
- (5) Prepare the Preliminary Report for submittal to the Trust covering the Engineer's preliminary surveys, studies, investigations and other items as specified in the paragraph "Basic Services" A. (1), (2) and (3) and Exhibit A hereof. If applicable, the report shall include a drainage study with complete computations and calculations and shall cover the total construction work by phases or sections and shall recommend to the Trust the order of construction and completion of each phase of construction. **Note:** For all water and sanitary sewer projects, the Engineer will prepare a separate "Engineering Report" (in accordance with Oklahoma Department of Environmental Quality (ODEQ) standards) for submittal to ODEQ.
- (6) Furnish the Trust up to two (2) hard copies and one (1) PDF copy of the Preliminary Report free of cost to the Trust. The cost of any additional copies of Preliminary Reports as the Trust may require will be reimbursed at the actual cost thereof.
- (7) Geotechnical Investigation:
 - a. The Engineer will recommend to the Trust the name of a geotechnical investigation/services firm from the Trust's listing of annual on-call engineering and testing laboratory contract firms.
 - b. The Engineer will identify and coordinate all requirements for geotechnical investigation and procure all geotechnical services related thereto, including but not limited to sampling, test boring, subsurface explorations, analysis and other investigations required for determining conditions and geotechnical recommendations for foundations and paving design. Identify and coordinate sampling and analysis of water and other substances as appropriate.

- c. The Trust will approve the selected laboratory and the Engineer will pay the costs of such sampling, analysis, borings, tests, or explorations and investigations.
- (8) Prepare legal descriptions for the necessary temporary and permanent easements and prepare legal descriptions necessary for property to be acquired on forms provided by the Trust. Additionally, provide right-of-way ownership maps showing locations and dimensions of right-of-way to be acquired and assist the Trust when requested in negotiations with owners of property acquired for or affected by the improvements. When requested by the Trust, the Engineer will provide a proposal for staking of right-of-way for right-of-way acquisition purposes. Said right-of-way staking (when authorized by the Trust) will be billed to the Trust at the actual cost thereof in accordance with the "Payments" paragraph of this Contract.
- (9) Review and recommend approval of testing laboratory claim vouchers within ten (10) calendar days of receipt of claim.
- (10) The Preliminary Report shall be recommended by the General Manager for formal approval by the Trust (if applicable, the Engineer shall also prepare an Engineering Report, in accordance with Oklahoma Department of Environmental Quality (ODEQ), for submittal to ODEQ).

B. Final Plan Services - Task 2 (by possible future amendment)

- (1) Prepare final plans, specifications and construction cost estimate.
- (2) After approval of the Preliminary Report in whole or in part by the City, the Engineer shall proceed as directed in writing by the City Engineer to prepare detailed plans and specifications, using wherever applicable, City standards, details and specifications for such work. The Engineer shall complete said plans and specifications for submission to the City for its approval.
- (3) Prepare and furnish the Trust all final plans and specifications, all necessary forms for construction proposals and advertisements for Bids, subject to approval of the Trust, employing wherever applicable, standard Trust forms, in completed form.
 - a. Scale for plan and profile sheets for preliminary and final plans shall be approved by the City Engineer prior to preparation of plans.
 - b. Aerial photographs will not be permitted for plan and profile sheets of the final construction plans.
 - c. The Engineer shall indicate on final plan and profiles all water lines, sanitary sewer lines, gas lines, oil lines, telephone conduits

and all other underground obstructions, which might affect the construction of the project.

- (4) Notify all known utility companies and other entities with facilities affected by the proposed Project. Furnish one (1) copy of the plans to each of the utility companies and entities as determined necessary. Coordinate necessary utility and facility relocations or modifications for the Project and conduct a final conference at 60% plans.
- (5) The 60% submittal shall include a complete drainage report. This report shall include all storm sewer design calculations to support the storm sewer design included in the 60% plans. The design calculations in this report shall conform with the storm sewer systems shown in the plans and shall include all drainage area maps; runoff calculations; storm sewer inlet, pipe, and other structure design calculations. This report shall incorporate any, and all, comments in reference to the storm sewer design that were included in the review of the Preliminary Report submittal.

Furnish the Trust up to two (2) copies of the project 60% plans for review along with a detailed Fixed Limit of Construction cost estimate for said improvements, extensions and repairs. This submittal does not stop, impact or otherwise delay the Engineer's contract-allotted work order time for completion and submittal of final plans and specifications. Incorporate all recommended changes prior to submittal of the 95% final plans and specifications.

- (6) The 95% submittal shall include a complete drainage report. This report shall include all storm sewer design calculations to support the storm sewer design included in the 95% plans. The design calculations in this report shall conform with the storm sewer systems shown in the plans and shall include all drainage area maps; runoff calculations; storm sewer inlet, pipe, and other structure design calculations that are required for a complete review of the storm sewer system design. This report shall incorporate any, and all, comments in reference to the storm sewer design that were included in the review of the Preliminary Report and 60% plan submittal.

Upon completion of 95% final plans, the Engineer will submit "check print" sets to the Project Manager for review by appropriate departments/divisions. Upon completion of the "check print" reviews, the Engineer shall revise the plans accordingly. The Project Manager shall resolve any conflicts in comments. Upon completion of corrections, the Engineer will then submit a final plans check set (along with the annotated "check print" copies) for a "final" review by the Project Manager.

- (7) The Final Plan submittal shall include a complete drainage report. This report shall include all storm sewer design calculations to support the storm sewer design included in the Final plans. The design calculations in this report shall conform with the storm sewer systems shown in the plans and shall include all drainage area maps; runoff calculations; storm sewer inlet, pipe, and other structure design calculations that are required for a complete review of the storm sewer system design. This report shall incorporate any, and all, comments in reference to the storm sewer design that were included in the review of the Preliminary Report and 95% plan submittal.

Prepare and furnish the Trust an electronic copy of all final plans and specifications, all necessary forms for Electronic Bidding and advertisements for Bids, subject to approval of the Trust, employing standard Trust forms, in completed form.

Furnish the Trust one (1) PDF of the final plans and specifications, all free of cost to the Trust. The cost of any additional copies of plans and specifications as the Trust may require will be reimbursed at the actual cost thereof.

- (8) Meet with the Trust or its representatives at any time requested for consultation or conference as directed in writing by the City Engineer.
- (9) Prior to the submission of Bidding Documents to the Trust for solicitation of Bids, the Engineer shall submit plans and specifications required for the granting of all necessary building permits.
- (10) Prepare all necessary plans, studies and applications for submission to City, State and Federal authorities as may be required for the initiation, prosecution, construction and for approval of grants and permits at no additional cost to the Trust.
- (11) Final design shall include the establishment of permanent horizontal and vertical alignment control points throughout the entire project limits using United States Geological Survey (USGS) data. The Engineer shall provide a permanent benchmark within two hundred (200) feet of the beginning and ending of the proposed construction. All surveys and control points shall be tied to the City's GIS control network and datum. For all SC-XXXX projects, the Engineer shall provide an electronic file on the location of all sanitary sewer manhole cover coordinates, which shall be tied to the City's GIS monument system.

C. Bidding Services - Task 3 (by possible future amendment)

- (1) Meet with the Trust or its representatives at any time requested for consultation or conference, as directed in writing by the General Manager. In this connection, the Engineer shall hold at least one (1) Pre-Bid Conference with prospective Bidders. The Engineer shall provide a power point presentation of the Bidding Documents for the purpose of pre-bid information to the prospective Bidders at a location determined by the Trust.
- (2) Answer all Trust and Bidder's questions regarding the bidding of the project and, upon approval by the City Engineer, prepare an electronic copy of all addendums for distribution.
- (3) The Trust will receive the Bids through the Electronic Bidding System and the Engineer will receive a copy of the Bids from the Trust. The Engineer will review and evaluate the Bids and will make recommendations to the Trust for an award. The Engineer shall assist, review and make recommendations to the Trust on all construction contract issues.
- (4) If Bids are received, all of which exceed the Estimated Construction Cost, the Engineer shall revise its plans as directed by the Trust, pursuant to the paragraph "Estimated Construction Cost" of this Contract.

D. Construction Administration Services - Task 4 (by possible future amendment)

- (1) The Engineer shall provide administration of the construction contract during construction and until final payment is made to the Construction Contractor. The Engineer will have the authority to act on behalf of the Trust only to the extent provided in this Contract, unless otherwise modified by written instrument.
- (2) Meet with the Trust or its representatives at any time requested for consultation or conference as directed in writing by the General Manager.
- (3) Assist in coordination of pre-work conferences for the Construction Contractor, the Trust and all other interested parties. The Trust will issue all work orders for the project.
- (4) Establish permanent horizontal and vertical alignment control points throughout the entire project limits from which the Construction Contractor shall set its control for construction (if applicable to this project, the Engineer will also provide bridge centerline horizontal and vertical control points). Provide a permanent benchmark within two hundred (200) feet of the beginning and ending of the proposed construction. All surveys and control points shall be tied to the City's GIS control network and datum. Construction staking is to be performed by the Construction Contractor. The Engineer will periodically review the Construction Contractor's construction

staking survey field notes and the actual staking to verify line and grade is in accordance with the Bidding Documents.

- (5) Provide interpretation of the plans and specifications in accordance with the intent of the Bidding Documents. Such interpretations shall be made upon request of the Trust and its representatives or the Construction Contractor, to safeguard the Trust against defects and deficiencies in the construction. When making such interpretations and decisions, the Engineer will endeavor to secure faithful performance by the Construction Contractor. The Engineer does not guarantee the performance of the contract by the Construction Contractor, nor is it responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it shall not be responsible for a Construction Contractor's failure to carry out the work in accordance with the Bidding Documents.
- (6) Perform coordination of the work of inspection bureaus and laboratories selected by the Trust for the inspection and testing of construction materials. Receive reports and recommend approval or rejection of the materials based upon reports made by such laboratories or bureaus. The costs of all such tests and inspection by laboratories or bureaus will be paid by the Trust.
- (7) Review and recommend approval of testing laboratory claim vouchers within ten (10) calendar days of receipt of claim.
- (8) The Engineer shall visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the work. The Engineer will further determine, in general, if the work is being performed in a manner indicating that the work, when completed, shall be in accordance with the Bidding Documents. However, the Engineer is not required to make exhaustive or continuous on-site inspections to check quality or quantity of the work. The Engineer will keep the Trust informed of progress of the work, and will endeavor to guard the Trust against defects and deficiencies of the work. The Engineer does not guarantee the performance of the contract by the Construction Contractor, nor is it responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it shall not be responsible for a Construction Contractor's failure to carry out the work in accordance with the Bidding Documents.
- (9) Review all necessary information for monthly estimates (**within seven (7) calendar days of receipt from the contractor**) of the quantity of work performed, and review the claim vouchers for payments to be made to the Construction Contractor during the progress of the work and upon completion of any and all work and report the same to the Trust.

