

AGREEMENT FOR LAND SURVEYING CONSULTING SERVICES

THIS AGREEMENT made and entered into this 26<sup>th</sup> day of April, 2012, by and between the CITY of Delray Beach, Florida, hereinafter referred to as "CITY", and Dennis J. Leavy & Associates, Inc. hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, the CITY has provided notice of the desired professional services and carried out the proper selection process pursuant to and in accordance with the Consultant's Competitive Negotiation Act; and,

WHEREAS, the CITY represents that it is a Florida municipal corporation with the authority to engage the CONSULTANT and accept the obligation for payment for the services desired; and,

WHEREAS, the CITY desires to engage the CONSULTANT to perform certain professional services pertinent to such work in accordance with this AGREEMENT and with SERVICE AUTHORIZATIONS to be issued at the time of or subsequent to execution of this AGREEMENT; and

WHEREAS, this AGREEMENT does not entitle the CONSULTANT to any fees for any particular project without first receiving a Service Authorization; and

WHEREAS, the CONSULTANT desires to provide such professional services in accordance with this AGREEMENT and SERVICE AUTHORIZATIONS.

NOW, THEREFORE, in consideration of the premises and the mutual benefits which will accrue to the parties hereto in carrying out the terms of this AGREEMENT, it is mutually understood and agreed as follows:

I. DEFINITIONS; GENERAL CONDITIONS

- A. THE SCOPE OF WORK is to be implemented in phases as set forth by this Agreement and by SERVICE AUTHORIZATIONS, which are attached hereto and made a part hereof, and as also may be added as approved by the City from time to time.
- B. A SERVICE AUTHORIZATION is a form to be used to authorize work, projects, and services. The form shall be executed by the CITY'S and CONSULTANT'S representatives. A CITY purchase order number shall be identified on the form. The purchase order authorization is established in the CITY Code of Ordinances with provisions for expenditure levels of approval authorizations. A sample form of the service authorization is attached as Exhibit "A" to this AGREEMENT. The projects, work, and services to be performed by the CONSULTANT, and time for completion of the particular phase of the work by CONSULTANT, shall be authorized by a SERVICE AUTHORIZATION. The SERVICE AUTHORIZATION shall include the scope of work to be performed; the budget cost, complete with an itemization of man-hours, wage rates, reimbursable expenses, and other related costs; schedule for completion and name of project manager. The SERVICE AUTHORIZATION shall be signed by the CITY and the CONSULTANT'S authorized representative. A CITY purchase order shall be issued with

authorization identifying funds and amount of expenditures. The terms of this AGREEMENT supersede the terms stated on the purchase order.

- C. PHASES: A phased approach may be utilized. The City and the Consultant shall have the right to negotiate the terms of each phase as contained within each service authorization, and to reject any service authorization, if the parties cannot agree to the terms of the service authorization. In the event the parties cannot agree, the city may select the next ranked proposer or go out for additional proposals in order to complete the subsequent phase(s) of the project. This phased approach shall not waive the City's right to terminate the Consultant's contract during any phase of the project.

## II. GENERAL DUTIES OF CONSULTANT

- A. The relationship of the CONSULTANT to the CITY will be that of a professional CONSULTANT, and the CONSULTANT will provide the professional and technical services required under this AGREEMENT in accordance with acceptable professional practices and ethical standards. No employer/employee relationships shall be deemed to be established and the CONSULTANT, its agents, subcontractors, and employees shall be independent contractors at all times.
- B. Professional and Technical Services. It shall be the responsibility of the CONSULTANT to work with the CITY and apprise it of solutions to problems and the approach or technique to be used towards accomplishment of the CITY'S objectives as set forth in SERVICE AUTHORIZATIONS, which will be made a part of this AGREEMENT upon execution by both parties.
- C. The scope of services to be provided shall be covered in detail in SERVICE AUTHORIZATIONS.
- D. The City has established a budget for each project awarded to CONSULTANT. The CONSULTANT shall be responsible for providing, at no additional cost to the City, new designs, drawings, specifications, reports and other applicable services if the budget for the entire project is exceeded during and up to completion of the design phase of the project; however, nothing contained herein shall require the CONSULTANT to bear additional costs if the additional costs are a result of a change in the scope of services directed by the City.
- E. The CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, compliance with regulations and rules, and the coordination with all appropriate agencies of all designs, drawings, specifications, reports and other services furnished by the CONSULTANT under this AGREEMENT. If the CITY determines there are any errors, omissions or other deficiencies in the CONSULTANT'S designs, drawings, specifications, reports and other services, the CONSULTANT shall, without additional compensation, correct or revise said errors or omissions to the satisfaction of the CITY.
- F. Approval by the CITY of drawings, designs, specifications, reports and incidental professional services or materials furnished hereunder shall not in any way relieve the CONSULTANT of responsibility for the technical adequacy of its work. The CITY'S review, approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights

under this AGREEMENT or of any cause of action arising out of the performance of this AGREEMENT.

- G. The CONSULTANT and its subconsultants shall have no responsibility for the discovery, presence, handling or removal or disposal of or exposure of persons to hazardous materials in any form existing prior to construction at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or any other toxic substances.
- H. The CONSULTANT designates David A. Bower, as its representative to act as liaison with the CITY. The representative shall manage and coordinate CITY projects and is hereby authorized to act on behalf of the CONSULTANT to negotiate and approve SERVICE AUTHORIZATIONS and act on any other related matter with respect to performance of services for the CITY in accordance with the AGREEMENT. Any change to name another person shall be requested in writing to the CITY, and shall be approved by the City.
- I. CONSULTANT shall attend all meetings, as specified or as defined in each SERVICE AUTHORIZATION of the City Commission or any City approval Board, where the project is discussed, unless the City's representative declares such attendance and participation is not necessary. In addition, the CONSULTANT shall attend all additional meetings as may be required to facilitate the project.

### III. DUTIES OF CONSULTANT:

The following Duties of CONSULTANT are separated into phases of the project, which if approved via SERVICE AUTHORIZATIONS shall be performed by the CONSULTANT. The City may require SERVICE AUTHORIZATIONS, which contain additional requirements applicable to the project. The City must authorize through service authorizations, the commencement of each phase of the work.

- A. The CONSULTANT shall consult with the CITY to clarify and define the CITY's requirements for the project and review available data.
- B. The CONSULTANT shall advise the CITY as to the necessity of the CITY's providing or obtaining from others, data or services.
- C. The CONSULTANT shall furnish the number of copies of the survey and report documents as provided in the SERVICE AUTHORIZATION and reviews them with the CITY.
- D. The CONSULTANT, in consultation with the CITY shall determine the general scope, extent and character of the Project.
- E. Advise the CITY if additional data or services are necessary and assist the CITY in obtaining such data and services.
- F. The CONSULTANT shall make available all design calculations and associated Data.

