

WHEN RECORDED RETURN TO:


Skamania County Public Works

PO Box 1009

Stevenson, WA

98646

Skamania County, WA **2022-001258**
 Total:\$247.50
 AGLS 06/21/2022 11:33 AM
 Pgs=45
 Request of: SKAMANIA COUNTY PUBLIC WORKS COI



00013418202200012580450451

Please print or type information **Washington State Recorder's Cover Sheet** (RCW 65.04)

DOCUMENT TITLE(S) (or transaction contained therein) (all areas applicable to your document must be filled in)
 Non-Exclusive Franchise Agreement

REFERENCE NUMBER(S) of Documents assigned or released:

Additional numbers on page ____ of document.

GRANTOR(S):

1. Skamania County Public Works 2. _____

3. _____ 4. _____

Additional names on page ____ of document.

GRANTEE(S):

1. NocTel Communications, Inc 2. _____

3. _____ 4. _____

Additional names on page ____ of document.

LEGAL DESCRIPTION (Abbreviated: i.e. Lot, Block, Plat or Section, Township, Range, Quarter):

N/A Road Right of Ways

Complete legal on page ____ of document.

Assessor's Property Tax Parcel #

Additional parcel numbers on page ____ of document.

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information.

"I am signing below and paying an additional \$50.00 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

Signature of Requesting Party

Note to Submitter: Do NOT sign above nor pay additional \$50 fee if the document meets margin/formatting requirements.

AFTER RECORDING RETURN TO:
Skamania County Public Works

Tax Parcel Number: N/A Road Right of Way

NONEXCLUSIVE FRANCHISE AGREEMENT
NocTel Communications, Inc.

Section 1. Franchise

1.1 Definitions. Terms as used throughout this Franchise shall have the same meanings given in Skamania County Code. Words not otherwise defined shall be given their common and ordinary meaning.

1.2 Grant of Franchise. Skamania County, a Washington municipal corporation and subdivision of the State (hereinafter "County") hereby grants **NocTel Communications, Inc.** (organized under the laws of the State of Washington) (hereinafter "Grantee"), a nonexclusive Franchise for the installation, construction, operation, and maintenance of telecommunications facilities within the rights of way of unincorporated Skamania County. The following conditions shall apply to the Franchise granted herein:

- A. The Franchise granted shall not convey any right, title or interest in the rights of way but shall be deemed a Franchise only to use and occupy the rights of way for the limited purposes and term stated herein. The Franchise shall not convey any right, title, or interest in rights of way that the County has an interest in only through agreement and does not possess an easement in the right of way.
- B. The Franchise granted shall not authorize or excuse Grantee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use the rights of way.
- C. The Franchise granted shall not be construed as any warranty of title or interest in any right of way; it does not provide the Grantee with any interest in any particular location within the right of way; and it does not confer rights other than as expressly provided in the grant hereof.
- D. No act, event, occurrence or thing shall give Grantee any rights to occupy or use the rights of way permanently nor shall operate as an estoppel against the County.
- E. **This Franchise is granted subject to the terms and conditions contained in Chapter 5 Skamania County Code, Installation of Utilities on Skamania County rights of way, and the Skamania County Resolution 2010-15, hereinafter the "Ordinance," as they are now written or as later amended, which shall apply in addition to the provisions of this Franchise.**
- F. The matters contained in Grantee's Franchise application and all subsequent

applications or proposals for extensions or renewals of this Franchise, except as inconsistent with law, regulations or local ordinance, are hereby incorporated by reference.

- G. This Franchise is being granted for Grantee's telecommunications facilities.
- H. Grantee shall comply with all applicable state and federal laws, including regulatory requirements of the WUTC, if applicable to Grantee.
- I. This grant of authority to provide the services described herein shall be limited solely to those services expressly described and no others. In the event of any ambiguity, this Franchise agreement shall be strictly construed as to the rights granted herein.

1.3 Term of Franchise. In accordance with RCW 36.55.060, the term of this Nonexclusive Franchise shall be fifty (50) years from the date of this Franchise. This Franchise may be renewed, at the sole discretion of the County by resolution of the Board of County Commissioners, for one additional fifty (50) year period upon the written request of Grantee, such request to be submitted not more than two (2) years nor less than one hundred eighty (180) days prior to the expiration of the initial fifty (50) year term.

1.4 Nonexclusive Franchise. The Franchise granted herein shall be nonexclusive. The County specifically reserves the right to grant, at any time, such rights, permits, licenses and/or franchises to other Persons to use the rights of way for similar or different purposes allowed hereunder as the County deems appropriate. Subject to this Franchise, Grantee shall not prevent or prohibit the County from constructing, altering, maintaining or using any of said rights of way, or affect its jurisdiction over them or any part of them, the County having full power and authority to make all necessary changes, relocation, repairs, or maintenance of said rights of way as the County deems appropriate.

1.5 Renewal Applications. If Grantee desires to renew this Franchise, Grantee shall send written notice to Skamania County Public Works in accordance with paragraph 1.3 above., and shall sign and execute a new franchise agreement on the original form, or on a form provided by Skamania County.

1.6 Renewal Determinations. Within 120 business days after receiving a signed copy of the new franchise agreement executed by the Grantee, the BOCC shall make a determination on behalf of the County granting or denying the renewal application in whole or in part. If the renewal application is denied, the determination shall include the reasons for non-renewal. The criteria below shall apply when determining whether to grant or deny the application, and the Board may also consider Grantee's compliance with the requirements of this Franchise.