- (10) Review the Construction Contractor's final request for payment (**within fourteen (14) calendar days of receipt from the contractor**) and certify that, to the best of its knowledge and industry standards, the completed work conforms to plans and specifications.
- (11) Prepare and keep a record of the work performed by any contractor on this project and file with the Trust a monthly progress report covering the work performed by the contractor(s). The progress report shall be attached to the Construction Contractor's claim for partial or monthly payment.
- (12) Except as otherwise provided in this contract, communications with the Engineer's consultants will be through the Engineer. Communications with the Construction Contractor's subcontractors and material suppliers will be through the Construction Contractor. Communications with other Trust contractors will be through the Trust. The Engineer shall be available at all times for the purpose of communication.
- (13) The Engineer shall recommend to the General Manager rejection of work that does not conform to the Bidding Documents. At any time during construction, the Engineer may be given the authority to require additional inspection or testing of the work by the General Manager.
- (14) The Engineer shall review for conformance with Bidding Documents, and approve or take other appropriate action upon the Construction Contractor's submittals, such as shop drawings, product data and samples. The Engineer's review of submittals will be promptly completed, but no longer than fourteen (14) calendar days from receipt of submittals. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Contractor as required by the Bidding Documents. The Engineer's review of the Construction Contractor's submittals will not relieve the Construction Contractor of its contractual obligation to the Trust as required by the Bidding Documents. The Engineer's review of the Construction Contractor's submittals will not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- (15) The Engineer shall reply to the Construction Contractor's requests for information, prepare clarification drawings, prepare change orders, field orders, amendments, field changes and construction change directives. The Engineer may recommend minor changes in the work, not inconsistent with

the intent of the Bidding Documents. Such recommended changes shall be made by written order approved by the General Manager and shall be binding upon the Construction Contractor.

- (16) The Engineer shall conduct observations and inspections as required to determine the quality of work to be accepted and the date or dates of final completion and acceptance. The Engineer shall receive and forward to the Trust all written warranties and any related documents required by the Bidding Documents and assembled by the Construction Contractor. The Engineer will recommend approval of the Construction Contractor's final certificate of payment upon completion of the work and compliance with the requirements of the Bidding Documents.
- (17) The Engineer will review daily reports furnished by the Trust's inspector to evaluate and determine compliance with the Bidding Documents. Significant variations between reported conditions and the Bidding Documents shall be verified by the Engineer and resolved with the Construction Contractor and the Trust. The Engineer's duty to review daily reports and initiate remedial action shall not extend to the Construction Contractor's construction means, methods, techniques, sequencing or procedures or for safety precautions and programs in connection with the work.
- (18) The Engineer shall maintain a record ("log") of all documents it receives, creates or transmits during the construction of the project. The log shall include time requirements of responses if needed.

Clarifications to Construction Administration - Task 4

- (1) The Engineer shall be responsible for ensuring Construction Contractor compliance with the Construction Contract Documents. As such, the Engineer will administer the Construction Contract and will formally certify that the Construction Contract has been completed in conformance with the Construction Contract Documents as prepared by the Engineer.
- (2) Coordinate, schedule, and administer the pre-work conference(s) for the Construction Contract. This will include scheduling and coordination with the Construction Contractor, the Trust, other City departments and Trusts affected by the project, and all other interested parties such as utility companies, regulatory agencies, testing laboratories, inspection services, etc. The Engineer will prepare the required sign-in sheet and agenda prior to the meeting and will distribute minutes within two (2) days after the meeting. During the pre-work conference(s), the Engineer will discuss:
 - a) Overall project intent and included work;

- b) key items within plans and specifications;
 - c) Required shutdowns or outages that will impact service to customers or normal facility operations;
 - d) additional permits necessary for completion of the Construction Contract Documents, including, but not limited to: stormwater permits, work zone permits, building permits, etc.;
 - e) Construction Contractor schedule and milestones;
 - f) material testing laboratory and required test schedule;
 - g) pipeline and/or equipment factory testing and testing after installation including startup procedures;
 - h) SCADA installation requirements, testing and milestones;
 - i) operation and maintenance manuals and equipment warranties;
 - j) processes for claims, submittals and other project documents;
 - k) project acceptance and commissioning;
 - l) Engineer certification of project completion in accordance with the Construction Contract Documents.
- (3) The Engineer will review the Contractor's Project Schedule submissions for compliance and review revisions monthly, or more frequently as necessary, to determine if the Contractor's Project Schedule accurately describes the progress of the Work and if the Project will be completed in accordance with the requirements specified in the Contract Documents. If Construction Contractor cannot maintain compliance with the time requirements specified in the Construction Contract Documents, the Engineer will actively work with the Construction Contractor to develop a recovery project schedule that allows for completion of the Construction Contract in accordance with the Construction Contract Documents. Should the Construction Contractor not comply with the schedule recovery requirements, the Engineer will provide recommendations to the Trust on a course of action. Any required notifications to the Construction Contractor will be prepared by the Engineer for Trust execution.
- (4) The Engineer shall coordinate and schedule regular progress meetings necessary for coordination and successful completion of the Construction Contract and shall visit the project site(s) at intervals appropriate to the stage of construction to become familiar with the progress and quality of the work. The Engineer shall prepare agendas and sign-in-sheets two (2) days prior to the progress meeting and shall prepare minutes summarizing the meetings within two (2) days after the progress meeting. The Engineer will further determine if the work is being performed in accordance with the Construction Contract Documents. Unless the Engineer is also providing Inspection Services, the Engineer is not required to make exhaustive or continuous on-site inspections to check quality or quantity of the work.

- (5) When the Engineer is not providing Inspection Services, the Engineer shall recommend to the City and the Trust the rejection of work that does not conform to the Construction Contract Documents. At any time during construction, the Engineer may be given the authority by the Trust to require additional inspection or testing of the work. When the Engineer is providing Inspection Services, the requirements for inspection will be pursuant to Task 6 for Inspection Services in this contract.
- (6) The Engineer shall coordinate and schedule the Pre-Final Inspection for the Construction Contract upon the completion of work by the Construction Contractor in accordance with the Construction Contract Documents. The Engineer shall complete the Pre-Final Inspection with the Construction Contractor and the City's and the Trust's representatives and shall develop a punch list of all identified deficiencies or a Final Inspection Report if no deficiencies are identified. Deficiencies shall be items found to not comply with the Construction Contract Documents. Upon completion of the punch list items, the Engineer shall verify the completion of the punch list items and will then coordinate and schedule the Final Inspection with the Construction Contractor and the City's and the Trust's representatives. The Engineer shall then submit to the Trust a Certificate of Completion wherein it is stated that all work performed by the Construction Contractor was completed in accordance with the Construction Contract Documents.
- (7) During the course of construction, the Engineer shall review and approve all warranties and guarantees submitted by the Construction Contractor. The Engineer shall then present the approved warranties and guarantees to the Trust for execution.
- (8) The Engineer shall recommend to the Trust to beneficially occupy or begin operation and use of the facilities when the Construction Contractor has sufficiently completed work in accordance with the Construction Contract Documents as necessary to maintain continuous operations or service.

E. As-Built Drawing Services - Task 5 (by possible future amendment)

- (1) Upon termination or completion of this Contract, the Engineer shall, at its expense, correct the original drawings, show all as-built changes based on information from as-built field surveys, reflecting the actual construction of the project and shall furnish the Trust, without expense, electronic files on CD ROM in the latest AutoCAD version 2013 compatible with the City of Oklahoma City's current software and a PDF file in color. All written comments, changes or other markings on the final drawings must be highlighted in **RED** color.

- (2) Upon termination or completion of this Contract, the Engineer shall also furnish the Trust, without cost to the Trust, all basic calculations used in the design of the structures and original field notes on all land surveys, at which time Engineer shall receive the retained portion of its fee as provided in Exhibit B of this Contract.
- (3) The Engineer shall submit GPS permanent benchmark with as-built drawings.
- (4) For all building/facility projects, the Engineer shall provide to the Trust an Operations and Maintenance (O&M) Manual (three copies) covering all systems and equipment constructed, installed or remodeled as a part of the construction project.

E. Provide Inspection Services – Task 6 (by possible future amendment)

- (1) The Engineer shall provide a qualified Inspector to perform the work identified within this task.
- (2) Prior to the advertisement for bids, prepare and submit to the Trust, for review and acceptance, a résumé showing the Inspector's experience and qualifications for this particular project. However, the Trust, through their review and acceptance, does not take any responsibility or liability for the Inspector or their work.
- (3) The Inspector will attend all pre-bid and pre-work conferences.
- (4) The Inspector shall perform inspection of all work under the Construction Contract.
- (5) The Inspector shall perform inspection of all materials received at the construction site and shall ensure that their storage is in accordance with all Construction Contract Requirements, manufacturer requirements and/or material labels.
- (6) Should work-in-progress or completed work be identified to not meet the requirements of the Construction Contract Documents, the Inspector shall immediately notify the Construction Contractor, the Engineer, and the City and the Trust if the Inspector believes the work does not conform to the contract documents.
- (7) The Inspector shall attend all job site meetings and shall report to the Engineer and the City and the Trust all issues concerning progress, quality assurance, quality control and dispute resolution.

- (8) The Inspector shall maintain at a readily available location, a copy of all Construction Contract documents and other pertinent documents in an orderly manner including a current set of construction documents annotated to include all Construction Contract related changes and clarifications. The documents shall include, but not limited to, Construction Contract Documents, Requests for Information (RFIs) and the subsequent response to the RFI, Discrepancy and Nonconformance Reports, supplemental drawings, Engineer approved shop drawings, submittals, samples, and color schedules, correspondence, accepted schedules, construction change orders, amendments, logs, meeting minutes and a Construction Contractor directory.
- (9) The Inspector shall prepare and submit a Daily Inspection Report to the Engineer, the City and the Trust and the Construction Contractor.
- (10) The Inspector shall maintain all shop drawings, project data, or samples in an easily retrievable filing system.
- (11) The Inspector shall maintain a daily log book or diary, recording all pertinent inspections, including but not limited to:
 - a. Inspector's time and activities;
 - b. Weather conditions at the site;
 - c. The nature and location of work being performed by the Construction Contractor;
 - d. Identification of any work that the Inspector believes fails to strictly conform to the contract documents, along with the Inspector's actions regarding such inspections;
 - e. Identification of any work determined to be nonconforming, along with the disposition of such nonconformance;
 - f. Copies of all reports made to the Construction Contractor of nonconforming work;
 - g. Description of all disputes among the Construction Contractor, Subcontractors and Suppliers; and
 - h. Description of how each dispute or nonconforming work is resolved.
- (12) The Inspector shall be present at the construction site while any critical installations and/or necessary testing will be required, is proceeding and shall provide inspection of the quality of construction on a regular and consistent manner. The Inspector will have authority to act on behalf of the Trust only to the extent provided by this Contract. The Inspector is not responsible for creating or implementing the Construction Contractor's schedules nor for any failure by the Construction Contractor to perform its work in accordance with Construction Contract Documents.