- G. The CONSULTANT shall prepare survey documents which shall include but not be limited to drawings and technical information, general and supplementary conditions, with technical criteria, descriptions and data necessary for permitting by governmental authorities.
- H. The CONSULTANT shall in the preparation of survey documents, technical criteria, written descriptions and data, take into account all currently prevailing codes and regulations governing construction in the City of Delray Beach, Florida, and shall meet the requirements of all other agencies or governmental authorities having jurisdiction over the project.
- I. The CONSULTANT shall be responsible for all required research related to existing plats, as-built drawings and other information as related to the scope of the project.

#### IV. DATA AND SERVICES TO BE PROVIDED BY THE CITY

The CITY shall provide the following:

- A. Furnish or cause to be furnished such reports, studies, instruments, documents, and other information as the CONSULTANT and CITY mutually deem necessary and which are under control of the CITY.
- B. Other data and services to be agreed upon in subsequent SERVICE AUTHORIZATIONS.
- C. Pay for all legal advertisements incidental to obtaining bids or proposals from contractors.
- D. The CITY Manager or his designee shall act as the CITY'S representative with respect to the work to be performed under this AGREEMENT. The CITY Manager or his designee shall have the authority to the extent authorized by the CITY Charter and Code of Ordinances to exercise the rights and responsibilities of the CITY provided in this contract. Said authority may include but is not limited to: transmit instructions, stop work, receive information, interpret CITY'S policies and decisions with respect to materials, equipment, elements, and systems pertinent to the services covered by this AGREEMENT.
- E. Pay all permit application filing fees.
- F. Provide access to CITY facilities.

#### V. TIME OF PERFORMANCE

- A. The CONSULTANT will begin work promptly after issuance of a Notice to Proceed.
- B. The CONSULTANT'S services called for under the AGREEMENT shall be completed in accordance with the schedule contained in each SERVICE AUTHORIZATION. If the

CONSULTANT'S services are unreasonably delayed by the CITY in excess of 180 days, the time of performance and compensation shall be renegotiated, provided; however, the CONSULTANT as a condition precedent to renegotiations shall notify the City within fifteen (15) calendar days at the end of the delay of CONSULTANT'S proposed additional costs incurred by reason of said delay.

## VI. AGREEMENT PERIOD

The agreement shall be for two (2) years with the right to renew for three (3) one (1) year extensions. Each one year renewal will be at the City's discretion. However, the agreement shall extend until all Service Authorizations are completed. Each Service Authorization shall delineate a time for completion of the services to be rendered.

## VII. COMPENSATION

- A. The CITY will compensate the CONSULTANT for the services performed on each SERVICE AUTHORIZATION in accordance with a negotiated lump sum, or a not to exceed budgeted amount based on time charges which are based upon hourly rates, plus reimbursable expenses if compensation is based on Method II and other related costs as are specified in the SERVICE AUTHORIZATION.

### 1. METHOD 1 - LUMP SUM

Lump Sum Amount. Wherever possible, the scope of services for Services, Projects or Programs shall be thoroughly defined and outlined prior to its authorization. The CITY and CONSULTANT shall mutually agree to a lump sum amount for services to be rendered and a detailed scope of services. Should the CITY deem that a change in the scope of services is appropriate, then a decrease or increase in compensation shall be authorized in writing. In lump sum contracts, the CONSULTANT shall submit the estimated man-hours, wage rates and other actual unit costs supporting the compensation. The CONSULTANT shall submit a truth in negotiation certificate stating that all data supporting the compensation is accurate, complete and current at the time of contracting. Hourly rates included in the estimated man-hours shall not exceed established hourly rates as shown in Exhibit B attached hereto, plus reimbursable expenses and other related costs.

### 2. METHOD II - TIMES CHARGES/ NOT TO EXCEED BUDGETED AMOUNT

Computation of Time Charges/Not to Exceed Amount. When a service is to be compensated for on a time charge/not to exceed basis, the CONSULTANT will submit a not to exceed budget cost to the CITY for prior approval based on actual time charges which shall not exceed established hourly rates as shown in Exhibit B attached hereto,

plus reimbursable expenses and other related costs. The CITY shall not be obligated to reimburse the CONSULTANT for costs incurred in excess of the not to exceed cost amount.

- a. The CITY agrees to pay the CONSULTANT compensation for services rendered based upon the established raw hourly salary rates as shown in Exhibit B for services rendered on CITY projects multiplied by an overhead factor not to exceed 3.0, which includes profit not to exceed ten percent (10%) and may be subject to audit. The Schedule of hourly rates as set forth in Exhibit B will not be adjusted during the initial two (2) year agreement. The rates in Exhibit B may be considered for adjusted after the initial two (2) year agreement; however the adjustment may not exceed more than five percent (5%) within any twelve (12) month period and will require written agreement of both parties. A newly revised Exhibit B must be submitted for approval.
- b. In addition, the CITY shall pay for reimbursable expenses invoiced at the actual cost of expenditures incurred by the CONSULTANT if provided in the SERVICE

AUTHORIZATION as follows:

- (1) Actual expense of transportation and lodging in accordance with CITY policy in effect at the time of travel when traveling in connection with each SERVICE AUTHORIZATION, express courier charges, and permit fees paid for securing approval of authorities having jurisdiction over the project.
  - (2) Actual expense of reproductions, of Drawings and Specifications including duplicate sets of the completion of each SERVICE AUTHORIZATION for the CITY'S review and approval.
  - (3) Actual expenses of testing, laboratory services, and field equipment.
  - (4) Actual expense of overtime work requiring higher than regular rates, when authorized by the CITY.
  - (5) Actual expense of Auto Travel at the established CITY rate per mile for travel outside Palm Beach County.
- B. Subcontractual service shall be invoiced at the actual fees paid by the CONSULTANT, plus an additional ten percent (10%) of the cost of these services to compensate CONSULTANT, for the procuring and management of the sub-consultant, and for the other financial and administrative costs. Subcontractual services shall be approved by the CITY in writing prior to performance of the subcontractual work.

- C. Total Compensation (including, but not limited to compensation for sub-consultants) for all services and expenses shall not exceed the budget cost listed upon each SERVICE AUTHORIZATION, without written approval.
- D. If the CITY determines that any price for services, however calculated provided by the CONSULTANT, including profit, negotiated in connection with this AGREEMENT or any cost reimbursable under this AGREEMENT was increased by any significant sums because the CONSULTANT or any subcontractor furnished incomplete or inaccurate costs or pricing data, then such price or cost or profit shall be reduced accordingly and the SERVICE AUTHORIZATION shall be reduced accordingly and the SERVICE AUTHORIZATION shall be modified in writing to reflect such reduction.