- (1) The financial and technical ability of the applicant to fulfill its obligations under a license;
- (2) The legal status of the applicant;
- (3) The capacity of the rights-of-way to accommodate the applicant's facilities;
- (4) The capacity of the rights-of-way to accommodate additional telecommunications facilities and

cable facilities if the application is granted;

(5) The damage or disruption, if any, to public or private facilities, improvements, services, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same;

(6) The public interest in minimizing the cost and disruption of construction within the rights-of-way;

(7) The service that applicant will provide to the region;

(8) The effect, if any, on general public health, safety and welfare in the county's sole opinion if the application is granted;

(9) The availability of alternate routes or locations for the proposed facilities;

(10) Applicable federal, state and local laws, regulations, rules and policies;

(11) Such other factors as may demonstrate that the grant to use the rights-of-way will serve the community interest.

1.7 Obligation to Cure as a Condition of Renewal. This Franchise shall not be renewed until any ongoing violations or defaults in Grantee's performance of this Franchise, of the requirements of all applicable laws, statutes, codes, ordinances, rules and regulations have been cured; or a plan detailing the corrective action to be taken by Grantee has been approved by the Administrator. Failure to comply with the terms of an approved plan shall be grounds for non-renewal or immediate revocation of this Franchise.

1.8 Franchise Territory. The Franchise territory shall be that territory set out in Exhibit A attached hereto and made a part hereof. The Franchise granted herein does not give or grant to Grantee the right, privilege or authority to install telecommunications facilities at any other location in the County.

1.9 Amendment of Franchise for Territory Changes. If Grantee desires to extend or locate its utilities in rights of way which are not included in this Franchise, Grantee shall apply in writing for an amendment to the Franchise. If the County orders Grantee to locate or relocate its telecommunications facilities in rights of way not included in this Franchise, the County shall grant a Franchise amendment for the territory change without further application.

1.10 Right to Require Removal of Property. At the expiration of this Franchise, and if Grantee has not obtained a new franchise from the County, the County shall have the right to require Grantee to remove all or any part of Grantee's facilities under this Franchise from the rights of way and restore the affected area, all at Grantee's expense. Removal and restoration shall be to the satisfaction of the County Engineer. If Grantee fails to do so, the County may perform the work or cause it to be done and collect the cost thereof from Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all property of Grantee effective upon filing of the lien with the Skamania County Auditor.

Section 2. Operation in Rights of Way

2.1 Construction or Alteration.

- A. Telecommunications facilities shall be constructed, operated and maintained in accordance with this Franchise and all applicable Federal, State and County codes, rules and regulations, including, but not limited to, Skamania County Code. Grantee shall comply with all lawful County resolutions and ordinances regarding the acquisition of permits and/or such other items as may be required in order to construct, operate, and maintain its telecommunications facilities. Grantee shall pay to the County all reasonable costs of granting or enforcing the provisions of this Franchise including, but not limited to, County fees related to the issuance of utility permits.
- B. Grantee shall not construct, maintain, repair, relocate, or remove its facilities within the rights of way without obtaining a utility permit. Applications for utility permits to construct Grantee's facilities shall be in compliance with the provisions of Skamania County Code. As part of the permitting process, the County may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such rights of way, proper restoration of such rights of way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the right of way. All work authorized and required hereunder shall be done in a safe, thorough, and workmanlike manner. All installations of equipment shall be permanent in nature, durable, and installed in accordance with good engineering practices.
- C. Within limits reasonably related to the County's role in protecting public health, safety and welfare, the County may require that telecommunications facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular right of way; may deny access if Grantee is not willing to comply with County's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the County, and may require Grantee to cooperate with others to minimize adverse impacts on the rights of way through joint trenching and other arrangements.

2.2 Non-Interference. In installing, constructing, operating, repairing, and maintaining its telecommunications facilities, Grantee shall not interfere with the use of the rights of way by the County, the general public or other persons authorized to use or be present in or upon the rights of way. Work in the right of way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's telecommunication facilities shall be constructed and maintained in such manner as not to interfere with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the rights of way by, or under, the County's authority. In the event of such interference, the County may require the removal or relocation of Grantee's telecommunications facilities from the property in question at Grantee's expense.

2.3 Construction Schedule and Notice of Work. Unless otherwise provided herein, Grantee or any Person acting on Grantee's behalf, shall comply with the notice provisions set out in Skamania County Code.

2.4 Traffic Control. Grantee shall comply with the traffic control provisions as required by the County Engineer or set out in Skamania County Code.

2.5 Relocation or Removal of Telecommunications Facilities. In the relocation or removal of Grantee's telecommunications facilities, Grantee shall comply with the following:

(1) Within ninety days following written notice from the county, a permittee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any utility facilities within the rights-of-way whenever the engineer shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(a) The construction, repair, maintenance or installation of any county, state, federal and/or city funded project;

(b) The operations of the county or other governmental entity in or upon the rights-of-way.

(2) The engineer may extend the ninety-day time period for good cause. All work must be accomplished by the same permitting process as for new installations.

(3) The county may also remove or relocate any utility facilities located within the rights-of-way that the county determines to be necessary, appropriate or useful in response to any public health or safety emergency. All such removal or relocation shall be at the sole expense of the permittee.