(13) The Inspector shall pre-review the Contractor's pay application to reconcile pay quantities, review and sign the time of completion report, and initial the pay application.

(14) The Inspector may NOT (unless authorized by the Trust):

- a. Authorize deviations from the Construction Contract Documents.
- b. Conduct or participate in tests or third-party inspections.
- c. Assume any of the responsibilities of the Construction Contractor, subcontractors or suppliers.
- d. Expedite the work for the Construction Contractor.
- e. Advise or issue directions to the Construction Contractor concerning aspects of construction means, method, techniques, sequences or procedures, or safety precautions and programs in connection with the work.
- f. Authorize the Trust to beneficially occupy or begin operation and use of the facilities in whole or part.
- g. Reject work or require special inspection or testing.
- h. Order the Construction Contractor to stop the work or any portion thereof.

(15) The discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the project site, including but not limited to, asbestos, asbestos products, polychlorinated biphenyls (PCBs), lead, or other toxic substances is not the responsibility of the Inspector. If the Inspector has actual notice of such hazardous materials, he/she shall notify the City and the Trust immediately of its discovery.

3. **No Extra Work.** No claims for extra work of any kind or nature or character shall be recognized by or be binding upon the Trust unless such work or service is first approved in writing by the Trust.
4. **Additional Services.** (by possible future amendment) Additional Services are project-related services as enumerated in Exhibit "E," attached hereto and made a part hereof, and are not included as Basic Services. Additional Services shall only be provided upon prior written and clearly detailed direction from the General Manager, acting within the limits of State law, Ordinances of the City of Oklahoma City and policies established by the City Council, and upon acceptance by the Engineer. Any Additional Services performed pursuant to the above written direction shall be paid in accordance with the Compensation and Payments paragraphs of this Contract.
5. **Compensation.** The aggregate total compensation for all engineering services under this Contract shall not exceed a total fee of \$181,570, which includes: for Basic Services an amount not to exceed \$181,570, as specifically set forth in Exhibit B, attached hereto and incorporated herein; and, for Additional Services an amount not to exceed (by possible

future amendment), as specifically set forth in Exhibit E attached hereto and incorporated herein.

6. **Payments.**

- A. Payment of claims for incremental work completed on each task may be submitted. Invoices for the amount and value of the work and services performed by the Engineer shall be submitted monthly to the Trust and shall meet the standards of quality as established under this Contract. Invoices will include the percentage of completion for each task and payment will be made based on the percentage of the task fee completed. The Trust agrees to pay the Engineer, as compensation for such engineering services as listed herein. The invoices shall be prepared and submitted by the Engineer and be accompanied by a status report identifying the task components, effort accomplished during the time period, and the percentage of completion thereof, to the Trust. Payment of any invoice for any work or services is not deemed to be recognition of satisfactory performance of said work or services or a waiver of any right of the Trust or any obligation of the Engineer should it be determined later that said work or services were negligently performed or provided or were not performed or provided in accordance with the standards required by this Contract. Surveyors or other professional consultants engaged by the Engineer for the normal structural, electrical or mechanical engineering services shall be billed to the Trust by the Engineer at the actual cost thereof.
- B. The Engineer shall present two (2) copies of the invoice with two (2) properly executed claim vouchers to the Trust for compensation and payment. The Trust will review the invoice and claim voucher for payment. Should the Trust question or request additional documentation or disapprove all or a portion of any invoice, the Engineer will be notified so that it may provide additional documentation sufficient to demonstrate the invoice and claim should be paid, in whole or in part; provided, however, no invoices or claims shall be paid the aggregate of which are in excess of the "not to exceed" amounts or limitations established in Exhibit B.
- C. Final payment shall not be deemed to waive any rights or obligations of the parties to this Contract.

7. **Indemnity.** The Engineer will not be required to indemnify, insure, defend or hold harmless the City or participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the Trust or their agents, representatives, subcontractors, suppliers or any other entity for whom the Engineer is not otherwise legally responsible.

The Engineer must indemnify the Trust against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault

for which the Engineer and any person or entity for which the Engineer is legally responsible are adjudicated liable.

8. **Insurance.** Prior to approval of this contract, the Engineer shall obtain insurance coverage as provided below. The Engineer must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth below. Certified, true and exact copies of all insurance policies required and endorsement pages shall be provided to the City and its participating trusts on a timely basis if requested by City staff. The Engineer will provide the Certificate(s) of Insurance to the City and its participating trusts with the executed contract (contract will not be processed for approval without the contract-required verification of insurance indicated on the Certificate(s) of Insurance). Certificate(s) of Insurance must be insurance industry standard forms, such as ACORD.

All insurance must be from responsible insurance companies which are authorized to do business in the state of Oklahoma and are acceptable to the City and its participating trusts. The required insurance coverage and policies shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this Contract under any other provision of this Contract, including but not limited to any indemnification provision.

- A. **Additional Insureds:** All liability policies (except professional liability and worker's compensation and employer's liability policies) shall provide that the City of Oklahoma City and the Oklahoma City Water Utilities Trust are named additional insureds without reservation or restriction.

All insurance coverage of the Engineer shall be primary to any insurance or self-insurance program carried by the City and its participating trusts.

All insurance policies shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

Subrogation as to any additional insured shall be waived.

- B. **Deductibles:** All policies must be fully insured with any single policy deductible not exceeding \$25,000 per occurrence. All deductibles must be declared on the certificate of insurance. If no deductible is declared, the Engineer is stating a deductible does not exist and thus a deductible is not approved or accepted. If the Engineer's deductible is higher than declared, then the City and its participating trusts will hold an equal amount from pay claims until corrected.

Self-insured retentions will not be accepted unless accompanied by a bond (financial guarantee bond) or irrevocable letter of credit guaranteeing payment of the losses, related investigations, claim administration and defense expenses not otherwise covered by the Engineer's self-insured retention.

- C. Policy Limits: The insurance coverage and limits required of the Engineer under this Contract are designed to meet the minimum requirements of the City and its participating trusts. Such coverage and limits are not designed as a recommended insurance program for the Engineer. The Engineer alone shall be responsible for the sufficiency of its own insurance program. Should the Engineer have any question concerning its exposures to loss under this Contract or the possible insurance coverage needed therefore, the Engineer should seek professional assistance.

Except for professional liability insurance, all policies shall be in the form of an "occurrence" insurance coverage or policy. If any insurance is written in a "claims-made" form, the Engineer shall also provide tail coverage that extends a minimum of two years from the expiration of this Contract.

The minimum aggregate limits of such insurance policies and continuing coverage shall be:

- (1) Worker's Compensation and Employer's Liability Insurance. The Engineer shall provide and maintain, during the term of the Contract, worker's compensation insurance as prescribed by the laws of the state of Oklahoma and employer's liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the site of the Project, and in case any work is subcontracted, the Engineer shall require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Engineer. In the event any class of employees engaged in work performed under the Contract or at the site of the Project is not protected under such insurance heretofore mentioned, the Engineer shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.
- (2) Commercial General Liability Insurance. The Engineer shall provide and maintain commercial general liability insurance coverage sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, as provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

- (3) Automobile Liability Insurance. The Engineer shall provide and maintain comprehensive automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

- (4) Professional Liability Insurance. The Engineer shall provide and maintain professional liability insurance coverage in an amount not less than \$1,000,000 aggregate annual limit liability. Such insurance coverage shall be maintained during this Contract, during the construction of the Project, and for a period of two (2) years after the final, formal acceptance of this Project by the Trust.

- D. Certificates: The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on the form furnished by the Trust or on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates have been provided to the City Engineer prior to execution of this Contract and are attached hereto. The certificate(s) must be signed by the authorized representative of the insurance company(s) shown in the certificate(s). The certificate must include the Project number and Project description or name.
- E. Cancellation. There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage.

The Engineer authorizes the City and its participating trusts to confirm all information so furnished as to the Engineer's compliance with its bonds and insurance requirements with the Engineer's insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this Contract is a breach of this Contract for which the Engineer shall repay and reimburse all payment made under the Contract and such other damages, losses, and costs incurred by the City and its participating trusts. The City and its participating trusts may at their option suspend this Contract until there is full compliance with this paragraph, or may cancel or terminate this Contract and seek damages for the breach of this Contract. The remedies in this paragraph shall not be deemed to waive or release any remedy available to The City and its participating trusts. The City and its participating trusts expressly reserve the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit below the aggregate limit required to this contract, the Engineer shall immediately notify the City and its participating trusts and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City and its participating trusts request a written statement from the insurance company(s) as to any impairments to or reduction of the aggregate limit below the aggregate limit required by this contract, the Engineer hereby agrees to promptly authorize and have delivered to the City and its participating trusts such statement.

The Engineer must carry and maintain the contract-required insurance coverages and may not cancel, fail to be renewed, nor decrease their limits without thirty (30) days written notice to the City and its participating trusts. In the event that a contract-required insurance coverage (policy) is canceled by the Engineer's insurance company and through no fault of the Engineer, the Engineer must immediately provide written notice to the City and its participating trusts and immediately provide properly executed Certificate(s) of Insurance evidencing coverage (policy) replacement of the canceled coverage(s). The Certificate(s) of Insurance must specifically indicate (in the remarks section of the form or elsewhere) the project number and project description. An authorized

representative of the insurance companies listed on the Certificate(s) of Insurance must sign the Certificate(s).

- F. Duration of Coverage. All insurance coverage required under this Contract except professional liability insurance shall be maintained in full force and effect until completion and formal acceptance of the Project by the City and its participating trusts. The Engineer shall maintain in full force in effect the required professional liability insurance stated above during this Contract, during the construction of the Project, and for a period of two (2) years after the final, formal acceptance of this Project by the City and its participating trusts.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Contract.

- G. The Architect and its insurer will not be required to indemnify, insure, defend or hold harmless the Trust against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the Trust or their agents, representatives, subcontractors, suppliers or any other entity for whom the Architect is not otherwise legally responsible.

The Architect and its insurer must indemnify the Trust against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Architect and any person or entity for which the Architect is legally responsible are adjudicated liable.

9. Termination for Convenience. The Trust may terminate this Contract (with or without cause), in whole or in part, for the Trust's convenience. The Trust may terminate by delivery of a notice to the Engineer, pursuant to paragraph "Notices" herein.

Upon receipt of the notice of termination, the Engineer shall (1) immediately discontinue all work and services affected (unless the notice directs otherwise), and (2), deliver to the Trust all work performed, documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated in performing this Contract, whether complete or incomplete unless the notice directs otherwise.