#### VIII. PAYMENT

The CITY agrees that it will use its best effort to pay the CONSULTANT within thirty (30) calendar days from presentation of the CONSULTANT'S itemized report and invoice and approval of the CITY'S representative, unless additional time for processing is required for payments for basic services, subcontractual services, and reimbursable expenses as defined in Section VII. The CONSULTANT shall submit monthly invoices, as required in the SERVICE AUTHORIZATION, which shall include a report of work completed during the respective invoice period. Invoices shall be in a format consistent with that shown in Exhibit C. The report shall be adequate in detail to describe work progress (% complete for each task) and written summaries of work completed. No payment request shall exceed the value of work and services performed by the CONSULTANT under the SERVICE AUTHORIZATION.

#### IX. MISCELLANEOUS PROVISIONS

##### A. Ownership Documents:

All reproducible mylar drawings, field notes, computations and CADD disks in a format compatible with CITY'S Computer system shall be given to the CITY. Details, design calculations, and all other documents and plans that result from the CONSULTANT'S SERVICES under this AGREEMENT shall become and remain the property of the CITY, including copyright rights, whether the project is completed or not, and will be delivered to the CITY upon demand. CONSULTANT reserves the right to retain a copy of all such documents for record purposes. Where such documents are required to be filed with governmental agencies, the CONSULTANT will furnish copies to the CITY upon request. The contract work is represented by hard copy documentation; software, is provided to the CITY for convenience only.

##### B. Copies of Documents:

The CONSULTANT shall prepare sufficient copies of all documents necessary to obtain approval through the City's processes, as well as other governmental authorities.. The CITY acknowledges that the materials cited in Paragraph IX A. and other data provided in connection with this Agreement which are provided by the CONSULTANT are not intended for use in connection with any project other than the project for which such materials are prepared. Any use by the CITY of such materials in connection with a project other than that for which such materials were prepared without prior written consent and adaptation by the CONSULTANT

shall be at the CITY'S sole risk, and the CONSULTANT shall have no responsibility or liability therefore.

C. Insurance:

Without limiting any of the other obligations or liabilities of the CONSULTANT, the CONSULTANT shall, at his own expense, provide and maintain in force, until all of its services to be performed under this AGREEMENT have been completed and accepted by the CITY (or for such duration as it otherwise specified hereinafter), the following insurance coverages:

1. Worker's Compensation Insurance to apply to all of the CONSULTANT'S employees in compliance with the "Worker's Compensation Law" of the State of Florida and all applicable Federal Laws.
  - A. Employer's Liability with limits of \$100,000 per person, \$500,000 per occurrence and \$100,000 per each disease.
2. Comprehensive General Liability with minimum limits of one million dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements other than ISO Endorsement GL 21 06 (Engineers, Architects, or Surveyors Professional Liability exclusion), as Filed by the Insurance Services Office and must include:
  - a. Premises and/or Operations
  - b. Independent Contractors
  - c. Products and Completed Operations - CONSULTANTS shall maintain in force until at least three years after completion of all services required under this AGREEMENT, coverage for Products and Completed Operations, including Broad Form Property Damage.
  - d. Broad Form Property Damage
  - e. Contractual Coverage applicable to this specific AGREEMENT.
  - f. Personal Injury Coverage with minimum limits of coverage equal to those required for Bodily Injury Liability.
3. Business Automobile Liability with minimum limits of three hundred thousand dollars (\$300,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:
  - a. Owned Vehicles
  - b. Hired and Non-Owned Vehicles
  - c. Employers' Non-Ownership



4. Professional Liability Insurance with minimum limits per occurrence applicable to CITY projects as follows:

<u>Construction Cost Range</u>	<u>Limit</u>
a. 0 - 99,000	250,000
b. 100,000 - 299,000	500,000
c. 300,000 - 499,000	750,000
d. 500,000 - Above	1,000,000

Coverage shall be afforded on a form acceptable to the CITY. CONSULTANT shall maintain such professional liability insurance until at least one year after a Certificate of Occupancy is issued. CONSULTANT shall insure that sub-consultants used for any portion of the project, maintain adequate levels of Professional Liability Insurance.

5. Prior to commencement of services, the CONSULTANT shall provide to the CITY Certificates of Insurance evidencing the insurance coverage specified in the foregoing Paragraphs C1, C2, C3, C4. All policies covered within subparagraphs C1, C2, C3, C4, shall be endorsed to provide the CITY with thirty (30) days notice of cancellation and/or restriction. The CITY shall be named as an additional insured as to CONSULTANT'S liability on policies referenced in subparagraphs C2. The required Certificates of Insurance shall not only name the types of policies provided, but also shall refer specifically to this AGREEMENT and section and to the above paragraphs in accordance with which insurance is being furnished, and shall state that such insurance is as required by such paragraphs of this AGREEMENT. The CONSULTANT shall also make available to the CITY a certified copy of the professional liability insurance policy required by paragraph 4 above for the City's review. Upon request, the CONSULTANT shall provide copies of all other insurance policies.
6. If the initial insurance policies required by this AGREEMENT expire prior to the completion of the services, renewal Certificates of Insurance of policies shall be furnished thirty (30) days prior to the date of their expiration. For Notice of Cancellation and/or Restriction; the policies must be endorsed to provide the CITY with thirty (30) days notice of cancellation and/or restriction.
7. The CONSULTANT'S insurance, including that applicable to the CITY as an Additional Insured, shall apply on a primary basis.

D. Litigation Services:

It is understood and agreed that CONSULTANT'S services include reasonable participation in litigation or dispute resolution arising from this AGREEMENT. CONSULTANTS participation shall include up to 30 hours of services related to litigation or dispute resolution. Any such services in excess of 30 hours shall be an extra service.

E. Authority to Contract:

The CITY represents that it is a Florida Municipal Corporation with the authority to engage the CONSULTANT for professional services described in the SERVICE AUTHORIZATIONS and to accept the obligation for payment for the services described in the SERVICE AUTHORIZATIONS.

F. Assignment:

The CITY and the CONSULTANT each binds itself and its successors, legal representatives, and assigns to the other party to this AGREEMENT and to the partners, successors, legal representatives, and assigns of such other party, in respect to all covenants of this AGREEMENT subject to budget considerations and requirements of law; and, neither the CITY nor the CONSULTANT will assign or transfer their interest in this AGREEMENT without the written consent of the other.

G. Confidential Information:

During all times that the CONSULTANT is employed on behalf of the CITY and at all times subsequent to the date of this contract, all discussions between the CITY and the CONSULTANT and all information developed or work products produced by the CONSULTANT during its employment and all matters relevant to the business of the CITY not otherwise being a matter of public record shall be deemed to be confidential. All such information and work product shall be protected by the CONSULTANT and shall not be revealed to other persons without the express written permission of the CITY, unless mandated by order of the court.