(4) Notwithstanding reinforcement or protection otherwise provided, a permittee shall be responsible for the security of each existing pipeline and utility facility within a road construction zone. Where there are unusual utility hazards or where heavy construction equipment will be used, the permittee shall provide adequate temporary protection. In replacing the roadway, the design should give due consideration to the protection of previously existing utility facilities in the roadway section without sacrificing the geometrics of roadway design.

(5) If a permittee is required to relocate or remove its utility facilities from the rights-of-way and fails to do so within the designated time set out by the engineer, the county may cause such to occur and charge the permittee for the costs incurred.

2.6 Consistency with Designated Use. Notwithstanding this Franchise to use County rights of way, no right of way shall be used by Grantee if the County determines that such use is inconsistent with: (1) the terms and conditions of dedication or establishment of the right of way; (2) the present use of the right of way; or (3) applicable federal, state or local laws.

2.7 Restoration of Rights of Way. Grantee shall comply with the restoration of rights of way conditions as follows:

(1) When a permittee, or any person acting on its behalf, does any work in or affecting any rights-of-way, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to the condition required by applicable county road standards. As used in this

section, "promptly" means as required by the engineer in the reasonable exercise of the engineer's discretion.

(2) If weather or other conditions do not permit the complete restoration required hereunder, the permittee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the permittee's sole expense, and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(3) A permittee or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way.

(4) All restoration work conducted under this section shall be subject to final inspection and approval by the engineer.

2.8 Restoration of Improvements. Upon completion of any construction work, Grantee shall make restoration in accordance with the following:

(1) Upon completion of any construction work, the permittee shall promptly repair, but in no event longer than such time as may be established by the county during permit review, any and all public and private property, improvements, landscaping, fixtures, structures and facilities which are damaged during the course of construction, restoring the same to as near the original condition before construction commenced.

(2) All roadway crossings shall be done by means of boring or pushing (untrenched installation). Opening of the roadway surface shall not be permitted unless it has been determined by the engineer that boring or pushing cannot be done.

(3) When a trenched crossing is approved, restoration shall be in accordance with one of the following guidelines:

(a) Controlled density fill (CDF) shall be required as a backfill material; or

(b) Select backfill, meeting the requirements of the standard specifications may be used. Backfill shall be compacted to at least ninety-five percent density and placed in a maximum of six-inch lifts. If the capability can be demonstrated, based upon compaction equipment or quality of backfill to achieve ninety-five percent density in thicker lifts, then the depth of backfill lifts may be increased as demonstrated to a maximum of one-foot.

(c) Native material may be used as backfill material when standard acceptable tests allow, and when standard tests demonstrate the material meets the requirements set forth in the standard specifications. The requirements for compaction and placement in subsection B above also apply when native material is used.

(4) After backfill and compaction of accepted method a, b, or c above, an immediate cold patch shall be placed and maintained in a manner acceptable to the engineer. A permanent hot mix patch of 0.17 feet minimum thickness or the existing asphalt thickness, whichever is the greater, shall be placed and sealed within thirty days, unless an extension is granted by the engineer.

(5) All utility facilities placed parallel to and within the pavement structure shall be required to overlay the full road with a minimum 0.10 feet of asphalt or asphalt concrete. Any exceptions to this overlay requirement will be on a case by case basis, subject to approval by the engineer, and

considering the existing conditions of the pavement. Cement concrete pavement shall be restored consistent with the standard specifications. Any cement concrete pavement affected by any construction work shall be repaired by replacement of the affected pavement panels.

(6) When conditions are warranted, the engineer may require all or a portion of the trench be backfilled with a combination of select backfill or CDF. Conditions that may warrant a combination use may be, but not limited to, the depth of trench required, the type of material that is being excavated and crossings on arterial and collector roadways.

(7) When conditions are warranted, the engineer may require financial security for a minimum of ten years in the form of a bond, irrevocable letter of credit or irrevocable assignment of interest in a bank account for all or a portion of restoration. Conditions that may warrant this may be, but not limited to, the placement of utility facilities in or near sensitive areas and areas of continuous settlement.

2.9 Rights of Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the right of way or on other public property for one (1) year. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the County may, after 48 hours prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. The Grantee shall pay the County within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment.

2.10 Telecommunications Facilities Maps. Grantee shall provide the County with telecommunications facilities maps as required by the County Engineer.

2.11 As-Built Drawings. Upon request by the County Engineer, Grantee shall provide as-built drawings.

2.12 Aesthetic and Scenic Considerations. Grantee shall comply with all requirements within the National Scenic Area and shall obtain any necessary permits through the Skamania County Community Development Department.

2.13 Damage to Grantee's Telecommunications Facilities. To the extent permitted by Washington law, the County shall not be liable for any damage to or loss of any of Grantee's telecommunications facilities or any interruption in telecommunications services within the rights of way as a result of or in connection with any emergency removal or relocation, public works, public improvements, construction, excavation, grading, filling, or work of any kind in the rights of way by or on behalf of the County or any person under contract with the County, including, but not limited to, damages, losses, or liability arising from the issuance or approval by the County of a permit, license or franchise to any third party; except for damage caused by the sole negligence of the County.

