

**PUBLIC IMPROVEMENT CONTRACT  
CITY OF NEWPORT**

This contract is between the City of Newport, ("City"), an Oregon municipal corporation, 169 SW Coast Highway, Newport, OR 97365, and Road and Driveway Company ("Contractor") PO Box 730, Newport, OR 97365.

Recital

City selected Contractor to perform work for the City on the *2012-017: 2012 Pavement Overlay Project* according to its public contracting rules and process.

Terms of Contract

1. Term. This contract shall be effective when signed by both parties, Contractor has submitted the required certificates of insurance and bonds and the City has issued a Notice to Proceed. It shall remain in effect until the work on the project set forth in section 13 has been completed, the improvement accepted by the City, and the warranty period has expired. The expiration of the term does not affect any right that arose prior to expiration. Terms that by their nature survive expiration shall remain in effect after expiration.
  - a. Work shall commence as stated in the Notice to Proceed from City to Contractor.
  - b. Work shall be substantially complete as shown in 31 December 2012.
2. Scope of Work. Contractor shall perform the work in Exhibit A – Scope of Work ("Project"). Contractor is required to furnish all materials, labor, water, tools, power, equipment, transportation and other work needed to construct the Project.
3. Payment. City shall pay Contractor an amount not to exceed \$144,146.30 according to the schedules and prices stated in Exhibit B.
  - a. Contractor shall invoice the City monthly for work performed, based on an estimate of the amount of work completed and the value of the completed work. City shall make a progress payment equal to the value of the completed work (of uncontested amounts), less amounts previously paid, less retainage of five percent (5%), within 30 days of receipt of the invoice.
  - b. City shall inspect the Project within 15 days of receipt of written notice from Contractor that the work is ready for final inspection and acceptance. The City shall either accept or reject the work in writing. A rejection must state the reasons for the rejection and list the work that must be done before the Project can be accepted. If a rejection is issued, Contractor

shall complete all work needed to be done and request another inspection. The process shall be continued until the City determines that the Project is complete and accepted.

- c. Within 30 days after written acceptance by the City and receipt of the warranty bond required by Section 8.c, all remaining amounts, including the retainage, shall be paid to Contractor, provided that Contractor shall submit evidence satisfactory to the Project Manager or Contracts Manager that all payrolls, material bills, and other indebtedness connected with the work have been paid. In case of disputed indebtedness or liens the Contractor may submit in lieu of evidence of payment a surety bond satisfactory to City guaranteeing payment of all such disputed amounts. If City fails to pay within 30 days of acceptance and receipt of the bond, City shall pay interest at the rate of 1.5% per month on any unpaid amounts.

#### 4. Contract Documents.

This contract consists of the main text of this contract and the following exhibits:

- a. Exhibit A – Scope of Work
- b. Exhibit B – Bid Schedule

The following documents are part of the contract documents and are binding on the parties:

- a. Authorized Change Orders
- b. Notice to Proceed
- c. Contract, including Exhibits
- d. Drawings
- e. Supplemental Specifications
- f. Special Conditions or Provisions
- g. Standard Specifications and Drawings
- h. General Conditions or Provisions
- i. Solicitation/RFP Documents

In the event of a conflict between or among contract documents, specific provisions and detailed drawings shall prevail over general provisions and general drawings. In the event two provisions conflict, Contractor will comply with the most stringent provision. Figure dimensions on plans shall take precedence over scale dimensions. Contractor must also supply a performance bond and a payment bond, as required by Section 8 and certificates of insurance as required by Section 7. Contractor acknowledges that it has or has access to all the contract documents referred to in this Section and will comply with all the contract documents.

5. Provisions Required by State Law and Grant Requirements

- a. Contractor shall:
- i. Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
  - ii. Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
  - iii. Not permit any lien or claim to be filed or prosecuted against City.
  - iv. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
  - v. Demonstrate that an employee drug testing program is in place. City has the right to audit and/or monitor the program. On request by the City, Contractor shall furnish a copy of the employee drug-testing program.
  - vi. Salvage or recycle construction and demolition debris, if feasible and cost-effective.
- b. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the contract as the claim becomes due, the City may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract.
- c. If Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this contract within 30 days after receipt of payment from the City (or in the case of a subcontractor, from Contractor), Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, on the date that is 30 days after the date when payment

was received from the contracting agency or from the contractor. The rate of interest may not exceed 30 percent. The amount of interest may not be waived.