H. Non-Exclusive Contract:

The CITY reserves the right to award projects to other firms pursuant to the Florida Statutes Consultant's Competitive Negotiations Act during the period of service of the CONSULTANT. The CONSULTANT agrees to cooperate with the CITY and other firms in accomplishing work that may require joint efforts to accomplish the CITY'S goals. This cooperation, when requested by the CITY, will include but not be limited to:

1. Sharing technical information developed under contract with the CITY.
2. Joint meetings for project coordination.
3. Establish lines of communication.

I. Subconsultants:

In the event the CONSULTANT, during the course of the work under this AGREEMENT requires the services of any subcontractors or other professional associates in connection with

services covered by this AGREEMENT, CONSULTANT must secure the prior written approval of the CITY.

J. Notices:

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last written, as the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places of giving of notice to wit:

CITY OF DELRAY BEACH

CITY MANAGER  
City of Delray Beach, Florida  
100 NW 1st Avenue  
Delray Beach, Florida 33444

CONSULTANT

Dennis J. Leavy & Associates, Inc.

Attn: Mr. David A. Bower, Vice President

460 Business Park Way, Suite B

Royal Palm Beach, Florida 33411

K. Attachments:

Request for Qualifications is hereby incorporated within and made an integral part of this AGREEMENT.

L. Truth-In-Negotiation Certificate:

Signature of this AGREEMENT by CONSULTANT shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this AGREEMENT are accurate, complete, and current. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the CITY determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

M. Records:

Records of all expenses relative to each SERVICE AUTHORIZATION shall be kept on a generally recognized accounting basis and shall be available to the CITY or its authorized representative at mutually convenient times.

N. Personnel:

The CONSULTANT represents that it has or will secure, at its own expense, qualified personnel required in performing the services under this AGREEMENT. All work shall be performed under the direction of a professional, registered under the State of Florida in the field for which he is responsible for performing such services.

The project manager shall be approved by the CITY under each SERVICE AUTHORIZATION. Key project personnel will be identified for each project and expected to perform the work assignment as can reasonably be expected.

O. Equal Opportunity Employment:

CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth this non-discrimination clause. This provision applies to all CONSULTANT'S subcontractors and it is the responsibility of CONSULTANT to ensure subcontractor's compliance.

P. Prohibition Against Contingent Fees:

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this AGREEMENT, and that he has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT.

Q. Termination:

This AGREEMENT may be terminated by either party by seven (7) calendar days prior written notice, in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. The CITY shall have the right to terminate this AGREEMENT for convenience at any time by thirty (30) calendar days written notice to the consultant. In the event the project described in any SERVICE AUTHORIZATION, or the services of the CONSULTANT called for under any SERVICE AUTHORIZATION, is or are suspended, canceled, or abandoned by the CITY, the CONSULTANT shall be given five days prior written notice of such action and shall be compensated for the professional services provided and reimbursable expenses incurred up to the date of suspension, cancellation or abandonment. The CONSULTANT agrees to provide all documents to the CITY (specifically

those referenced in paragraph IX.A. Further, prior to the CONSULTANT'S destruction of any of the above referenced documents, the CITY shall be notified and allowed a reasonable period to gain access to and make copies of any such documents. Upon any termination of this AGREEMENT, the CONSULTANT agrees that it shall use its best efforts to work harmoniously with any successor who enters an AGREEMENT to provide services for the CITY in order to provide for a smooth transition period.

R. Indemnification:

In consideration of ten dollars (\$10.00) and other valuable consideration, the CONSULTANT will at all times indemnify, save and hold harmless and defend the CITY, its officers, agents (the term agents shall not include the contractor(s), any subcontractors, any materialmen or others who have been retained by the City or Contractor, or materialmen to supply goods or services to the project) and employees, from and against all liability, any claim, demand, damage, loss, expense or cause of action and costs (including attorney's fees at trial or appellate levels) arising out of error, omission, or negligent act of CONSULTANT, its agents, servants or employees in the performance of services under this agreement. The CONSULTANT further agrees to indemnify, hold harmless and defend the City, its officers, agents and employees from and against any claim, demand or cause of action arising out of any negligence or misconduct of CONSULTANT for which the City, its agents, servants or employees are alleged to be liable. The indemnification's contained herein shall survive the expiration or earlier termination of this Agreement. Nothing in this AGREEMENT shall be deemed to affect the rights, privileges and immunities of the CITY as set forth in Florida Statutes 768.28.

S. Interest of the Consultant:

The CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in any Project to which this AGREEMENT pertains or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The CONSULTANT further covenants that in the performance of this AGREEMENT, no person having such interest shall be employed.

T. Compliance with Laws:

- a. The CONSULTANT shall comply with the applicable requirements of State and applicable County laws and all Codes and Ordinances of the CITY OF DELRAY BEACH as amended from time to time, and that exist at the time of building permit issuance.
- b. For SERVICE AUTHORIZATIONS involving work under Federal or State Grantors or Approving Agencies, the CITY and the CONSULTANT shall review and approve the applicable required provisions or any other supplemental provisions as may be included in each SERVICE AUTHORIZATIONS.

U. Jurisdiction; Venue:

The CONSULTANT hereby covenants, consents and yields to the jurisdiction of the State Civil Courts of Palm Beach County, Florida. Any dispute between CONSULTANT and the CITY shall be governed by the laws of Florida with venue in Palm Beach County.

V. Internal Dispute Between Owner and Consultant:

The City Manager shall be the final decision maker regarding internal disputes between CITY and CONSULTANT.

W. Extent of Agreement:

This AGREEMENT represents the entire integrated AGREEMENT between the CITY and the CONSULTANT and supersedes all prior negotiations, representations or AGREEMENTS, written or oral. This AGREEMENT does not entitle the CONSULTANT to receive any fee unless first being issued a Service Authorization. This AGREEMENT does not provide that a CONSULTANT is entitled to receive any Service Authorization. This AGREEMENT may not be amended, changed, modified, or otherwise altered in any way, at any time after the execution hereof, except by approval of the CITY Commission. This AGREEMENT applies only to those projects that are on the CITY'S Capital Improvement Plan (CIP), attached hereto as Exhibit "D". The CITY is not required to issue any Service Authorizations to CONSULTANT for any projects listed on the CIP.

IN WITNESS WHEREOF, the CITY has caused these presents to be executed in its name by its Mayor, and attested and its official Seal to be hereunto affixed by its CITY Clerk, and the CONSULTANT has hereunto set its hand and Seal the day and year first written above.

CITY OF DELRAY BEACH, FLORIDA

By: [Signature]  
MAYOR

ATTEST:

[Signature]  
City Clerk

Approved as to Form:

[Signature]  
CITY Attorney

CONSULTANT Dennis J. Leavy & Associates, Inc.