2.14 Location of Telecommunications Facilities.

(1) Utility installations shall be located to minimize need for later adjustment to

accommodate future roadway improvements and to permit access to servicing such installations with minimum interference to roadway traffic. The county shall make available to permittees a copy of its six-year transportation improvement program (or capital facilities and transportation plan where required), in order to minimize both utility customer and road user inconvenience should future road improvements (on existing or new alignment) require adjustment or relocating of the utility facilities. Utility installations shall also be located to minimize impacts to critical areas, as defined in Ch. 19 SCC.

(2) The utility company shall be responsible to consider a minimum clear zone distance in all new construction, reconstruction or relocation of all overhead facilities and their appurtenances and underground facilities. Clear zone shall be defined as the roadside area at the edge of the traveled lane that is available for safe use by errant vehicles. The available clear zone is the distance, measured in feet, normal to the roadway beginning at the edge of the traveled lane to the closest part of any fixed object or nontraversable obstacles as defined in the WSDOT Design Manual (M 22-01) and the 1990 AASHTO "A Policy on Geometric Design of Highways and Streets" (Green Book).

(3) Survey control monuments including existing monuments disturbed, destroyed or removed during construction, shall be placed or replaced by a registered surveyor, at the expense of the permittee, in accordance with recognized good practice of land surveying, and in conformance with all applicable state law and state and local regulations.

Consistent with any general County undergrounding policy or program now or hereafter developed, the County may require Grantee's participation in County-imposed undergrounding or related requirements at Grantee's expense. Grantee agrees to coordinate its underground installation and planning activities with the County's underground plan and policies.

2.15 Hazardous Substances.

- A. Grantee shall comply with any and all applicable laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's telecommunications facilities in the rights of way.
- B. Grantee agrees to indemnify the County against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the County arising out of a release of hazardous substances caused by Grantee's telecommunications facilities.

2.16 Notice to Private Property Owners Grantee shall give notice to private property owners of work on or adjacent to private property.

2.17 County Use of Trenching. The Grantee and the County recognize that situations may occur in the future where the County may desire to place its own cable or conduit in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the County in any construction by the Grantee that involves trenching or boring, provided that the County has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the County to lay its cable or conduit in the Grantee's trenches and bores, provided the County shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The County shall be responsible for maintaining its respective cable or conduit buried in

the Grantee's trenches and bores under this paragraph.

2.18 Movement of Telecommunications System Facilities for Other Franchise Holders. If any removal, replacement, modification or disconnection of the telecommunications system is required to accommodate the construction, operation or repair of the facilities or equipment of another County franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party.

2.19 Work of Contractors and Subcontractors. Grantee's contractors and sub-contractors shall be licensed and bonded in accordance with state law. Work by contractors and sub-contractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and sub-contractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages and for correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, sub-contractors or other persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

2.20 Inspection of Construction and Facilities. The County may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. The County shall have the right to charge generally applicable inspection fees therefor. If an unsafe condition is found to exist, the County, in addition to taking any other action permitted under applicable law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the County establishes. The County has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefor.

2.21 Stop Work.

A. On notice from the County that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the County, or in violation of the terms of any applicable permits, laws, regulations, ordinances, or standards, the work shall immediately stop.

B. The stop work order shall:

1. Be in writing.
2. Be given to the Person doing the work, or posted on the work site.
3. Be sent to Grantee by overnight delivery at the address given herein.
4. Indicate the nature of the alleged violation or unsafe condition.
5. Establish conditions under which work may be resumed.

Section 3. Financial Provisions

3.1 Financial Security. The County may require financial security to ensure completion of construction before any construction work is started by Grantee. Depending on the nature of the project planned by Grantee a Permit issued by the Public Works Department before construction starts may require a bond.

3.2 Indemnity and Hold Harmless. Grantee shall indemnify, defend, and hold the County, its appointed and elected officials, agents, officers, and employees harmless from and against any and all claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including all costs and attorney's fees, made against the County, its agents, officers, or employees on account of injury, harm, death, or damage to persons or property arising out of or in connection with Grantee's construction, operation, use, or maintenance of Grantee's Facilities, except that such indemnification shall not extend to nor include any liability due to the sole negligence of the County, its elected and appointed officials, agents, officers, and employees acting within the scope of their employment.

Grantee shall indemnify, defend, and hold the County, its appointed and elected officials, agents, officers, and employees harmless from and against any and all claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including all costs and attorney's fees, made against the County on account of violation of any environmental laws applicable to the Facilities, or from any release of petroleum products or hazardous substances on or from the Facilities, except for any such claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including costs and attorney's fees caused by the sole negligence of the County, its elected and appointed officials, agents, officers or employees acting within the scope of their employment. This indemnity includes, but is not limited to: (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; and (d) liability for any costs of investigation, abatement, correction, or cleanup; or fines, penalties, or other damages arising under any environmental laws.