Upon termination for the convenience by the Trust, the Trust shall pay the Engineer for all work and services rendered, up to the time of the notice of termination, in accordance with the terms, limits and conditions of this Contract and as further limited by the not to exceed amounts set out in this Contract.

The rights and remedies of the Trust provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

Termination herein shall not terminate or suspend any of the required provisions of paragraph "Indemnity" or "Insurance" of this Contract.

10. **Notices.** All notices given pursuant to this Contract shall be in writing, delivered or mailed by United States mail, postage prepaid or faxed (with hard copy follow up by mail or delivery) and addressed as follows:

To the Trust:
The Oklahoma City Water Utilities Trust
420 West Main Street, Suite 500
Oklahoma City, Oklahoma 73102
Attn: Chris Browning, Director/General Manager
Phone Number: (405) 297-2822

To the Engineer:
Ardurra Group, Inc.
210 Park Ave STE 2100
Oklahoma City, OK 73102
Attn: Kyle Drury
Phone Number: (405) 265-9136

The address of any person or party may be changed by notice to the other party, given in the manner described above. All such notices shall be deemed received when delivered.

11. **Stop Work.** Upon notice to the Engineer, the Trust may issue a stop work order suspending the performance of work and/or services under this Contract. The stop work order shall not terminate or suspend any of the required provisions of paragraph "Indemnity" and/or "Insurance" of this Contract.
12. **Compliance with Laws, Ordinances, Specifications and Regulations.** The Engineer shall comply with all existing and applicable federal, Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, applicable to the work and/or services provided by this Contract. All work product provided by the Engineer must comply with and provide for compliance with all Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto in the use of the work product of the Engineer. All work product provided by the Engineer must specifically direct and must provide sufficient information and contacts for the Construction Contractor to timely comply with all Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations, and all amendments and additions thereto, in the use of the work product of the Engineer and timely performance by the Construction Contractor.
13. **Records and Accounts.** During the term of this Contract and continuing for a period the longer of five (5) years after the final acceptance of the completed project by the Trust, or until the final resolution of any outstanding disputes between the Trust and the Engineer or

the contractor(s) on the project, the Engineer shall maintain: all documents, notes, drawings, specifications, reports, estimates, summaries, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, computer files and any other materials produced, created or accumulated in performing this Contract that have not been submitted to the Trust subsequent to final completion of the project and its internal accounting records, and other supporting documents pertaining to the claims and/or invoices for costs of work and/or services of this Contract. The Engineer must maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The Engineer shall permit periodic audits by the Trust and the Trust's authorized representative. The periodic audits of the records in support of claims and invoices for the Contract shall be performed at times and places mutually agreed upon by the Trust and Engineer. Agreement as to the time and place for audits may not be unreasonably withheld.

14. **Reporting to the Trust.** The Engineer shall report to the Trust on a regular monthly basis and on an as needed basis.
15. **Prohibition Against Collusion.** The Engineer warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Engineer to solicit or secure this Contract. The Engineer further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. In addition, the Engineer must execute the Anti/Non-Collusion Affidavit, attached as Exhibit C, prior to the effective date of this Contract.
16. **Sub-consultant, Subcontractor or Employee Conflict of Interest.** Any work performed by the Engineer's employees, sub-consultants or subcontractors on this project shall prohibit said persons from contracting with, working for, or otherwise assisting any potential Bidder to do any project-related work for the Bidder which may in any way be (or construed to be) a conflict of interest. It is the responsibility of the Engineer to require all employees, sub-consultants, or subcontractors engaged by the Engineer to advise the Trust of any business relationship (formal or otherwise) which may pertain directly or indirectly to this project and/or which may in any way be (or construed to be) a conflict of interest. The Engineer will also notify the Trust of any such business relationship and/or conflict of interest. Any conflict of interest discovered by the Trust may be cause for rejection of the Bid in question and/or cancellation of the Engineer's contract.
17. **Work Orders.** The Engineer shall proceed with the provision of work and/or services for this Contract upon receipt of work orders from the City Engineer. The Engineer shall complete and submit the Preliminary Report Services - Task 1 within one hundred twenty (120) calendar days of date of written work order from the City Engineer (for engineering services contracts, this work order includes completion and submittal of the limited ownership list within thirty (30) calendar days of the date of the work order), and shall complete and submit the Final Plan Services - Task 2 within (by possible future

amendment) calendar days of date of written work order from the City Engineer. For either Preliminary Reports/Plans or Final Plans and Specifications, the Trust will endeavor to review and return comments and/or corrections (if any) to the Engineer within thirty (30) calendar days from date of receipt of the documents from the Engineer. Subsequently, the Engineer shall return the corrected documents along with check print copies (if applicable) within thirty (30) calendar days from date of the City's transmittal letter directing corrections. If the Engineer cannot perform the work and/or services within the time provided, and upon the submission by the Engineer of a request in writing to the Trust, indicating the length of extension required to perform a task, the General Manager may grant at his or her sole discretion a reasonable extension of time. The request from the Engineer shall state the reason for the extension request, along with evidence showing that the Engineer is unable to complete this work in the time specified in the work order for reasons beyond its control. The Engineer is prohibited from claiming damages for delays and extensions of time.

18. **Ownership of Documents.** All documents, notes, drawings, specifications, reports, estimates, summaries, computer files, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, and any other materials produced, created or accumulated in performing this Contract, are and shall remain the property of the Trust and may be reproduced, distributed and published in whole or part without permission or any additional payments or fees to the Engineer. Reuse of said documents by the Trust shall be at the Trust's risk and responsibility and not that of the Engineer. The parties may use any portions of said documents at their own risk and responsibility. During preparation of design documents, the Engineer shall do weekly backups of CADD computer files and maintain said backups in a safe and secure off-site location. These back up CADD computer files are the property of the Engineer.
19. **References Not Incorporated.** The use of language or definitions from the Federal Acquisition Regulations ("FAR"), the American Institute of Architects ("AIA") or any other publication, are not intended to adopt by reference or otherwise any or all of the language, definitions, regulations or publications or any interpretation thereof.
20. **Standard of Care.** In providing the work and services herein, the Engineer shall maintain during the course of this Contract the standard of reasonable care, skill, diligence and professional competency for such work and/or services. The Engineer agrees to require all of its consultants, by the terms of its consultants' contracts, to provide services at the same standard of expert care, skill, diligence and professional competence required of the Engineer.
21. **Estimated Construction Cost.** If the lowest and best Bid proposed in response to the solicitation of Bids for construction of the project, in accordance with the Bidding Documents provided by the Engineer, exceeds the Estimated Construction Cost or funds available for this project, the Engineer, at no increase or additional cost to the Trust shall redesign the project and redraft the Bidding Documents so that the construction Bids pursuant to a subsequent solicitation come within the Estimated Construction Cost.

22. **Design Corrections.** The Engineer agrees to make any necessary corrections to the designs, drawings, specifications or other documents, work or services furnished, when such documents or services contain any errors, deficiencies or inadequacies caused by the Engineer, at no cost to the Trust. The Engineer further agrees to be liable for any damages caused by its negligence and/or the negligent failure to timely discover and/or make such necessary corrections. The Engineer is not relieved of liability for design errors, deficiencies or inadequacies undiscovered by the Trust upon its review or inspection, nor is the Engineer relieved from liability for the Trust's lack of review or inspection of said documents.
23. **Backup Required.** In accordance with good engineering practices, the Engineer must back up all data, surveys, tests, work, plans, specifications, notes, calculations, RFI, records, reports, documents (collectively referred to as "data") in the form of an electronic file on a USB drive, data storage, or to an offsite electronic storage facility. Should any data become lost, corrupted, inaccessible, or unusable (collectively "loss"), the Engineer must timely recreate all data within the original time frame of the engineering contract at its sole cost. No extensions or additional time will be granted the Engineer for loss of data. No additional payment or reimbursement will be made to the Engineer for loss of data. The Engineer will be responsible for any and all costs, expenses, or lost opportunities incurred by The City, Trust, and construction contractor resulting from the failure to meet schedules, milestones, performance standards, or performance requirements related to loss of data.
24. **Notice of Design Limitations.** The Engineer will immediately advise the Trust at any time it believes that the project being designed will exceed, or is likely to exceed, the allocated cost for construction as set forth in this Contract.
25. **Sub-consultants.** The Engineer agrees to submit for approval by the Trust, prior to their engagement, a list of any sub-consultants or subcontractors the Engineer intends to engage to perform work and/or services and the scope of work and/or services to be performed related to this Contract. Such approval of subcontractors and sub-consultants and scope of work and/or services to be performed will not be unreasonably withheld. The Engineer must notify the Trust and seek pre-approval of any substitutions or changes in sub-consultants or subcontractors and changes in the subcontractor or sub-consultant's scope of work and services related to this Contract. Approval of subcontractors or sub-consultants or their work and services will not relieve or release the Engineer from responsibility or liability to perform all work and services under this Contract and will not create any responsibility, liability or duty upon the Trust as to the selection of or work and services provided by the subcontract or sub-consultant under this Contract.
26. **Nondiscrimination.** In connection with the performance of work and/or services under this Contract, the Engineer agrees as follows:
- A. The Engineer shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or

disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). The Engineer shall take affirmative action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3 (2). Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Engineer shall agree to post, in conspicuous places, Exhibit D.

- B. In the event of the Engineer's noncompliance with this nondiscrimination clause, this Contract may be suspended, canceled or terminated by the Trust. The Trust may declare the Engineer ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by the Engineer.
 - C. The Engineer agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this Contract. The Engineer shall also execute the nondiscrimination certificate, attached and incorporated as Exhibit D, prior to the effective date of this Contract.
27. **Assignment.** Inasmuch as this Contract is a personal and professional service agreement which relies upon the personal and professional integrity, financial standing and unique ability and expertise of the Engineer to provide professional and personal services to the Trust, the parties agree that the Engineer may not assign its obligations, rights or interest in this Contract except the assignment of subcontractors and Sub-consultants as set forth in paragraph "Termination for Default" subparagraph B.
28. **Termination for Default.** The Trust may terminate or cancel this Contract for cause, in whole or in part, for failure of the Engineer to fulfill in accordance with good engineering practices and in the best interests of the Trust or to promptly fulfill its obligations under this Contract.
- A. After due default notice and thirty (30) days within which to correct the default, this Contract may be terminated by the non-defaulting party upon written notice. Upon termination for cause by the Trust, the Trust shall pay the Engineer for all work and services completed in accordance with good engineering practices and in the best interests of the Trust and useable by the Trust for the project(s) in the Notice to Proceed, up to the time of the effective date of termination.
 - B. If this Contract is terminated by reason of a default of the Engineer prior to the completion of this project, regardless of the reason for said termination, the Engineer shall immediately assign to the Trust any contracts and/or agreements relative to this project entered into between the Engineer and its subcontractors and sub-consultants, as the Trust may designate in writing and with the consent of the

subcontractors and sub-consultants so designated. With respect to those contracts and/or agreements assigned to and accepted by the Trust, the Trust shall only be required to compensate such subcontractors and sub-consultants for compensation accruing to such parties under the terms of their agreements with the Engineer from and after the date of such assignment to and acceptance by the Trust. All sums claimed by such subcontractors or sub-consultants to be due and owing for services performed prior to such assignment and acceptance by the Trust shall constitute a debt between the Engineer and the affected subcontractors or sub-consultants, and the Trust shall in no way be deemed liable for such sums. The Engineer shall include this provision and the Trust's rights and obligations hereunder in all agreements or contracts entered into with the Engineer's subcontractors and sub-consultants.