By: [Signature]  
Witness

Title: David A. Bower, Vice President  
Name Printed

[Signature] (Seal)  
Witness

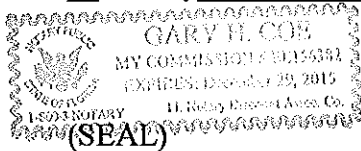
Tara L. Leavy  
Name Printed

ACKNOWLEDGEMENT IF CORPORATION

State of Florida  
County of Palm Beach

BEFORE ME, the foregoing instrument, this 20<sup>th</sup> day of January, 2012, was acknowledged by David A. Bower, on behalf of the Corporation and said person executed the same freely and voluntarily for the purpose therein expressed.

WITNESS my hand and seal in the County and State aforesaid this 20<sup>th</sup> day of January, 2012.



Gary H. Coe  
Notary Public  
My Commission Expires: 12/29/15

ACKNOWLEDGEMENT IF AN INDIVIDUAL

State of Florida  
County of Palm Beach

I HEREBY CERTIFY that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, personally appeared \_\_\_\_\_, known to me to be the person in and who executed the foregoing instrument, and acknowledged before me that he/she executed the same.

SWORN TO AND SUBSCRIBED before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



ACKNOWLEDGEMENT IF A PARTNERSHIP

State of Florida  
County of Palm Beach

I HEREBY CERTIFY that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, personally appeared \_\_\_\_\_, known to me to be the person in and who executed the foregoing instrument as a partner of \_\_\_\_\_, a partnership. He/She acknowledged before that he/she executed the same as the act and deed of said partnership for the uses and purposes therein mentioned.

SWORN TO AND SUBSCRIBED before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

EXHIBIT A (SAMPLE)  
CONSULTING SERVICE AUTHORIZATION

DATE: \_\_\_\_\_

CONSULTANT: \_\_\_\_\_

SERVICE AUTHORIZATION NO. \_\_\_\_\_ FOR CONSULTING SERVICES

CITY P.O. NO. \_\_\_\_\_ CITY EXPENSE CODE \_\_\_\_\_

CITY PROJECT NO. \_\_\_\_\_ CONSULTANT PROJECT NO. \_\_\_\_\_

TITLE: \_\_\_\_\_

This Service Authorization, when executed, shall be incorporated in and shall become an integral part of the "Agreement for General Consulting Engineering Services" Contract.

**I. PROJECT DESCRIPTION**

**II. SCOPE OF SERVICES**

**III. BUDGET**

**IV. COMPLETION DATE**

This service authorization is approved contingent upon the City's acceptance of and satisfaction with the completion of the services rendered in the previous phase or as encompassed by the previous service authorization. If the City in its sole discretion is unsatisfied with the services provided in the previous phase or service authorization, the City may terminate the contract without incurring any further liability. The CONSULTANT may commence work on any service authorization approved by the City to be included as part of the contract without a further notice to proceed.

Approved by:

CITY OF DELRAY BEACH:

Date \_\_\_\_\_

\_\_\_\_\_  
Mayor

CONSULTANT:

Date \_\_\_\_\_

By: \_\_\_\_\_  
(Seal)

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Witness (Printed)

Attest: \_\_\_\_\_

Approved as to Legal Sufficiency

\_\_\_\_\_  
City Attorney

BEFORE ME, the foregoing instrument, this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, was acknowledged by \_\_\_\_\_ on behalf of the Corporation \_\_\_\_\_, and said person executed the same free and voluntarily for the purpose there-in expressed.

Witness my hand and seal in the County and State aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_  
Notary Public  
State of Florida

My Commission Expires:

## LAND SURVEY CONSULTING SERVICE AUTHORIZATION

Reference: Typical Survey Requirements and Scope

Dear:

The City is proposing to upgrade existing water main for the street listed below. I have enclosed a map outlining the minimum limits of the streets involved. Please submit an estimate for completing a topographical survey. Also, please provide the time it will take from execution of a service authorization to delivery of the survey.

Street	From	To
--------	------	----

The survey should include the following:

1. Platted rights-of-way (include bearing and distances for centerlines), lot numbers, block numbers, **House Numbers** (if available) and dedicated easements.
2. All improvements, physical objects, driveways, and significant landscape (i.e. trees, shrubs) within the right-of-way as well as the front two corners of the building on each lot.
3. All underground utilities. Inverts on sanitary and storm sewers shall be indicated, as well as, locations of water valves and meters. Coordination with the Sunshine State Call One Center for location of other underground utilities shall be the surveyor's responsibility. Coordination with City of Delray Beach's Water and Sewer network at (561) 243-7312 for underground utilities locates shall be the surveyor's responsibility. Do not use City of Delray Beach atlas for locations.
4. All topographical surveys shall have stationing established from south to north and west to east where applicable.
5. Elevations shall be indicated every 25 feet, at a minimum, to indicate centerline grades, edge of pavement grades, and shoulder grades. Intermediate grades shall be indicated at all grade breaks, driveways, and sidewalks. Two grades (one at the right-of-way line and one 15 feet back) shall be indicated on the driveways to indicate direction of grade.
6. The survey shall include topography of the complete intersection, 25 feet beyond radius returns, at the terminal end of each street.
7. Tie survey to state plane coordinate system and set a minimum of two permanent reference markers.
8. The survey stationing shall not repeat, i.e. use 200+00 for SE 2<sup>nd</sup> Ave, 300+00 for SE 3<sup>rd</sup> Ave, 800+00 for SE 8<sup>th</sup> Street etc.
9. The surveyor shall submit one (1) digital and three (3) signed and sealed copies of the survey to the City.

## **BASIC STANDARDS & PROTOTYPES FOR SURVEY DRAWING CREATION**

October 03, 2011

The primary use of survey drawings produced for the City's Engineering Division is as a basemap for design work. Standards for basemap creation have been established and it is necessary that they be followed closely with few exceptions. The purpose of these standards is to minimize the time cad operators spend developing a usable basemap for the City's Engineering Division.

The layers provided in the Delray prototype drawing are to be used exclusively. All entities placed on these layers should be set to color and linetype by layer.

Symbols such as manholes, valves, & hydrants that are inserted into the drawings should be block entities **and not individual lines, arcs, etc...** They should be uniformly scaled. Each symbol should have been created on layer 0 (color 7) and inserted into the drawing on the layer of intended use thus, automatically changing to the layer color upon insertion. An example of an exception would be a block that has attributes, such as an Autodesk Land Development Desktop POINT Block. This block consists of a point on layer 0 (color 7) and predefined attribute layers for an elevation (color 3), point # (color 1), & description (color 2). These standards for producing and using symbology should be followed and will result in block entities that can be manipulated in groups as needed.

Annotation of existing features on drawings shall be done using a leroy fontstyle created from using the AutoCAD SIMPLEX.shx font file. These styles are to be named in accordance with the sizes of each leroy standard lettering template. All existing features shall be labeled as "EXISTING", using all upper cap letters. "EXISTING LIGHT POLE" Annotation text and leader lines should be placed in the same feature layer. I.E. Existing hydrant annotation and leader would be placed on layer "EN-WATER".