Grantee's indemnification obligations include assuming potential liability for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and sub-contractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the County arising by virtue of Grantee's exercise of the rights set forth in this Agreement. The obligations of Grantee under this section have been mutually negotiated by the Parties, and Grantee acknowledges that the County would not enter into this Agreement without Grantee's waiver. To the extent required to provide this indemnification and this indemnification only, Grantee waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

In the event any matter (for which the County intends to assert its rights under this Section 3.2) is presented to or filed with the County, the County shall promptly notify Grantee thereof, and

Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such matter as it pertains to Grantee's responsibility to indemnify, defend, and hold harmless the County, its agents, officers, employees and volunteers. In the event any suit or action is started against the County based upon any such matter, the County shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election (subject to approval as set forth below), as it pertains to Grantee's responsibility to indemnify, defend, and hold harmless the County, its agents, officers, or employees. Grantee's selection of legal counsel to defend the County shall be subject to the approval of the Prosecuting Attorney of County; furthermore, Grantee shall exercise its best efforts to provide legal counsel that is acceptable to the Prosecuting Attorney of County. In addition, the Office of the Prosecuting Attorney may participate in the defense of the County in any such litigation without thereby waiving Grantee's indemnity obligations or any other right or protection in this Agreement; and Grantee agrees to cooperate with the Office of the Prosecuting Attorney as necessary in order to facilitate its participation in the litigation.

Acceptance by the County of any work performed by Grantee under this Agreement shall not be grounds for avoidance of this Section 3.2.

The provisions of this Section 3.2 shall survive the termination or expiration of this Agreement.

- 3.3 Insurance.** As a condition of this Franchise, Grantee shall secure and maintain the following liability insurance policies.
- A. Commercial General Liability Insurance, and if necessary, Umbrella Liability Insurance, which will cover bodily injury, property damage, and any other exposure which can be reasonably identified as potentially arising from Grantee's activities within the rights of way. The limit of liability shall not be less than two million dollars (\$2,000,000) each occurrence with a three million dollar (\$3,000,000) aggregate. The County, its elected and appointed officers, officials, employees, agents, and representatives shall be named as additional insureds with respect to activities occurring within its rights of way. Coverage shall be comprehensive with respect to Grantee's activities within the rights-of way and shall include completed operations, explosions, collapse, and underground hazards. Any insurance or self-insurance maintained by the County, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it.
 - B. Business Automobile Liability Insurance for owned, non-owned and hired vehicles with limits of not less than two million dollars (\$2,000,000) per person, two million dollars (\$2,000,000) per accident.
 - C. Workers' Compensation insurance as required by Title 51 RCW and Employer's Liability Coverage with a limit of not less than one million dollars (\$1,000,000).
 - D. The insurance policies required by Section 3.3 shall be maintained at all times by Grantee. The insurer or Grantee shall notify the County at least thirty (30) days

before the policy can be canceled by either party to be mailed to the Skamania County Engineer, 170 NW Vancouver Ave, P.O. Box 1009 Stevenson, WA, 98648 as well as the named insured. Grantee will be obligated to replace or renew the canceled or expiring policy and show proof in the form of a certificate of insurance, at least fifteen (15) days before the expiration or cancellation of the existing policy(ies).

- E. Grantee shall furnish the Real Estate Services Division with properly executed certificates of insurance naming Skamania County as primary, non-contributory, additionally insured, or a signed policy endorsement which shall clearly evidence all insurance required in Section 3.3.
- F. Grantee or its agent will provide a copy of any and all insurance policies specified in this Franchise upon request of the Administrator.
- G. The insurance limits mandated for any insurance coverage required by this Franchise are not intended to be an indication of limits of exposure nor are they limitations on liability or indemnification.
- H. By acceptance of this Franchise, Grantee agrees that failure to procure or maintain the required insurance shall constitute a material breach of this Franchise and that the County may immediately terminate this Franchise or, at the County's discretion, procure or renew such insurance to protect the County's interests and be reimbursed by Grantee for all premiums paid in connection therewith.

3.4 Compensation. The Franchise granted hereunder is subject to the County's right, which is expressly reserved, to annually fix a fair and reasonable compensation for the authorization granted hereunder, and to reimburse the County's costs in connection with administration and oversight of this Franchise, and in connection with reviewing, inspecting, monitoring and supervising the use and occupancy of the rights of way. Nothing herein shall prohibit the County and Grantee from agreeing upon the compensation to be paid.

This Franchise shall not be interpreted to prevent the County from imposing additional lawful conditions, including additional compensation conditions for use of the rights of way, should Grantee provide service other than telecommunications service.

3.5 Reimbursement. Except as provided in Subsection 3.4, Grantee shall reimburse County within thirty (30) calendar days after receipt of written demand for all reasonable amounts paid and costs incurred by the County in relation to this Franchise or the enforcement thereof.

Section 4. Additional Franchise Provisions

4.1 Publication Costs. Grantee shall assume the costs of publication associated with this Franchise as such publication is required by law.

4.2 Vacation.

- A. If the County vacates all or portion of any County rights of way which are subject to

rights granted by this Franchise, and said vacation is for the purpose of acquiring the fee or other property interest in said rights of way for the use of the County in either its proprietary or governmental capacity, the Board may, at its option and by giving forty-five (45) days written notice to Grantee, terminate this Franchise with reference to any County rights of way so vacated, and the County shall not be liable for any damages or loss to Grantee by reason of such termination.

- B. Whenever a County right of way or any portion thereof is vacated upon a finding that it is not useful and the public will be benefited by the vacation, the County may retain an easement in respect to the vacated land for the installation, construction, operation and maintenance of public utilities and services which at the time of the vacation are specifically authorized under this Franchise or physically located on a portion of the land being vacated, but only in accordance with the provisions of RCW 36.87.140. The County shall not be liable for any damages or loss to Grantee by reason of any such vacation.