- d. If Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- e. The payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.
- f. For work under this contract, a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in those cases, the employee shall be paid at least time and a half pay:
  - i. For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
  - ii. For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
  - iii. For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

Contractor is not required to pay overtime if the request for overtime pay is not filed within 30 days of completion of the Contract if Contractor has posted and maintained in place a circular with the information contained in ORS 279C.545 as required by ORS 279C.545(1).

- g. Contractors and subcontractors must give notice in writing to employees who perform work under this contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- h. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under

any law, contract or agreement for the purpose of providing or paying for the services.

- i. All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors comply with these requirements.
- j. Contractor shall utilize where applicable, recycled materials if (a) The recycled product is available; (b) The recycled product meets applicable standards; (c) The recycled product can be substituted for a comparable non-recycled product; and (d) The recycled product's costs do not exceed the costs of non-recycled products by more than five percent (5%).
- k. Contractor shall include in each first-tier subcontract, including contracts with material suppliers, a clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of the amounts paid to Contractor by City under this contract, and if payment is not made within 30 days after receipt of payment from City, to pay an interest penalty as specified in ORS 279C.515(2) to the first-tier subcontractor. The interest penalty does not apply if the only reason the delay in payment is due to a delay in payment by City to Contractor. Contractor shall include in each of Contractor's subcontracts, a provision requiring the first-tier subcontractor to include a similar payment and interest penalty clause and shall require subcontractors to include similar clauses with each lower-tier subcontractor or supplier.
- l. By signing this Contract, Contractor certifies that all subcontractors performing construction work shall be registered by the Construction Contractors Board or licensed by the State Landscape Contractors Board before the subcontractor starts work on the Project.
- m. By signing this Contract, Contractors certifies that it shall comply with Oregon tax laws.

## 6. Indemnity

Contractor shall defend, indemnify, and hold the City, its officers, agents and employees, harmless against all liability, loss, or expenses, including attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property caused by or resulting from any act or omission sustained in connection with the performance of this contract or by conditions created thereby, or based upon violation of any statute, ordinance or regulation.

7. Insurance

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement. The insurance shall cover all activities of the Contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier. The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,200,000
Medical Expense (Any one person)	\$5,000

B. Commercial Automobile Insurance

Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

C. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

D. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City as an additional insured with respect to this Agreement.

E. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage of Contractor's insurance without 30 days prior written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days prior notice of cancellation to the City

F. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Contractor shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the City 10 days prior to coverage expiration. Contractor shall provide City with certificates of insurance demonstrating that all required insurance is in place prior to issuance of the notice to proceed.

G. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

H. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Agreement. The procuring of required insurance shall not be construed to limit Contractor's liability under this Agreement.

8. Bonds

- a. Contractor shall provide a separate Performance Bond and a separate Payment Bond in a form acceptable to the City Attorney. Each bond shall be equal to 100% of the contract amount. The Performance Bond and the Payment Bond must be signed by the Surety's Attorney-in-Fact, and the Surety's seal must be affixed to each bond. Bonds shall not be canceled

without the City of Newport's consent, nor shall the City release them prior to Contract completion. Bonds must be originals - faxed or photocopied bond forms shall not be accepted.

- b. Contractor shall file with the Construction Contractor's Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the amount of \$30,000 prior to starting work on this contract. Contractor is aware of the provisions of ORS 279C.600 and 279C.605 relating to notices of claim and payment of claims on public works bonds.

9. Conflict of Interest

Contractor shall not give or offer any gift, loan, or other thing of value to any city official or employee. The Contractor shall not rent, lease, or purchase materials, supplies, or equipment, with or through any City official or employee.

10. Impact on Traffic and Property

Contractor shall adopt reasonable means and comply with all laws, ordinances, and regulation in order to minimize interference to traffic and damage to both public and private property; including the provision of adequate dust control, provisions of adequate noise control and all obstructions to traffic in accordance with the manual on uniform traffic control devices if applicable.

11. Prevailing Wage (Prevailing wages shall apply only if contract exceeds \$100,000)

- a. Contractor shall pay workers in each trade or occupation the higher of the applicable State prevailing wage rate or the federal prevailing wage rate under the Davis-Bacon Act (40 U.S.C. 3141 et seq.). Contractor and any subcontractors shall post the prevailing wage rates and fringe benefits as required by ORS 279C.840.
- b. Contractor shall furnish weekly to the City, certified statements, in writing, on a form prescribed by the Commissioner of the Bureau of Labor, certifying: (a) the hourly rate of wage paid each worker whom the contractor or the subcontractor has employed on the works; and (b) that no worker employed on the work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage. If the Contractor has not filed the certified statements as required under this contract, the City shall retain 25 percent of any amount earned by the Contractor until the Contractor has complied. The City shall pay the Contractor the amount retained under this subsection within 14 days after the Contractor has filed the certified statements with the City.
- c. Contractor shall allow the Bureau of Labor and Industries ("BOLI") to enter the office or business establishment of Contractor at any reasonable time

to determine whether the prevailing rate of wage is actually being paid and shall make payment records available to BOLI on request. Contractor shall require subcontractors to provide the same right of entry and inspection.