LEROY TEMPLATE PLOTTED    PLOTTED SIZE x PLOT SCALE = SCALED HEIGHT

<u>SIZE</u>	<u>SIZE</u>
L80	0.08" @ 1"=20' this would be 1.6' high letters
L100	0.10"
L120	0.12"
L140	0.14"
L175	0.175"
L200	0.20"
etc. _____	

Line weights are to be set to Leroy pen size standards. This is accomplished through the use of the DELRAY.CTB (or PCP) file. The file will set ACAD PENS 1 through 14 to plot in leroy pen sizes 000 through 3. Pens 1 through 7 will print solid dark black and pens 8 through 14 will print shaded (halftone). Note : Half tones are accomplished in the abovementioned plotter control files. The screening value of the affected pens has been modified.

Elevations, spot elevations, spot shots, or grade elevations; whatever the term, are to be set in a drawing using a POINT block. A block consisting of an AutoCAD point and an elevation attribute is acceptable. An Autodesk Land Development Desktop point block is preferable and included on the standard files CD.

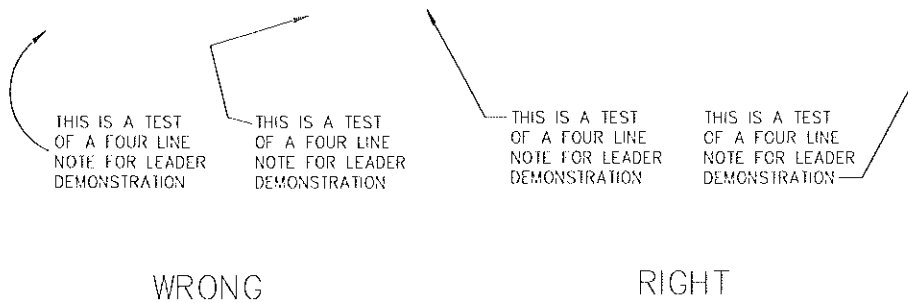
There are a few main issues regarding drawing management and file transfers to the city that require compliance. When producing a drawing file for the city all efforts should be made to create drawing files in model space only. Files will not be acceptable if they contain nested blocks or nested xrefs. When transferring files to the City on a CD make sure that all support files are included. DO NOT copy drawing files directly from your storage location to a CD. Use the wblock command to write a drawing file containing only the entities in your deliverable as seen on the screen. This will eliminate the transfer of unused or confusing data to the city.

Contact the City's Engineering Division to receive digital file copies of all prototypes and more information regarding standards.

FILES ON DISK      DESCRIPTION:

- COVERSHT.DWG      Standard PROJECT TITLE SHEET block. Insert unexploded with a scale factor equal to the desired plot scale. ATTDIA should be on.
- DELRAY.DWG      Start a NEW drawing using this prototype. This drawing file contains all the standard layers used by the city engineering division. See standards CD for a document file explaining the layer structure.
- 2436STAN.DWG      Standard border and title block. Insert unexploded with a scale factor equal to the desired plot scale. ATTDIA should be on.
- LEROY.DWG      Insert exploded to make base leroy styles available in a drawing. The heights should be adjusted per desired plot scale.
- DIMARROW.DWG      This DIMARROW is to be used in place of ANY Autodesk standard dimarrows for dimensioning and leaders. Standard AutoCAD dimarrows are worthless entities and do not permit a global editing when required. An example would be a case where a drawing pieced together from drawings created using different LTSCALE settings ends up having arrows of different sizes. Using this DIMARROW block they can be rescaled all at the same time without moving from their original insertion points.

## PLACEMENT OF LEADER LINES



### DELRAY.CTB

If applicable, this AutoCAD plotter control file is used for plotting on an 1055cm, T2300, or equal HP plotter. It maintains lero y pen widths on drawings, and defaults to the standard sheet size used for plotting, when the standard 2436STAN.dwg border is used. Original layer settings from the DELRAY.dwg prototype must be maintained if using this file for plotting. A PCP file is also included for the same purpose if needed.

### POINT.DWG

Standard Softdesk(LDD) point block. For those consultants not using Autodesk Land Development Desktop survey functions to import fieldwork, this block must be inserted manually. They have to be inserted unexploded at a scale factor equal to the plotted scale of the drawing. The point attribute values are to be modified appropriately.

### ACAD.LIN

Standard Linetype file. It contains some custom linetypes that we use. For example: Using the AutoCAD standard hatch pattern of dots in a drawing is very cumbersome in terms of added file size. So, creating hatch patterns containing only lines, helps the file size stay extremely small, thus the creation of a hatch pattern using a line definition of dots.

We use a standard dot hatching equal to those old peel and stick films used in the pre-CAD days. You could define patterns of dots in densities of 10, 15, 20, 30, etc... percent (%). When varied pen widths or half tones are applied in their use many combinations are possible.

EXHIBIT B

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Employer Category	Hourly Raw Salary Rates	Hourly Raw Salary Rate Times 2.80 Multiplier
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Professionals – Surveyors, Engineers, Architects, Planners, Economists, Scientists, Hydrologists, Hydrogeologists, Geologists, etc.

Principal Surveyor .....\$39.29/hr.....\$110.01/hr.  
Project Surveyor.....\$33.93/hr.....\$95.00/hr.

---

Technicians – Drafters, Graphic Artists, Computer, Field Crews, Cartographics, Construction Inspectors, etc.

Survey Technician .....\$23.21/hr.....\$64.99/hr.  
CADD Technician .....\$23.21/hr.....\$64.99/hr.  
Three Man Field Crew .....\$42.86/hr.....\$120.01/hr.  
Two Man Field Crew .....\$33.93/hr.....\$95.00/hr.

---

Office Support

Clerical/Admin.....\$19.64/hr.....\$54.99/hr.