4.3 Eminent Domain. This Franchise is subject to the power of eminent domain and the right of the Board or the people acting for themselves through the initiative or referendum process to repeal, amend, or modify this Franchise. In any proceeding under eminent domain, this Franchise itself shall have no value.

4.4 Revocation or Termination.

- A. This Franchise may be revoked as provided in the Ordinance after notice, an opportunity to cure, and a hearing as provided in the Ordinance.
- B. In addition to Section 4.4 A. of this Franchise, upon failure of Grantee, after written notice, to perform properly and completely each term, condition, or obligation imposed upon it pursuant to this Franchise, the County may terminate this Franchise.
- C. At the expiration of the term of this Franchise or upon its revocation or termination, the County shall have the right to require Grantee to remove its telecommunications facilities within ninety (90) days from the County rights of way. Grantee shall be liable for any costs incurred in removing any telecommunications facilities of Grantee and restoring any County rights of way. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all rights of way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its facilities. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.
- D. If Grantee fails to remove its telecommunications facilities to the County's satisfaction in the time frame required by the County, the County may perform the work and collect the cost thereof from Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of

- Grantee effective upon filing of the lien with the County Auditor.
- E. A revocation or termination of this Franchise shall not prejudice any other remedy for breach of contract, damages, non-payment or otherwise which the County has under this Franchise or under law.

4.5 Modification. The County and Grantee reserve the right to modify the terms and conditions of this Franchise upon written agreement of both parties to such modification or in the exercise of the County's police power authority or other authority pursuant to applicable laws.

4.6 Franchise Subject to Future County Ordinances and Regulations. Nothing herein shall be deemed to restrict the County's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of the County's police powers in the interest of public safety and for the welfare of the public. The County shall have the authority at all times to control by appropriate regulations the location, elevation, manner of installation, construction and maintenance of any telecommunications facilities by Grantee. Grantee agrees to promptly conform to all such regulations as if they were in effect at the time this Franchise was executed by the County, unless compliance would cause Grantee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any ordinance(s) enacted or action taken under the County's police power authority, such ordinance(s) or other exercise of police power shall take precedence over the provisions set forth herein.

4.7 Assignments or Transfers. In no event shall a sale, lease, sharing, transfer, assignment, or disposal of ownership, interest, or control be approved without the transferee acknowledging the obligations under this agreement, becoming a signatory to this Franchise, and assuming all rights and obligations hereunder; and assuming all other rights and obligations of the transferor to the County.

4.8 Receivership and Foreclosure

- A. At the option of the County, subject to applicable law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy, or other action or proceeding, unless:
1. The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or
 2. The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of this Franchise.
- B. If there is a foreclosure or other involuntary sale of the whole or any part of the property and equipment of Grantee, the County may serve notice of revocation on

Grantee and the purchaser at the sale, and the rights and privileges under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

1. The County has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and
2. The purchaser has covenanted and agreed with the County to assume and be bound by all of the terms and conditions of this Franchise.

4.9 Incorporation and Annexation.

- A. If any rights of way covered by this Franchise are incorporated into the limits of any city or town, this Franchise shall terminate as to any rights of way within the corporate limits of such city or town; but this Franchise shall continue as to County rights of way not incorporated into a city or town.
- B. If, pursuant to Article XI § 3 of the Washington Constitution, territory is stricken or taken from the County and a new county is established from the territory taken from the County, this Franchise shall terminate as to any rights of way within the territory so taken to establish the new county; but this Franchise shall continue as to County rights of way not taken from the County.

4.10 Service of Notice. Except as provided herein, any notices required or permitted to be given under this Franchise shall be deemed properly served when deposited with the United States Postal Service, postage paid, addressed to the party to receive same. Grantee shall promptly notify the County of any change in notice address.

Notice to the County shall be sent to:

Skamania County Public Works
170 NW Vancouver Ave
PO Box 1009
Stevenson, WA 98648

Notice to Grantee shall be sent to:

NocTel Communications, Inc
3242 NE 3rd Ave #230
Camas, WA 98607

4.11 Open Records. The County, including the County's Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. The County may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the County, at the sole expense of Grantee.

4.12 Severability. The parties understand and agree that if a court holds any part, term, or provision of this Franchise to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Franchise did not contain the particular invalid provision. Should the County determine that the severed portions substantially alter the Franchise so that the original intent and purpose of this Franchise no longer exists, the County may, in its sole discretion, terminate this Franchise without cost or penalty.

4.13 Remedies. All remedies and penalties under this Franchise, including termination of this Franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this Franchise, including termination of this Franchise, are not exclusive, and the County reserves the right to enforce the provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity.

4.14 Nonwaiver of Rights. The County and Grantee agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Franchise does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Franchise at a subsequent time.

4.15 Choice of Law. This Franchise has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Franchise shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

4.16 Jurisdiction. Any action at law, suit in equity, or judicial proceeding arising out of this Franchise shall be instituted and maintained only in any of the courts of competent jurisdiction in Skamania County, Washington.

4.17 Context. When consistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

4.18 Entire Agreement. The parties agree that this Franchise is the complete expression of the terms and conditions hereunder, and supersedes all prior agreements or proposals except as specifically set forth herein. Any oral or written representations or understandings not incorporated herein are specifically excluded. This Franchise is executed in duplicate originals and executed by the persons signing below who warrant that they have the authority to execute this Franchise.