- C. Termination herein shall not terminate or suspend any of the required provisions of the paragraph "Indemnity" or "Insurance" of this Contract.
29. **Time Is of the Essence.** Both the Trust and the Engineer expressly agree that time is of the essence with respect to this Contract, and the time for performance of each task established by the work orders shall be made a part of this Contract and shall be strictly observed and enforced. Any failure on the part of the Trust to timely object to the time of performance shall not waive any right of the Trust to object at a later time.
30. **No Damage for Delay.** No payment, compensation or adjustment of any kind (other than an approved extension of time) shall be made to the Engineer for damages because of hindrances or delays from any cause in the progress of the work, whether such hindrances or delays be avoidable or unavoidable. The Engineer agrees that it will make no claim for compensation or damages for any such delays and will accept as full satisfaction for such delays the extensions of time.
31. **Severability.** In the event that any provision, clause, portion or section of this Contract is unenforceable or invalid for any reason, such unenforceability or invalidity may not affect the enforceability or validity of any other paragraph or the remainder of this Contract.
32. **Entire Agreement.** This Contract, including its Exhibits and any other documents or certificates incorporated herein by reference, expresses the entire understanding of the Trust and the Engineer concerning the Contract. Neither the Trust nor the Engineer has made or shall be bound by any agreement or any representation to the other concerning this Contract which is not expressly set forth herein.
33. **Amendment.** This Contract may be modified only by a written amendment of subsequent date hereto, approved by the Trust and the Engineer. In the event the Engineer's Basic Services are increased or changed so as to materially increase the need for engineering services in excess of the not to exceed total compensation, the Engineer may seek to amend this Contract.

34. **Execution in Counterparts.** This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
35. **Descriptive Headings.** The descriptive headings of the sections of this Contract are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Contract.
36. **Construction and Enforcement.** This Contract shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Contract, it shall not be construed for or against any party on the basis that such party did or did not author the same.
37. **Survival of Representations.** All representations and covenants of the parties shall survive the expiration of the Contract.
38. **Parties Bound.** This Contract shall be binding upon and inure to the benefit of all parties. This Contract is solely for the benefit of the parties and their successors in interest, and none of the provisions hereof are intended to benefit third parties.
39. **Venue of Actions.** The parties agree that if any legal action is brought pursuant to this Contract, such action shall be instituted in the District Court of Oklahoma County.
40. **Effective Date.** The effective date of this Contract shall be the date of execution of this Contract by the Trust.
41. **Local Business Utilization Report.** On December 22, 2020, the City Council approved and re-established the Small, Local and Minority Business Utilization (LBU) Program. The program encourages and promotes the use of small, local and minority business subcontractors on public construction contracts. The goal is to provide assistance, guidance, and opportunities for small, local and minority businesses to work on Trust projects.

The Engineer agrees to submit a Small, Local and Minority Business Utilization ("LBU") Report to the Trust within fourteen (14) days of the issuance of the Notice to Proceed, to include the following information:

- A. A list identifying each of its subconsultants or subcontractors;
- B. The location and contact information of the principal place of business of each subconsultant or subcontractor;
- C. The status of each of its subconsultants and subcontractors, and which class of business; local, small, minority, N/A etc.

- D. The general scope of work to be performed by each subconsultant or subcontractor;
- E. The dollar amount of each subcontract; and
- F. The tools and/or organizations used to locate and contact these businesses.

The Engineer further agrees to submit to the Trust a monthly report identifying the scope of work and amount of payments made to each subconsultant or subcontractor for the preceding month on a form provided by the Trust.

42. **Crime Prevention through Environmental Design** The Crime Prevention through Environmental Design (CPTED) concept suggests that natural surveillance, natural access control, and territoriality can be effectively applied to a project and its surrounding environment to provide safety for users. A CPTED design can also promote community confidence and improve natural surveillance methods to reduce/prevent common crime and vandalism.

The Engineer should implement the concepts of CPTED, where appropriate, to reduce the real and perceived areas of potential problems during the project design.

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24th IN WITNESS WHEREOF, this Contract was executed and approved by the Engineer this day of February, 20 25.

ATTEST: (affix seal)

B. Stallen

Secretary



ARDURRA GROUP, INC.

Kyle Jones

President/Vice President

IN WITNESS WHEREOF, this Contract was approved and executed by the Oklahoma City Water Utilities Trust this 11TH day of MARCH, 2025.

THE OKLAHOMA CITY WATER UTILITIES TRUST

ATTEST:

Amy K. Simpson

Secretary



J. D. Couch

Chairman

REVIEWED for form and legality.

Patricia Mann

Assistant Municipal Counselor

CONCURRED by the City of Oklahoma City this 25TH day of MARCH, 2025

ATTEST:

Amy K. Simpson

City Clerk



David Holt

Mayor

EXHIBIT A
SCOPE OF WORK
PROJECT NO. SC-1141
LIFT STATION REHABILITATION FOR LIFT STATIONS 8, 40, 47 AND 53

PROJECT DESCRIPTION

The Project will provide engineering services to evaluate Lift Stations 8, 40, 47, and 53 and provide recommendations to rehabilitate, replace, relocate and/or eliminate. Final design, bidding, construction administration and management, inspection, and as-built services may be completed under a future amendment.

SCOPE OF SERVICES

The following scope of services is intended to supplement Paragraph 2 – Basic Services in the Contract. The Engineer shall provide the following scope of services for the Project as follows:

Task 1 - Preliminary Report Services:

The following scope shall constitute Task 1. Engineer shall provide Preliminary Report Services in accordance with the Basic Services of this Contract and as listed below. The Preliminary Design phase is the phase in which preliminary recommendations to rehabilitate, replace, relocate and/or eliminate each lift station is discussed.

A. Project Management and Progress Reporting:

1. The Engineer shall provide project management and progress reporting functions required to successfully complete Task 1.
2. Monthly Progress Reporting: The Engineer shall prepare and submit to Trust monthly invoice packets including the following:
 - a. A cover letter providing general project status, progress completed during the invoice period for each major subtask, overall percent complete for each major subtask, planned activities for the upcoming month, information requests, action items required to be addressed by the Trust, schedule status with any applicable delays, and a list of potential scope adjustments.
 - b. Monthly invoice.
 - c. Updated project schedule.
3. Potential Scope Adjustment Register: The Engineer shall maintain a potential scope adjustment (PSA) register. In the event there is consideration given for changes to the Project's scope of work, Engineer will develop and present PSAs with the next monthly invoice transmittal.
 - a. Engineer shall itemize the potential changes detailing the anticipated cost impact to the Engineer's contract and the Project's construction cost.
 - b. Engineer shall detail impacts, if any, to the project schedule.
4. Progress Meetings:
 - a. Engineer shall conduct regular monthly progress status meetings with the Trust. The meetings shall cover the following items at a minimum:
 - i. Update the team on project status, progress achieved, budget and schedule status/concerns and potential deviations from the Scope of Services and

- corrective actions.
 - ii. Discuss project issues, coordinate work activities and review work activities planned for the upcoming period. These progress meetings will be in addition to other work product review meetings or workshops with Trust as identified herein. The Engineer will prepare an agenda for each meeting.
 - iii. Engineer shall distribute meeting minutes within seven (7) calendar days of the meeting.
- 5. Quality Assurance and Quality Control: The design documents shall be reviewed by Engineer's technical advisors and/or senior technical staff for quality assurance and quality control (QA/QC) purposes prior to delivery to the Trust.
 - a. Engineer shall develop and implement a QA/QC plan and submit the QA/QC plan to the Trust for review.
 - b. Engineer QA/QC reviews of each deliverable shall be completed prior to submitting to the Trust for review. A concurrent QA/QC review with the Trust shall not be permitted without prior written approval from the Trust.
 - c. Results of the reviews shall be maintained by the Engineer in its records files until completion of the PROJECT. The results of the QA/QC review shall be incorporated into the Final Design Documents.
- 6. Schedule: Engineer shall provide a detailed schedule for execution of the project prior to the project kickoff meeting.
 - a. Schedule shall allow for Trust review periods of at least two (2) weeks.
 - b. Schedule shall include tentative dates for major review meetings.
 - c. Schedule shall be updated monthly based on progress.
- 7. Provide project design information and coordinate with other consultants contracted by the Trust pertaining to related issues whereby multiple projects share a common process or function and/or are within the immediate vicinity of each others' improvements throughout the duration of the project.

B. Kickoff Meeting:

- 1. Task 1 Kickoff Meeting: Engineer shall conduct a project initiation meeting to review the scope and clarify Trust's requirements for the project, review pertinent available data, review project staffing and organization, present initial work plan, and review initial work schedule.
 - a. Prepare and submit an agenda two (2) business days prior to the project initiation meeting.
 - b. Prepare and submit meeting minutes to the Trust for review and comment within seven (7) calendar days of the meeting.