EXHIBIT C

CONSULTING SERVICES INVOICE FORMAT

**Bill To:** City of Delray Beach  
434 S. Swinton Ave.  
Delray Beach, FL 33444

**Invoice #** \_\_\_\_\_

**Invoice Date:** \_\_\_\_\_

**Service Auth. #** \_\_\_\_\_

**Remit To:** \_\_\_\_\_

**City Purchase Order #** \_\_\_\_\_

**City Project Number:** \_\_\_\_\_

**City Project Title:** \_\_\_\_\_

**For Professional Services for Period Ending:** \_\_\_\_\_

**Project Status Summary Paragraph (Description of Services Provided):** \_\_\_\_\_

Insert Status Summary / Description of Services

**LABOR**

<u>Class</u>	<u>Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Principal				\$0.00
Sr. Engineer				\$0.00
Engineer				\$0.00
Cadd Designer				\$0.00
Sr. Engineering Tech				\$0.00
Sr. Inspector				\$0.00
Clerical				\$0.00
<b>Subtotal Labor</b>				<b>\$0.00</b>

**SUBCONSULTANTS** (Must attach copies of backup invoices)

	<u>Amount</u>
Insert Name of Subconsultant	\$0.00

Insert Name of Subconsultant	\$0.00
------------------------------	--------

<b>Subtotal Subconsultants</b>	<b>\$0.00</b>
--------------------------------	---------------

**REIMBURSABLE/OUT-OF-POCKET EXPENSES** (Must attach copies of backup)

	<u>Amount</u>
Postage	\$0.00

Printing	\$0.00
----------	--------

<b>Subtotal Expenses</b>	<b>\$0.00</b>
--------------------------	---------------

**TOTAL AMOUNT DUE THIS INVOICE:**

**\$0.00**

EXHIBIT C (page 2)

<b>Bill To:</b>	City of Delray Beach 434 S. Swinton Ave. Delray Beach, FL 33444	<b>Invoice #</b> _____
		<b>Invoice Date:</b> _____
		<b>Service Auth. #</b> _____
<b>Remit To:</b>	_____	<b>City Purchase Order #</b> _____
	_____	<b>City Project Number:</b> _____
	_____	

City Project Title: \_\_\_\_\_  
For Professional Services for Period Ending: \_\_\_\_\_

**COST SUMMARY** (Must match cost breakdown in Service Authorization)

<u>Phase or Task Number</u>	<u>Phase or Task Description</u>	<u>Amount</u>
Phase I or Task 1	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
Phase II or Task 2	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
Phase III or Task 3	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
Phase IV or Task 4	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
Phase V or Task 5	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00

EXHIBIT C (page 3)

**Bill To:** City of Delray Beach  
434 S. Swinton Ave.  
Delray Beach, FL 33444

**Invoice #** \_\_\_\_\_

**Invoice Date:** \_\_\_\_\_

**Service Auth. #** \_\_\_\_\_

**City Purchase Order #** \_\_\_\_\_

**City Project Number:** \_\_\_\_\_

**Remit To:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City Project Title: \_\_\_\_\_

For Professional Services for Period Ending: \_\_\_\_\_

<u>Phase or Task Number</u>	<u>Phase or Task Description</u>	<u>Amount</u>
Phase VI or Task 6	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
Phase VII or Task 7	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
Phase VIII or Task 8	(Insert Description of Phase or Task)	
	Contract Amount	\$0.00
	Amount Earned This Period	\$0.00
	Amount Previously Earned	\$0.00
	Amount Remaining	\$0.00
<b><u>TOTAL CONTRACT COSTS</u></b>		
	Total Contract Amount	\$0.00
	Total Amount Earned This Period	\$0.00
	Total Amount Previously Earned	\$0.00
	Total Amount Remaining	\$0.00



DENNJLE-01 ZGONZALEZ

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
4/6/2012

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

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

PRODUCER Collinsworth, Alter, Fowler & French, LLC 8000 Governors Square Blvd Suite 301 Miami Lakes, FL 33016	CONTACT NAME: Zoraida Gonzalez	FAX (A/C, No): (305) 362-2443	
	PHONE (A/C, No, Ext): (305) 822-7800	E-MAIL ADDRESS: zgonzalez@cafflc.com	
INSURED  Dennis J. Leavy & Associates Suite B Royal Palm Beach, FL 33411	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Hartford Ins Co of the SE		
	INSURER B : Travelers Casualty & Surety		
	INSURER C : Everest National Insurance Co		
	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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X		21SBMRQ7537	5/9/2011	5/9/2012	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COM/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY						
	ANY AUTO						COMBINED SINGLE LIMIT (Ea accident) \$
	ALL OWNED AUTOS						BODILY INJURY (Per person) \$
	SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
	HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
							\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB			21SBMRQ7537	5/9/2011	5/9/2012	EACH OCCURRENCE \$ 2,000,000
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE \$ 2,000,000
	<input type="checkbox"/> CLAIMS-MADE						\$
	DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	N/A	X	UB9976Y787	5/9/2011	5/9/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH)						E.L. EACH ACCIDENT \$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 500,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000
C	Professional Liab			79AE000395111	5/9/2011	5/9/2012	Each Claim 1,000,000
C	Claims-Made Form			79AE000395111	5/9/2011	5/9/2012	Aggregate 2,000,000

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

Professional Liability Deductible: \$10,000; Professional Liability Retrodate: 1/1/1994

Project: 2012 Surveying Consultant Agreement

Those usual to the Insured's Operations, City of Delray Beach, Florida is an additional insured on the General Liability as required by written contract per the Business Liability Coverage Form SS0008 attached to this policy; excluding Professional Services and is provided on a primary basis.

## CERTIFICATE HOLDER

## CANCELLATION

City of Delray Beach, Florida  
100 NW 1st Ave.  
Delray Beach, FL 33444

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

AUTHORIZED REPRESENTATIVE

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/05/2012

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

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

<b>PRODUCER</b> Cindy Papandreas Insurance Agency Inc 123 S State Road 7 Ste 204 Royal Palm Beach, Fl. 33414		<b>CONTACT NAME:</b> <b>PHONE</b> (A/C No. Ext): 561-780-0707 <b>FAX</b> (A/C No): 561-790-3370 <b>E-MAIL ADDRESS:</b> <b>PRODUCER CUSTOMER ID #:</b>	
<b>INSURED</b> Dennis J Leavy & Associates 460 Business Pkwy Ste B Royal Palm Beach, Fl. 33411		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> State Farm Mutual Automobile Insurance Company <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	
		<b>NAIC #</b> 25178	

**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	ADDITIONAL INSURER	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> 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"/> PROJECT <input type="checkbox"/> LOC					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	445 7708-E09-59C-9ZZ	05/09/2011	05/09/2012	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP \$ 10,000
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE  DEDUCTIBLE \$ RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	N/A				WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

Job: Land Surveying Consulting Services

The City of Delray Beach, Florida is considered Additional Insured with respect to Auto Liability.

**CERTIFICATE HOLDER****CANCELLATION**City of Delray Beach, Florida  
100 NW 1st Avenue  
Delray Beach, Fl. 33444

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

6037F.11 CERTIFICATE OF INSURANCE

Agent 6680

AFO 613

This is to certify that: STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,  
Of Bloomington, Illinois has coverage in force as shown below for the named insured. If the  
coverage is change or terminated will give 10 days' written notice to:

City of Delray Beach Florida  
100 NW 1<sup>st</sup> Ave  
Delray Bch FL 33444-2612

Description of Vehicles: ALL FLEET VEHICLES  
Liability - COVERAGE A

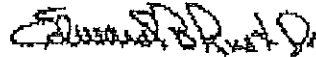
Limits of Liability

Bodily Injury each person	each accident	Property Damage each accident	Bodily Injury and Property Damage Single Limit
\$	\$	\$	\$ 1,000,000
			each accident

This Certificate of Insurance does not change the coverage provided by the described policy.