4.19 Familiarity with Franchise. The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein.

4.20 Acceptance. Within thirty (30) days after adoption of this Franchise by the Board, this Franchise may be accepted by Grantee by executing this Franchise in duplicate, filing it with the Clerk of the Board, and paying publication costs set out in Sec. 4.1 of this Franchise. Further, the executed Franchise shall be returned accompanied by the required evidence of insurance as provided in Sec. 3.3 of this Franchise, the Financial Security as provided in Sec. 3.1 of this Franchise, and the Security Fund as provided in Sec. 3.4 of this Franchise. In the event Grantee fails to accept this Franchise or fails to comply with all conditions of acceptance as set forth herein within thirty (30) days after adoption by the Board, this Franchise shall be null and void.

ACCEPTED by Grantee this 7th day of June, 2022

ACCEPTANCE:

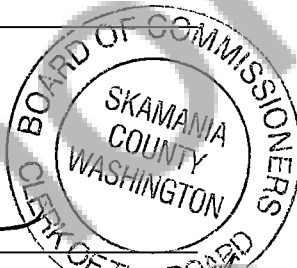
[Signature]
Grantee

By: Cory Schrueth
(Authorized Signatory & Representative)

Its: President

ATTEST:

[Signature]
Board of County Commissioners
Debbie Slack, Clerk of the Board



BOARD OF COMMISSIONERS
for Skamania County, Washington

[Signature]
Chair

[Signature]
Commissioner

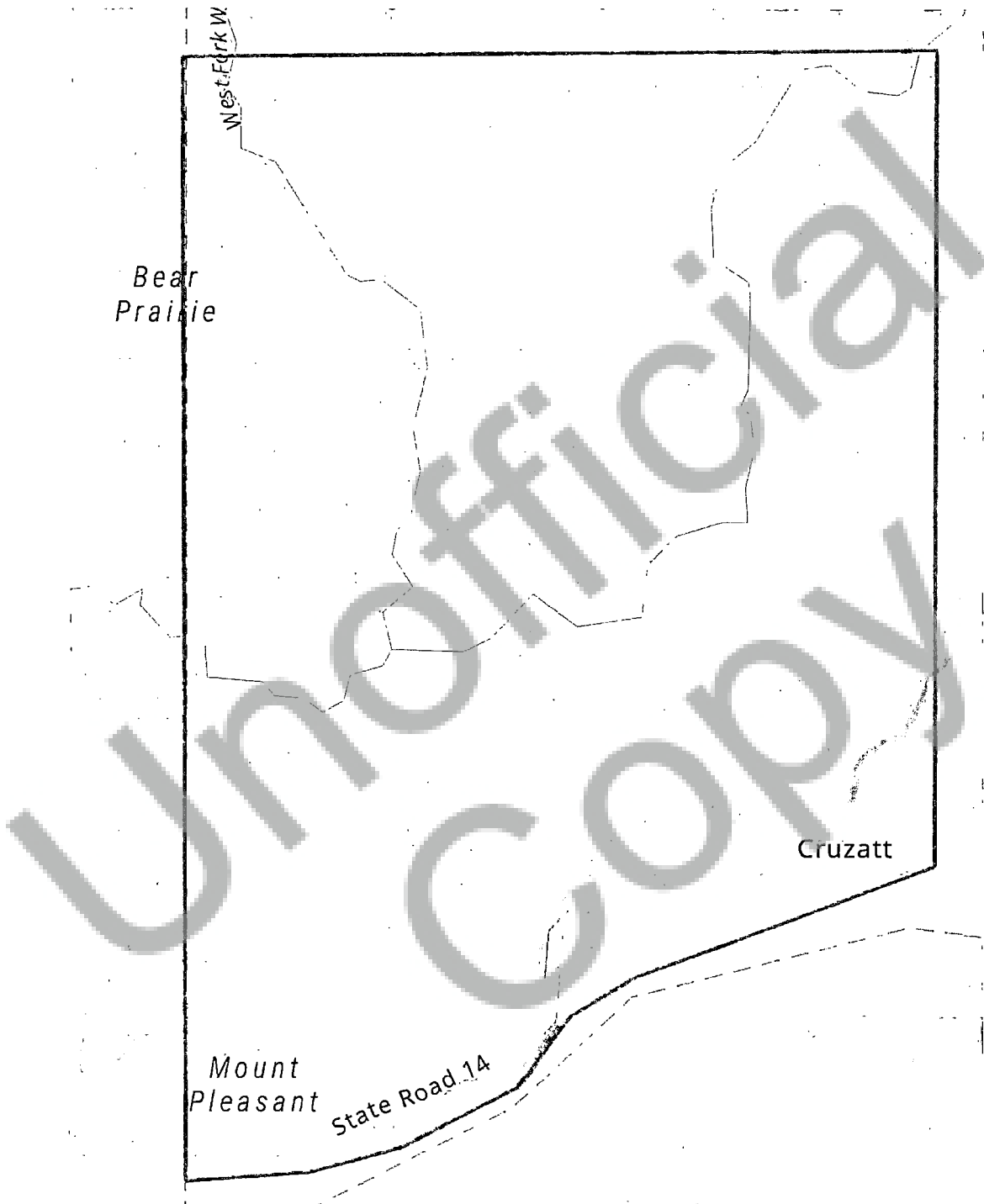
[Signature]
Commissioner

APPROVED AS TO FORM:
Prosecuting Attorney

By: [Signature]
Adam Kick, Prosecutor

Exhibit A

NocTel Fiber Coverage, Southwest Skamania County



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Unofficial
Copy



NOCTCOM-01

W1LMCCOY

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/14/2022

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 AssuredPartners of Oregon, LLC 2000 Pacific Ave Forest Grove, OR 97116	CONTACT NAME: PHONE (A/C, No, Ext): (503) 357-3154 FAX (A/C, No): (503) 716-1022 E-MAIL ADDRESS: info@wscinsurance.com												
INSURER(S) AFFORDING COVERAGE													
INSURED Noctel Communications, Inc 3242 NE 3rd Avenue Camas, WA 98607	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURER A : Sentinel Insurance Company Ltd</td> <td style="width: 20%;">NAIC # 11000</td> </tr> <tr> <td>INSURER B : Hartford Fire Insurance Company</td> <td>19682</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER A : Sentinel Insurance Company Ltd	NAIC # 11000	INSURER B : Hartford Fire Insurance Company	19682	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
INSURER A : Sentinel Insurance Company Ltd	NAIC # 11000												
INSURER B : Hartford Fire Insurance Company	19682												
INSURER C :													
INSURER D :													
INSURER E :													
INSURER F :													

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	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		52SBAAD5170	7/1/2022	7/1/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/PROP AGG \$ 2,000,000 Stop Gap \$ 1,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			52SBAAD5170	7/1/2022	7/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			52SBAAD5170	7/1/2022	7/1/2023	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Professional \$1/M			52TE0338231-21	7/1/2021	7/1/2022	Professional \$ 1,000,000

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

CERTIFICATE HOLDER**CANCELLATION**

Skamania County Public Works
 PO Box 790
 Stevenson, WA 98648

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

Kenzie McCoy



BUSINESS LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

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

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

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

(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. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

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

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. 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".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

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

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

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:

- (1) All expenses we incur.
- (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
- (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
- (5) All costs taxed against the insured in the "suit".
- (6) 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.
- (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

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

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

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

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "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; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

BUSINESS LIABILITY COVERAGE FORM

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

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

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

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

d. Workers' Compensation And Similar Laws

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

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

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

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

This exclusion applies:

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

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

f. Pollution

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

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

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

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

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or

released as part of the operations being performed by such insured, contractor or subcontractor;

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

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

BUSINESS LIABILITY COVERAGE FORM

g. Aircraft, Auto Or Watercraft

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

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

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

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

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

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

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

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

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

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

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

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

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

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

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

l. Damage To Your Product

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

m. Damage To Your Work

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

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

n. Damage To Impaired Property Or Property Not Physically Injured

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

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

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

BUSINESS LIABILITY COVERAGE FORM