C. Preliminary Design Report

- 1. Data Collection:
 - a. Engineer will request through the City's Open Records Request process and the OCWUT lift station maintenance group, and the City will provide the following information if available:
 - i. Lift station and force main record drawings
 - ii. Lift station design reports
 - iii. Lift station operation and maintenance logs
 - iv. Collection system record drawings

- v. Inspection data
 - vi. City GIS layers of water, wastewater, storm water, topographic contours and parcel data
- b. Survey
 - i. Design surveys shall be completed in two phases. A preliminary survey shall be completed prior to development of the preliminary site locations and pipeline alignments to confirm feasibility of the concepts. A detailed design survey shall be completed after submitting the final Engineering Design Report and written notification from the Trust.
 - ii. Preliminary: Engineer shall provide site survey services as required to develop the Preliminary Site Locations, Pipeline Alignments and Engineering Design Report. This includes limited spot shots, flowlines, manholes, and other survey data as determined to be necessary by the Engineer to validate the preliminary design.
 - iii. Horizontal and vertical control will be referenced to the City of Oklahoma Control Network which is based on Oklahoma State Plane Coordinate System and NAVD 88, respectively.
- c. Geotechnical Investigation
 - i. Geotechnical Investigation will be conducted once locations are determined and will be performed in the design phase.
- 2. Lift Station Evaluation
 - a. Pump Draw Down Test – Engineer will coordinate with the Trust to perform a pump draw down test on each lift station. The purpose of the test will be to identify the existing operating parameters of each station.
 - b. Hydraulic Analysis – Engineer will gather the data from the pump draw down test and perform a hydraulic analysis of the data to develop pump curves for each lift station.
 - c. Evaluation locations
 - i. Engineer shall evaluate existing locations of the lift stations and give recommendations for site upgrades or improvements.
 - ii. Engineer shall recommend locations for re-locating the lift stations.
 - d. Lift Station Elimination
 - i. Engineer will evaluate alternative for eliminating Lift Station No. 53 with a gravity sewer line.
 - ii. Engineer shall provide a preliminary alignment of gravity mains.
 - e. Loss of Power
 - i. Engineer shall evaluate each lift station to determine if a generator is needed vs a quick connect due to loss of power.
- 3. Package Lift Station
 - a. Engineer will evaluate up to three possible package lift stations that can meet calculated flows and hydraulic conditions for each lift station.
- 4. Opinion of Probable Construction Cost (OPCC) for each Area:
 - a. All opinions of probable construction costs (OPCC) developed shall follow the recommendations of the Association of Advancement of Cost Engineering (AACE) International Recommendation Practice No. 18R with regard to methodology and

- accuracy.
- b. The cost opinion level of accuracy presented by the Engineer shall be a Class 3 – Budget Authorization or Control cost opinion in accordance with accepted industry guidelines defined by AACE. The Class 3 estimate is commensurate with development of the design concept to a 10% to 40% level; the expected accuracy on the low end will be -10 to -20 percent and the expected accuracy on the high end will be from +20 to 50 percent.
 - c. Engineer shall provide summary and detail reports of the OPCC. Summary OPCC report shall match the anticipated bid structure of the Project.
5. Alternative Analysis:
- a. Engineer will evaluate alternatives for each site for package lift station, standard lift station, relocation, or elimination (LS 53 only) of each lift station.
 - b. Engineer will develop evaluation criteria that will be used to perform a quantitative evaluation of the alternatives, including a life cycle cost evaluation.
 - c. Engineer will provide recommendations for each lift station.
6. Draft Report:
- a. Engineer shall submit two (2) draft hard copies and Microsoft Word and PDF formats of the Engineering Design Report for review and comment by the Trust.
7. Review meeting: Engineer shall conduct the meeting between Trust's Project Team and Engineer to present a summary of the Engineering Design Report.
- a. Prepare and submit an agenda two (2) business days prior to the review meeting.
 - b. Prepare and submit meeting minutes to the Trust for review and comment within seven (7) calendar days of the meeting.
 - c. Engineer shall incorporate Trust review comments into the final version.
8. Final Report:
- a. Engineer shall incorporate Trust comments into the final report.
 - b. Engineer shall submit four (4) final copies of the final Engineering Design Report in hardcopy format and in electronic PDF format.
 - i. PDF format shall have the following features:
 - (1) Shall be fully indexed using the Table of Contents.
 - (2) Bookmarks shall be created in the navigation frame for each major entry in the Table of Contents.
 - c. Engineer shall submit a response matrix and decision log documenting the proposed action to the Trust's comments with the final report.

Task 2 - Final Plan Services

Task 2 by possible future amendment.

Task 3 - Bidding Services

Task 3 by possible future amendment.

Task 4 - Construction Administration Services

Task 4 by possible future amendment.

Task 5 - As-Built Drawings Services

Task 5 by possible future amendment.

TS 1/14/19

Task 6 - Project Inspection Services

Task 6 by possible future amendment.

Completion Times:

Work Item	Time to Complete¹	Completion Time from NTP¹
Task 1 – Engineering Report	120 days	120 days

Completion times shall include review time by the Trust for each deliverable. A minimum of two (2) weeks shall be provided for each deliverable included in Task 1. A minimum of two (2) weeks shall be provided for 60% Design deliverable review. A minimum of two (2) weeks shall be provided for 90% Design deliverable review. A minimum of one (1) week shall be provided for 100% Design deliverable review.

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**EXHIBIT B
COMPENSATION
PROJECT NO. SC-1141
LIFT STATION REHABILITATION FOR LIFT STATIONS 8, 40, 47 AND 53**

Under the terms of this Contract, the Engineer agrees to perform the work and services described in this Contract. The Trust agrees, in accordance with the limitations and conditions set forth in the Contract, to pay an amount not to exceed \$181,570 which includes: for Basic Services an amount not to exceed \$181,570, as specifically set forth in this Exhibit B; and, for Additional Services an amount not to exceed (by possible future amendment), as specifically set forth in Exhibit E.

B.I. Basic Work and Services

Compensation for basic services may not exceed \$181,570, and in no event may the Engineer receive compensation in excess of the amount listed for each task for performance of its basic services.

The Engineer may receive up to the following amounts of the not to exceed amounts for services rendered upon the completion of the following tasks. Partial payments of the not to exceed amounts for each task may be invoiced for incremental work completed. Not to exceed amounts below are accumulative for successive tasks.

Task 1 an amount not to exceed:
\$181,570

Completion and recommendation by the General Manager for approval by the Trust of the Preliminary Report for the project.

The breakdown for Task 1 is as follows:

Project Management and Progress Reporting	\$ 6,280
Kickoff Meeting	\$ 4,680
Design Report	\$170,610

Task 2 an additional amount not to exceed:
(by possible future amendment)

Completion and acceptance by the Trust of the final plans and specifications for the project.

Task 3 an additional amount not to exceed:
(by possible future amendment)

Award of the construction contract to the successful Bidder.

Task 4 an additional amount not to exceed:
(by possible future amendment)

Upon completion and final acceptance by the Trust of the completed project. Said amount is to be paid proportionately to the level of

completion of project construction. The proportionate amount is to be consistent with the Construction Contractor's percentage of completion.

Task 5 an additional amount not to exceed:
(by possible future amendment)

Upon satisfactory completion and acceptance of the as-built drawings.

Task 6 an additional amount not to exceed:
(by possible future amendment)

Compensation for Inspection Services shall not be greater than the amount and value of the work and services performed by the Engineer.

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EXHIBIT C
ANTI/NON-COLLUSION AFFIDAVIT
SC-1141

LIFT STATION REHABILITATION FOR LIFT STATIONS 8, 40, 47 AND 53

State of Oklahoma)
County of Oklahoma) SS.

The undersigned Engineer, of lawful age, being duly sworn, upon his/her oath, deposes and says: That the undersigned has the lawful authority to execute the within and foregoing proposal for, and on behalf of, the Engineer; that the Engineer has not, directly or indirectly, entered into any agreement, express or implied, with any other architect/engineer(s), having for its object the controlling of the price or amount of the Contract, the limiting of the services of the architect/engineers, the parceling or farming out to any architect/engineer(s) or other persons, of any part of the Contract or any part of the subject matter of the Contract, or of the profits thereof.

The Engineer further states that the Engineer has not been a party to any collusion among other persons, firms or contractors in restraint of freedom of competition, by any agreement to Contract at a fixed price or to refrain from competing; or with any city official, city employee or city agent as to the quantity, quality, or price in the prospective Contract, or any other terms of the said prospective Contract; or in any discussions between the Engineer or city official, city employee or city agent concerning the exchange or money or other thing of value for special consideration in the letting of a Contract. The Engineer states that it has not paid, given or donated or agreed to pay, give or donate to any city official, officer or employee of the Trust or awarding agency, any money or other thing of value, either directly or indirectly, in the procuring of the award of this Contract.

Printed name of the Engineer: Kyle Drury

Signature of executing individual: Kyle Drury

Title: Vice President

210 Park Ave, Suite 2100, Oklahoma City, Oklahoma 73102
Address of the Engineer Zip Code

940-357-9500
(A.C.) Tel. Number and FAX Number

Signed and sworn to before me on this 24th day of February,

2025, by Kyle Drury.

My Commission Expires/Commission Number:
08/29/2026 / 220711774 (Seal)

Tammy Markee
Notary Public

TAMMY MARKEE
Notary Public, State of Oklahoma
Commission #22011774
My Commission Expires 08/29/2026

**EXHIBIT D
NONDISCRIMINATION CERTIFICATE
SC-1141**

LIFT STATION REHABILITATION FOR LIFT STATIONS 8, 40, 47 AND 53

State of Oklahoma)
)
County of Oklahoma) SS.

In connection with the performance of work under this Contract, the Engineer agrees as follows:

- A. The Engineer agrees not to discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, ancestry, age or disability, as defined by the Americans with Disabilities Act of 1990, Sec. 3(2). The Engineer shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, ancestry, age or disability, as defined by the Americans with Disabilities Act of 1990, Sec. 3(2). Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. The Engineer and sub-consultants shall agree to post in a conspicuous place, Exhibit D.
- B. In the event of the Engineer's noncompliance with this Nondiscrimination Certificate, the Contract may be canceled, terminated or suspended by the Trust. The Engineer may be declared, by the Trust, ineligible for further contracts until satisfactory proof of intent to comply shall be made by the Engineer and/or sub-consultants.
- C. The Engineer agrees to include the requirements of this Nondiscrimination Certificate in any subcontracts connected with the performance of this Contract.

I have read the above clause and agree to abide by its requirements.

Printed name of the Engineer: Kyle Drury

Signature of executing individual: Kyle Drury

Title: Vice President

210 Park Ave, Suite 2100, Oklahoma City, Oklahoma 73102

Address of the Engineer Zip Code

940-357-9500

(A.C.) Tel. Number and (FAX No.)

Signed and sworn to before me on this 24th day of February, 2025, by
Kyle Drury

My Commission Expires/Commission Number:
08/29/2026 22011774 (Seal)

TS 1/14/19

Engineering Services Contract Page 39

Tammy Markee
Notary Public

TAMMY MARKEE
Notary Public, State of Oklahoma
Commission #22011774
My Commission Expires 08/29/2026

EXHIBIT E
ADDITIONAL SERVICES
PROJECT NO. SC-1141
LIFT STATION REHABILITATION FOR LIFT STATIONS 8, 40, 47 AND 53

Additional Services shall only be provided upon prior written and clearly detailed direction of the General Manager. The Engineer may be directed to perform any, all or none of the following Additional Services that may include, but not be limited to, the following:

1. Additional geotechnical investigation and services.
2. Subsurface Utility Engineering (SUE) Services: the Engineer will undertake subsurface utility investigations. Compensation for this task shall be as outlined below. Where required, the Engineer shall provide subsurface utility engineering (SUE) services to determine conflicts with existing utilities. The SUE services shall determine the exact location and depth of the existing utility. The actual number of locations shall be determined after field investigation and preliminary survey services are completed. SUE services shall either be Quality Level “A” or Quality Level “B” in accordance with ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data) as recommended by the Engineer and approved by the Trust.
3. Additional legal descriptions and exhibit services.
4. Additional acquisition services.
5. Additional staking for easement preparation.
6. Additional easement research and verification
7. Additional Construction Administration Services per Task 4 in excess of the construction duration listed in Task 4. Compensation for this task shall be as outlined below.
8. Additional Inspection Services per Task 6 in excess of the construction duration listed in Task 6. Compensation for this task shall be as outlined below.
9. Additional services to allow for design of other project areas. A detailed scope and fee for the additional services shall be submitted.
10. Additional Services necessary for completion of the project. A detailed scope and fee for the additional services shall be submitted.