- d. City shall not make final payment unless the prevailing wage rate certifications are received.
- e. Contractor must comply with all laws and regulations relating to prevailing wages, whether or not set out in this contract. Further information regarding prevailing wages, including requirements applicable to Contractor, is available at:
- f. Prevailing Wage Requirements (ORS 279C.830 AND ORS 279C.840).

The Contractor shall pay to workers in each trade or occupation the current, applicable State prevailing rate of wage as established by the Oregon State Bureau of Labor and Industries (BOLI) <http://www.boli.state.or.us/BOLI> and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) through to the completion of this Contract (The current wage rate is determined by the 1st date of advertisement of the project).

Davis Bacon and Oregon State Prevailing Wage Rates included in the Invitation to Bid are applicable to this project; the higher of two wage rates shall be paid for each hour worked. Information is also available by contacting BOLI at 971-673-0839 or <http://www.oregon.gov/BOLI/WHD/PWR/index.shtml>

## 12. Equal Opportunity Employment

The successful bidder shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The successful bidder shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements.

## 13. Warranties

Contractor unconditionally warrants all work and materials under this Contract, including additional work authorized under change orders, against any defects whatsoever, for one year from the date of acceptance by the City, except that manufacturers' warranties and extended manufacturer warranties as specified in the contract documents or otherwise is a standard manufacturer product warranty shall not be abridged. In addition to its right to proceed on the warranty, the City may recover for breach of contract or negligence even if defects do not become evident during the warranty period.

- a. Contractor shall perform all work in accordance with all specifications,

correcting any work not in compliance with specifications, and for all repairs of damage to other improvements, natural and artificial structures, systems, equipment, and vegetation caused by, or resulting in whole or in part from occurrences beginning during the warranty period and are the result of defects in construction or materials installed under this contract. Contractor shall be responsible for all costs associated with site cleanup and remediation caused by, or resulting in whole or in part from, defects in its work or materials.

- b. Within 10 calendar days of the City's written notice of defects, Contractor or Contractor's Surety shall start repair of the defects and all related damage. If Contractor or Contractor's Surety fails to correct and repair the defects in a timely manner, the City may have the correction and repair done by others. Contractor or Contractor's Surety shall promptly reimburse the City for all expenses incurred to correct and repair the defects.
- c. In case of an emergency where delay could result in serious loss or damage, the City may make emergency corrections and repairs, without written notice. Contractor or Contractor's Surety shall promptly reimburse the City for all expenses incurred to correct and repair the defects.
- d. All work done to comply with the warranty shall itself be warranted for one year beginning on the date of the City's acceptance of the corrections, repairs, replacements or changes.

#### 14. Liquidated Damages

Contractor recognizes that the City shall incur significant internal and external costs (damages) as a result of any delay by the Contractor completing all Work within the specified Contract time. However, given the nature of the Project, it is unduly burdensome and difficult to demonstrate the exact dollar value of damages related to delay. The City has made a good faith and reasonable estimate of damages it would suffer from delay in completion. Contractor agrees to pay to City, not as a penalty but as liquidated damages, the amount specified in Exhibit A or the City's Special Provisions, if attached, for each calendar day of delay in completion of the project.

The City is authorized to deduct the amount of the liquidated damages from any amounts due and the Contractor and its Surety shall be liable for any excess.

If the Contract is terminated according to the Section 15 and if the Work has not been completed by other means on or before the expiration of Contract Time or adjusted Contract Time, liquidated damages shall be assessed against the Contractor for the duration of time reasonably required to complete the work.

## 15. Termination

a. Default. City may terminate this Contract for default on 10 day's written notice if Contractor:

- Violates any material provision of the Contract;
- Disregards applicable laws and regulation;
- Refuses or fails to supply enough Materials, Equipment or skilled workers for the prosecution of the Work in compliance with the Contract;
- Fails to make prompt payment to subcontractors;
- Makes an unauthorized assignment;
- Has a receiver appointed because of the Contractor's insolvency;
- Is adjudged bankrupt and the court consents to the Contract termination; or
- Otherwise fails or refuses to perform the Contract according to its terms and conditions.