Named Insured DENNIS J LEAVY & ASSOCIATES

Policy Number 445 7708-E09-59



Chief Executive Officer

Countersigned January 27, 2012

Effective Date JAN 05 2011  
12:01 A.M. Standard Time

6037F.11

By   
Authorized Representative

6028E.5 ADDITIONAL INSURED  
(Prior Notice of Termination)

This endorsement is a part of *your* policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as *your* policy if issued with it. If issued at a later date the name, policy number and effective date must be shown.

Issued by STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY of Bloomington, Illinois, or the STATE FARM FIRE AND CASUALTY COMPANY of Bloomington, Illinois, as shown by the company's name on the policy of which this endorsement is a part.

Named Insured Dennis J Leavy + Associates  
Policy number 445 7708 E09 59 Countersigned 03/26/2012 Date  
Effective date January 5, 2012 By [Signature]  
12:01 A.M. Standard Time Authorized Representative

It is agreed that Liability — Coverage A of *your* policy is extended to the party named on the declarations page as an Additional Insured. The Additional Insured is subject to the provisions of the policy granting coverage to an *insured* other than *you*. The Additional Insured:

1. has the same right of recovery under this policy as before;
2. is not liable for any premium or other expense under this policy;
3. is not a member of the State Farm Mutual Automobile Insurance Company of Bloomington, Illinois.

This policy will not be changed or terminated as to the interest of the Additional Insured unless we give such insured notice. The number of days' notice we will give is ten unless another number is shown on the declarations page.

Edward B Rust, Jr.  
Chief Executive Officer

6028E.5

6080J Vehicle Schedule (Continued)

Date: JAN 10 2012 DENNIS J LEAVY & ASSOCIATES

Agent/AFO: 6680/613

Attached to and forming a part of Policy No.: 445 7708-E09-59C

Policy Period: MAY 09 2011 TO MAY 09 2012

Exceptions and Endorsements

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Applies to all vehicles-6037F.11 Certificate of Insurance City of Delray Beach Florida, 100 NW 1st Ave, Delray Bch FL 33444-2612

Applies to all vehicles-6028E.5 Additional Insured City of Delray Beach Florida, 100 NW 1st Ave, Delray Bch FL 33444-2612

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



# **BUSINESS LIABILITY COVERAGE FORM**

**QUICK REFERENCE**  
**BUSINESS LIABILITY COVERAGE FORM**  
**READ YOUR POLICY CAREFULLY**

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## 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.

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### 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:

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(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.

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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.

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### 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.

## Kucmerowski, Carolanne

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**From:** Tara <djlasc@bellsouth.net>  
**Sent:** Friday, April 06, 2012 4:02 PM  
**To:** Kucmerowski, Carolanne  
**Subject:** FW: Dennis J Leavy - Revised COI for City of Delray Beach  
**Attachments:** PDF Creator.pdf; Hartford ss00080405.pdf

Good Afternoon Carolanne:

Please see response from our agent below. They have also attached a revised COI and the corresponding Business Liability Coverage Form from our policy.

I was told by our agent that Hartford builds the endorsement into their policy that is why they do not use an "Endorsement Page". Our agent attached a copy of Form SS0008 from our policy for reference.

Should you have any questions, please do not hesitate to contact me.

Tara  
Dennis J. Leavy & Associates  
460 Business Park Way, Suite B  
Royal Palm Beach, FL 33411  
P: 561/753-0650  
F: 561/753-0290

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**From:** Zoraida Gonzalez [<mailto:zgonzalez@cafflc.com>]  
**Sent:** Friday, April 06, 2012 4:02 PM  
**To:** Tara  
**Subject:** RE: Dennis J Leavy - Revised COI for City of Delray Beach

Tara - attached please find the revised certificate of insurance for the City of Delray Beach. Unfortunately, the Hartford does not use the Form provided as a Sample by the client...however; that is not uncommon as that is a standard form from ISO (Insurance Services Office) and the big carriers such as the Hartford's and the Travelers choose to use their own forms which have been previously approved by the Insurance Department. I have attached the Business Liability Coverage Form SS0008 which is what they provide.

Thanks!

**Zoraida Gonzalez, AAI, ACSR**  
Account Manager  
[zgonzalez@cafflc.com](mailto:zgonzalez@cafflc.com)  
Collinsworth Alter Fowler & French, LLC  
8000 Governors Square Blvd., Suite 301  
Miami Lakes, FL 33016  
Direct: 305/503-9159 Fax: 305/558-4294

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**From:** Tara [<mailto:djlasc@bellsouth.net>]  
**Sent:** Friday, April 06, 2012 2:36 PM

**To:** Zoraida Gonzalez

**Subject:** FW: Additional Required Information for Surveying Consulting Agreement - Business Liability Endorsement

Zoraida:

The City of Delray has some comments on the COI that we sent.

Please call to discuss.

Thanks.

Tara

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**From:** Kucmerowski, Carolanne [<mailto:Kucmerowsk@mydelraybeach.com>]

**Sent:** Friday, April 06, 2012 2:15 PM

**To:** 'Tara'

**Cc:** Grieve, Bill; Krejcarek, Randal; [djlassc@bellsouth.net](mailto:djlassc@bellsouth.net)

**Subject:** RE: Additional Required Information for Surveying Consulting Agreement - Business Liability Endorsement

Tara,

We still need additional insurance documentation in order to process the Consulting Agreement. Please provide the following:

- Additional Insured Endorsement Page for the General Liability ; we have received it for the Auto
- Proof of Workman's Comp. Insurance
- The project name needs to be in the Description of Operations Section: Project: 2012 Surveying consultant Agreement
- Proof of Professional Liability Insurance

Please provide the above; so the agreements can be processed by the City.

*Thank you.*

*Carolanne Kucmerowski*

Construction Management Technician

City of Delray Beach

434 South Swinton Avenue

Delray Beach, FL 33444

Phone: (561) 243-7177

Fax: (561) 243-7060

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**From:** Tara [<mailto:djlassc@bellsouth.net>]

**Sent:** Wednesday, March 28, 2012 10:09 AM

**To:** Kucmerowski, Carolanne

**Subject:** Additional Required Information for Surveying Consulting Agreement - Business Liability Endorsement

Good Morning Carolanne:

Attached, please find the Endorsement for our Business Liability Policy.

Our carrier has included an Endorsement for our current policy year (ending 5/9/12) as well as one for our renewing policy year.

You should have received the Endorsement for our auto policy and page #1 of our Contract late yesterday afternoon via e-mail.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Tara  
**Dennis J. Leavy & Associates**  
460 Business Park Way, Suite B  
Royal Palm Beach, FL 33411  
P: 561/753-0650  
F: 561/753-0290