No.	Item	Unit Price	Unit
1	Additional Geotechnical Borings		Each
2	SUE – Quality “A”		Each
2	SUE – Quality “B”		Each
3	Additional legal descriptions and exhibits services		Parcel
4	Additional acquisition services		Parcel
5	Additional staking for easement preparation		Parcel
6	Additional easement research and verification		Parcel
7	Additional Construction Administration Services		Month

8	Additional Construction Inspection Services		Hour
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Compensation for Additional Services: Included in the not to exceed total compensation is an allowance for Additional Services in an amount not to exceed (by possible future amendment). This allowance is to be used and paid to the Engineer in the manner established in this Contract, unless other compensation means are agreed to in writing by the General Manager. The Additional Services compensation may only be used after the Engineer has performed Additional Services upon prior written authorization by the City Engineer. Invoices submitted for Additional Services shall represent only hours actually worked on this project by the Engineer's employees and the Engineer's consultant's employees and shall be accounted for separately for each Additional Service performed.

[the remainder of this page intentionally left blank.]

LETTER OF AUTHORIZATION

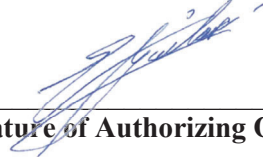
THIS LETTER OF AUTHORIZATION MUST BE COMPLETED IF THE ATTACHED
LEGALLY BINDING DOCUMENT WAS NOT SIGNED BY THE STATUTORILY
AUTHORIZED OFFICER ON BEHALF OF THE CONTRACTING ENTITY.

City of Oklahoma City or related Public Trust:

This letter authorizes Kyle Drury to
(PRINTED NAME OF AUTHORIZED AGENT)

sign the attached legally binding document on behalf of Ardurra Group, Inc.
(CONTRACTING ENTITY)

Sincerely,



Signature of Authorizing Officer

President
Printed Title

02/24/2025
Date

Ernesto Aguilar
Printed Name of Authorizing Officer

eaguilar@ardurra.com
Email Address of Authorizing Officer

NOTE: If the Contracting Entity is a(n):

Corporation	The authorizing officer <u>must</u> be: President, Vice-President, Chairperson, or Vice-Chairperson
LLC	The authorizing officer <u>must</u> be: Manager, Managing Member, President, or Vice-President
Partnership	The authorizing officer <u>must</u> be: General Partner
Joint Venture	The authorizing officer <u>must</u> be: An Authorized Officer of Each of the Ventures



ARDURRA-01

KSUTTON

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/19/2025

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

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

PRODUCER Ames & Gough 8300 Greensboro Drive Suite 980 McLean, VA 22102	CONTACT NAME: PHONE (A/C, No, Ext): (703) 827-2277 FAX (A/C, No): (703) 827-2279 E-MAIL ADDRESS: admin@amesgough.com
	INSURER(S) AFFORDING COVERAGE INSURER A: Charter Oak Fire Insurance Company A++ (XV) NAIC # 25615 INSURER B: Phoenix Insurance Company A++, XV 25623 INSURER C: Travelers Property Casualty Company of America, A++, XV 25674 INSURER D: National Fire & Marine Insurance Company A++ X 20079 INSURER E: INSURER F:
INSURED Ardurra Group, Inc. 1000 N.W. 57th Court, Suite 800 Miami, FL 33126	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

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 <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab. GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	X	630-5X487435	1/1/2025	1/1/2026	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	810-5X558309	1/1/2025	1/1/2026	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	X	X	CUP-5X642114	1/1/2025	1/1/2026	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000 \$
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below		X	UB-5X489557	1/1/2025	1/1/2026	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	<input checked="" type="checkbox"/> Professional Liab.			42-EPP-306878-07	1/1/2025	1/1/2026	Per Claim/Aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: SC-1141 LIFT STATION REHABILITATION FOR LIFT STATIONS 8, 40, 47 AND 53

The City of Oklahoma City and its participating public trusts are included as additional insured with respect to General Liability, Automobile Liability, and Umbrella Liability when required by written contract. General Liability includes Additional Insured coverage for On-Going & Completed Operations as required by written contract. General Liability, Automobile Liability, and Umbrella Liability are primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and when required by written contract. General Liability, Automobile Liability, Workers Compensation, and Umbrella Liability policies include a waiver of subrogation in favor of the additional insureds where permissible by state law and when SEE ATTACHED ACORD 101

CERTIFICATE HOLDER

CANCELLATION

The City of Oklahoma City and its participating public trusts
420 West main Street
Suite 500
Oklahoma City, OK 73102

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



ADDITIONAL REMARKS SCHEDULE

AGENCY Ames & Gough		NAMED INSURED Ardurra Group, Inc. 1000 N.W. 57th Court, Suite 800 Miami, FL 33126
POLICY NUMBER SEE PAGE 1		
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:
required by written contract. Umbrella Liability coverage sits excess over General Liability, Automobile Liability and Employers' Liability coverage. A 30-day Notice of Cancellation will be issued for the General Liability, Automobile Liability, Umbrella Liability, Workers Compensation and Professional Liability policies in accordance with policy terms and conditions.

Professional Liability deductible is \$25,000.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – WRITTEN CONTRACTS (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only 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 requiring insurance" applies. The 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 limited as follows:

- c. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
- d. This insurance does not apply to the rendering of or failure to render any "professional services" or construction management errors or omissions.
- e. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured ap-

plies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional 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" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But this insurance provided to the additional insured still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any "other insurance".

3. The following is added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

Duties Of An Additional Insured

As a condition of coverage provided to the additional insured:

- a. The additional insured must 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:

COMMERCIAL GENERAL LIABILITY

- i. How, when and where the "occurrence" or offense took place;
 - ii. The names and addresses of any injured persons and witnesses; and
 - iii. 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 the additional insured, the additional insured must:
 - i. Immediately record the specifics of the claim or "suit" and the date received; and
 - ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. The additional insured must 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.
- d. The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of other insurance which would cover the additional insured for a loss we cover. However, this condition does not affect whether this insurance provided to the additional insured is primary to that other insurance available to the additional insured which covers that person or organization as a named insured.

- 4. The following is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR ARCHITECTS, ENGINEERS AND SURVEYORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. Non-Owned Watercraft – 75 Feet Long Or Less B. Who Is An Insured – Unnamed Subsidiaries C. Who Is An Insured – Retired Partners, Members, Directors And Employees D. Who Is An Insured – Employees And Volunteer Workers – Bodily Injury To Co-Employees, Co-Volunteer Workers And Retired Partners, Members, Directors And Employees E. Who Is An Insured – Newly Acquired Or Formed Limited Liability Companies F. Blanket Additional Insured – Controlling Interest G. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers | <ul style="list-style-type: none"> H. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Premises I. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations J. Incidental Medical Malpractice K. Medical Payments – Increased Limit L. Amendment Of Excess Insurance Condition – Professional Liability M. Blanket Waiver Of Subrogation – When Required By Written Contract Or Agreement N. Contractual Liability – Railroads |
|---|---|

PROVISIONS

A. NON-OWNED WATERCRAFT – 75 FEET LONG OR LESS

1. The following replaces Paragraph (2) of Exclusion **g., Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:
 - (2) A watercraft you do not own that is:
 - (a) 75 feet long or less; and
 - (b) Not being used to carry any person or property for a charge;
2. The following replaces Paragraph 2.e. of **SECTION II – WHO IS AN INSURED**:
 - e. Any person or organization that, with your express or implied consent, either

uses or is responsible for the use of a watercraft that you do not own that is:

- (1) 75 feet long or less; and
- (2) Not being used to carry any person or property for a charge;

B. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

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

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and

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- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a. A limited liability company;
- b. An organization other than a partnership, joint venture or limited liability company; or
- c. A trust;

as indicated in its name or the documents that govern its structure.

C. WHO IS AN INSURED – RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph 2. of SECTION II – WHO IS AN INSURED:

Any person who is your retired partner, member, director or "employee" that is performing services for you under your direct supervision, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no such retired partner, member, director or "employee" is an insured for:

(1) "Bodily injury":

- (a) To you, to your current partners or members (if you are a partnership or joint venture), to your current members (if you are a limited liability company) or to your current directors;
- (b) To the spouse, child, parent, brother or sister of that current partner, member or director 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 retired partners, members, directors or "employees", other than a doctor. Any such retired partners, members, directors or "employees" 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) "Personal injury":

- (a) To you, to your current or retired partners or members (if you are a partnership or joint venture), to your current or retired members (if you are a limited liability company), to your other current or retired directors or "employees" 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 current or retired partner, member, director, "employee" or "volunteer worker" as a consequence of Paragraph (2)(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 (2)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(3) "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 retired partners, members or directors, your current or retired "employees" or "volunteer workers", any current partner or member (if you are a partnership or joint venture), or any current member (if you are a limited liability company) or current director.

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D. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – BODILY INJURY TO CO-EMPLOYEES, CO-VOLUNTEER WORKERS AND RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

Paragraphs **(1)(a)**, **(b)** and **(c)** above do not apply to "bodily injury" to a current or retired co-"employee" while in the course of the co-"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to your other "volunteer workers" or retired partners, members or directors while performing duties related to the conduct of your business.

E. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

The following replaces Paragraph **3.** of **SECTION II – WHO IS AN INSURED**:

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, 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:

- (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or
- (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it;

- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

For the purposes of Paragraph **1.** of Section **II – Who Is An Insured**, each such

organization will be deemed to be designated in the Declarations as:

- a. A limited liability company;
 - b. An organization other than a partnership, joint venture or limited liability company; or
 - c. A trust;
- as indicated in its name or the documents that govern its structure.

F. BLANKET ADDITIONAL INSURED – CONTROLLING INTEREST

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

Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:

- a. Such financial control; or
- b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

The insurance provided to such person or organization does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

2. The following is added to Paragraph **4.** of **SECTION II – WHO IS AN INSURED**:

This paragraph does not apply to any premises owner, manager or lessor that has financial control of you.