o. Recall Of Products, Work Or Impaired Property

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

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

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

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

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

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section G. – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

(12) Arising out of:

- (a) An "advertisement" for others on your web site;
- (b) Placing a link to a web site of others on your web site;
- (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
- (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

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

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

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

This exclusion applies:

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

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

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

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

Damage To Premises Rented To You - Exception For Damage By Fire, Lightning or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

BUSINESS LIABILITY COVERAGE FORM

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

- a. **Any Insured**
To any insured, except "volunteer workers".
- b. **Hired Person**
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. **Injury On Normally Occupied Premises**
To a person injured on that part of premises you own or rent that the person normally occupies.
- d. **Workers' Compensation And Similar Laws**
To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. **Athletics Activities**
To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.
- f. **Products-Completed Operations Hazard**
Included with the "products-completed operations hazard".
- g. **Business Liability Exclusions**
Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
 - a. **Employees And Volunteer Workers**
Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.
However, none of these "employees" or "volunteer workers" are insureds for:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or 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 that "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

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. Legal Representative If You Die

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.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, 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 under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

BUSINESS LIABILITY COVERAGE FORM

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

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

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
 This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

BUSINESS LIABILITY COVERAGE FORM

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

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

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

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

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

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to 2.a. or 2.b above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

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

**E. LIABILITY AND MEDICAL EXPENSES
GENERAL CONDITIONS**

1. Bankruptcy

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

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

a. Notice Of Occurrence Or Offense

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

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

b. Notice Of Claim

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

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

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

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

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

d. Obligations At The Insured's Own Cost

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

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

BUSINESS LIABILITY COVERAGE FORM

This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

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

5. Separation Of Insureds

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

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

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

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

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

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

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

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

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

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

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

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

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

c. Method Of Sharing

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

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

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

BUSINESS LIABILITY COVERAGE FORM

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

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

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

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

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

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

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

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

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In the performance of your ongoing operations for the additional insured(s); or

(2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

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

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

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

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. – Liability and Medical Expenses Limits of Insurance.
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

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

BUSINESS LIABILITY COVERAGE FORM

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, 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.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
18. "Pollutants" means 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.
19. "Products-completed operations hazard";
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

20. "Property damage" means:

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

As used in this definition, "electronic data" is not tangible property.

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

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

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

23. "Volunteer worker" means a person who:
- a. Is not your "employee";

BUSINESS LIABILITY COVERAGE FORM

- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "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.

25. "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.