G. BLANKET ADDITIONAL INSURED – MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS

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

Any person or organization that is a mortgagee, assignee, successor or receiver and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to its liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage" or "personal and advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed,

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subsequent to the signing of that contract or agreement; and

- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

- a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such person or organization does not apply to:
 - (1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or
 - (2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

H. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

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

Any governmental entity that has issued a permit or authorization with respect to premises owned or occupied by, or rented or loaned to, you and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of any of the following for which that governmental entity has issued such permit or authorization: advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away

openings, sidewalk vaults, elevators, street banners or decorations.

I. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

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

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

J. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

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

2. The following replaces the last paragraph of Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

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:

- (a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician, paramedic, athletic trainer, audiologist, dietician, nutritionist,

occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) 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.

3. The following replaces the last sentence of Paragraph 5. of **SECTION III – LIMITS OF INSURANCE**:

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

4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis,

that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

K. MEDICAL PAYMENTS – INCREASED LIMIT

The following replaces Paragraph 7. of **SECTION III – LIMITS OF INSURANCE**:

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, and will be the higher of:
 - a. \$10,000; or
 - b. The amount shown in the Declarations of this Coverage Part for Medical Expense Limit.

L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY

The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a written contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed; subsequent to the signing of that contract or agreement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED PERSON OR ORGANIZATION – NOTICE OF
CANCELLATION, NONRENEWAL OR MATERIAL
LIMITATION OF COVERAGE PROVIDED BY US**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION:	Number of Days Notice:	30
WHEN WE DO NOT RENEW (Nonrenewal):	Number of Days Notice:	30
MATERIAL LIMITATION OF COVERAGE:	Number of Days Notice:	30

PERSON OR ORGANIZATION: AS REQUIRED BY WRITTEN CONTRACT

ADDRESS: AS REQUIRED BY WRITTEN CONTRACT

PROVISIONS

- A.** If we cancel this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for Cancellation in the Schedule above, we will mail notice of cancellation to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for Cancellation in such Schedule before the effective date of cancellation.
- B.** If we do not renew this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for When We Do Not Renew (Nonrenewal) in the Schedule above, we will mail notice of nonrenewal to the person or organization shown

in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for When We Do Not Renew (Nonrenewal) in such Schedule before the effective date of nonrenewal.

- C.** If we add a material limitation on the coverage provided by this policy, and a number of days is shown for Material Limitation Of Coverage in the Schedule above, we will mail notice of such limitation to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for Material Limitation Of Coverage in such Schedule before the effective date of such limitation.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT – FLORIDA

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| A. BROAD FORM NAMED INSURED | H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT |
| B. BLANKET ADDITIONAL INSURED | I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT |
| C. EMPLOYEE HIRED AUTO | J. PERSONAL PROPERTY |
| D. EMPLOYEES AS INSURED | K. AIRBAGS |
| E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS | L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS |
| F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS | M. BLANKET WAIVER OF SUBROGATION |
| G. WAIVER OF DEDUCTIBLE – GLASS | N. UNINTENTIONAL ERRORS OR OMISSIONS |

PROVISIONS

A. BROAD FORM NAMED INSURED

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

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. 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.

B. BLANKET ADDITIONAL INSURED

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

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect

during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

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

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph **b. in B.5., Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

- b.** For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

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

D. EMPLOYEES AS INSURED

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

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph **A.2.a.(2)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

- (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph **A.2.a.(4)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph **B.7., Policy Period, Coverage Territory**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

- (5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30

days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

- (a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

- (i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

- (ii) Neither you nor any other involved "insured" will make any settlement without our consent.

- (iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

- (iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph **C., Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

- (v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph **C., Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

- (b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess contingent or on any other basis.

- (c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph **D.**, **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible applies under Specified Causes of Loss or Comprehensive coverage for "loss" to glass used in the windshield.

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph **A.4.b.**, **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph **A.4.a.**, **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph **A.4.**, **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and
- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph **B.3.**, **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
 - b. The airbags are not covered under any warranty; and
 - c. The airbags were not intentionally inflated.
- We will pay up to a maximum of \$1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph **A.2.a.**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph **A.5., Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated

by such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

PROVISIONS

1. The following is added to Paragraph **A.1.c., 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 between you and that person or organization, 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 the first named insured when the written contract or agreement between you and that person or organization, 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED PERSON OR ORGANIZATION – NOTICE OF CANCELLATION, NONRENEWAL OR MATERIAL LIMITATION OF COVERAGE PROVIDED BY US

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION:	Number of Days Notice:	30
WHEN WE DO NOT RENEW (Nonrenewal):	Number of Days Notice:	30
MATERIAL LIMITATION OF COVERAGE:	Number of Days Notice:	30

PERSON OR ORGANIZATION: AS REQUIRED BY WRITTEN CONTRACT

ADDRESS: AS REQUIRED BY WRITTEN CONTRACT
TAMPA FL 33634

PROVISIONS

- A.** If we cancel this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for Cancellation in the Schedule above, we will mail notice of cancellation to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for Cancellation in such Schedule before the effective date of cancellation.
- B.** If we do not renew this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for When We Do Not Renew (Nonrenewal) in the Schedule above, we will mail notice of nonrenewal to the person or organization shown

in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for When We Do Not Renew (Nonrenewal) in such Schedule before the effective date of nonrenewal.

- C.** If we add a material limitation on the coverage provided by this policy, and a number of days is shown for Material Limitation Of Coverage in the Schedule above, we will mail notice of such limitation to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for Material Limitation Of Coverage in such Schedule before the effective date of such limitation.

POLICY NUMBER: UB-5X489557

NOTICE OF CANCELLATION TO DESIGNATED PERSONS OR ORGANIZATIONS

The following is added to PART SIX – CONDITIONS :

Notice Of Cancellation To Designated Persons Or Organizations

If we cancel this policy for any reason other than non-payment of premium by you, we will provide notice of such cancellation to each person or organization designated in the Schedule below. We will mail or deliver such notice to each person or organization at its listed address at least the number of days shown for that person or organization before the cancellation is to take effect.

You are responsible for providing us with the information necessary to accurately complete the Schedule below. If we cannot mail or deliver a notice of cancellation to a designated person or organization because the name or address of such designated person or organization provided to us is not accurate or complete, we have no responsibility to mail, deliver or otherwise notify such designated person or organization of the cancellation.

SCHEDULE

Name and Address of Designated Persons or Organizations:	Number of Days Notice
ANY PERSON OR ORGANIZATION WITH WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN , BUT ONLY IF: 1. YOU SEE TO IT THAT WE RECEIVE A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND 2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS ENDORSEMENT. ADDRESS: THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US.	30

All other terms and conditions of this policy remain unchanged.

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

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No.

Endorsement No.
Premium \$

Insurance Company

Countersigned by _____

EXCESS FOLLOW-FORM AND UMBRELLA LIABILITY INSURANCE

THIS POLICY, INPART, 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 Follow-Form And Umbrella Liability

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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.
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.

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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 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

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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
 - (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

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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, 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

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- (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.

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

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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 preceding 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;
- 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

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- 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

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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.

- 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":

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- 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".

- 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;

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- 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

(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.

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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.

DESIGNATED PERSON OR ORGANIZATION – NOTICE OF CANCELLATION, NONRENEWAL OR MATERIAL LIMITATION OF COVERAGE PROVIDED BY US

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION:	Number of Days Notice:	30
WHEN WE DO NOT RENEW (Nonrenewal):	Number of Days Notice:	30
MATERIAL LIMITATION OF COVERAGE:	Number of Days Notice:	30

PERSON OR ORGANIZATION: AS PER WRITTEN CONTRACT

ADDRESS: AS REQUIRED BY WRITTEN CONTRACT

PROVISIONS

- A.** If we cancel this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for Cancellation in the Schedule above, we will mail notice of cancellation to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for Cancellation in such Schedule before the effective date of cancellation.
- B.** If we do not renew this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for When We Do Not Renew (Nonrenewal) in the Schedule above, we will mail notice of nonrenewal to the person or organization shown

in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for When We Do Not Renew (Nonrenewal) in such Schedule before the effective date of nonrenewal.

- C.** If we add a material limitation on the coverage provided by this policy, and a number of days is shown for Material Limitation Of Coverage in the Schedule above, we will mail notice of such limitation to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for Material Limitation Of Coverage in such Schedule before the effective date of such limitation.



Berkshire Hathaway
Specialty Insurance

ENDORSEMENT 13

This endorsement, effective 12:01AM: **January 1, 2025**
Forms a part of Policy No.: **42-EPP-306878-07**
Issued to: **Ardurra Group, Inc.**
By: **National Fire & Marine Insurance Company**

NOTICE OF CANCELLATION LIMITED TO EMAIL NOTIFICATION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

**PROFESSIONAL FIRST - ARCHITECTS, ENGINEERS & CONSULTANTS
PROFESSIONAL LIABILITY POLICY**

In consideration of the premium for this Policy, it is hereby understood and agreed that:

1. In the event this policy is cancelled by the **Insurer** or by the **Named Insured** prior to the expiration date as shown on the Declarations, a thirty (30) day notice of such cancellation will be provided if the **Named Insured** is under an existing contractual obligation to notify a certificate holder when this Policy is cancelled and has provided the following either directly or indirectly through its broker of record:
 - a. The name of the entity shown on the certificate; and
 - b. A contact at such entity and the email address of such entity where notification may be sent.

This provision does not apply if the cancellation is due to nonpayment of premium to the **Insurer** or to a finance company authorized to cancel the Policy.

2. It is understood and agreed that in the event this policy is cancelled by the **Insurer** for nonpayment of premium, a ten (10) day notice of such cancellation will be provided if the **Named Insured** is under an existing contractual obligation to notify a certificate holder when this policy is cancelled for nonpayment of premium and has provided the following either directly or indirectly through its broker of record:
 - a. The name of the entity shown on the certificate; and
 - b. A contact at such entity and the email address of such entity where notification may be sent.
3. Such notices of cancellation will be provided via e-mail to the certificate holders. Proof of the

Insurer emailing the notices of cancellation, using the information provided by the **Named Insured**, will serve as proof that the **Insurer** has fully satisfied its obligations under this endorsement.

Such notices of cancellation are provided on an informational basis and solely to assist the **Named Insured** in meeting their contractual notice requirements to such parties. The **Insurer's** failure to provide such advance notice to the certificate of insurance holder(s) will not extend any policy cancellation date, negate any cancellation of the policy, or grant, alter, or extend any rights or obligations under this Policy and the **Insurer** shall have no liability for failure to provide the notices herein.

All other terms and conditions of this Policy remain unchanged.

POLICY NUMBER: UB-5X489557

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

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

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS
WAIVER.

Any person or organization for which the employer has agreed by written contract, executed prior to loss, may execute a waiver of subrogation. However, for purposes of work performed by the employer in Missouri, this waiver of subrogation does not apply to any construction group of classifications as designated by the waiver of right to recover from others (subrogation) rule in our manual.