Contractor may avoid termination by remedying the default to City's satisfaction within the 10 day notice period. The City may extend the 10 day period if it is satisfied that Contractor is making satisfactory progress towards remedying the default. On termination, Contractor shall provide City with immediate and peaceful possession of the Project Site, and of all materials and equipment to be incorporated into the Project, whether located on and off the Project Site, for which the Contractor received progress payments.

If the Contract is terminated for default, neither the Contractor nor its Surety shall be:

- Relieved of liability for damages or losses suffered by the City because of the Contractor's breach of Contract; or
- Entitled to receive any further progress payments until the Work is completed. However, progress payments for completed Work that remain due and owing at the time of Contract termination may be made according to the City's payment terms, except that City shall be entitled to withhold sufficient funds to cover costs incurred by the City as a result of the termination. Final payment to the Contractor shall be made according to the City's payment terms.

If a termination under this provision is determined by a court of competent jurisdiction to be unjustified, the termination shall be deemed a termination for public convenience. On termination, City may:

- Take possession of the Project Site;
- Take possession of Materials on the Project Site;
- Take possession of Materials not on the Project Site, for which the

Contractor received progress payments;

- Take possession of Equipment on the Project Site that is to be incorporated into the Work;
- Take Possession of Equipment not on the Project Site that is to be incorporated into the Work, and for which the Contractor received progress payments; and
- Finish the Work by whatever method the City deems expedient.

b. Termination for Public Convenience. City may terminate the Contract in whole or in part whenever the City determines that termination of the Contract is in the best interest of the public.

- **Notice**

The City shall provide the Contractor and the Contractor's Surety seven calendar days' written notice of termination for public convenience. On the termination date stated in the notice, Contractor and Contractor's Surety shall provide the City with immediate and peaceful possession of the Project Site, and of Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments.

- **Compensation**

If the Contract is terminated for public convenience, compensation shall be determined by the amount of Work completed/installed and materials and equipment furnished and the status of payment (paid/un-paid) for such Work, materials & equipment; less any outstanding labor or material claims against the Contractor.

16. Compliance with Law

a. Contractor shall comply with all applicable federal, state and local laws, ordinances, and regulations. Contractor shall maintain a current City business license. When multiple standards apply, Contractor shall comply with the more stringent standard. Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal, state and City civil rights and rehabilitation statutes, ordinances, rules and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act (ADAAA) of 2008 and any subsequent amendments (42 U.S.C. § 12101, et seq.) (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Contractor agrees to comply with ADA in its employment practices, and that it shall perform its contractual obligations consistent with ADA federal requirements/regulations, state disability and accessibility law and requirements, and applicable regulations and administrative rules established pursuant to those laws.

b. If Contractor encounters a condition not referred to in the solicitation documents,

not caused by the successful bidder and not discoverable by a reasonable prebid visual site inspection, and the condition requires compliance with the environmental and natural resources regulations listed in the invitation to bid, Contractor shall immediately notify City and not perform further work without written direction from City. On request of the City, Contractor shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition and provide the cost estimate promptly to the City. Within a reasonable time after receiving the estimate, the City may:

- i. Terminate the contract;
- ii. Complete the work itself;
- iii. Use other resources already under contract with the City;
- iv. Solicit bids for a new contractor to provide the necessary services under the competitive bid requirements of this chapter; or
- v. Issue a change order setting forth the additional work that must be undertaken, including any necessary extension of time;
- vi. Seek recovery from property owners or other responsible parties.

If City chooses to terminate the Contract under this subsection, Contractor shall be entitled to all costs and expenses incurred to the date of termination, including overhead and reasonable profits, on the percentage of the work completed. If City causes work to be done by another entity, Contractor may not be held liable for actions or omissions of the other entity.

#### 17. Assignment

Contractor shall not assign or transfer its interests in this contract without written consent of City, which consent may be withheld in the City's sole, subjective discretion.

#### 18. Non-partnership

Neither the City nor Contractor is a partner or joint venture with the other party in connection with the activities carried out under this contract. Contractor is engaged as an independent contractor.

- a. Contractor shall be solely responsible for payment of any federal or state taxes required as a result of this Contract.
- b. Contractor is not a City employee and is not entitled to any benefits granted to City employees.

#### 19. Force Majeure

Neither party shall not be held responsible for delay or default caused by fire, riot, war or acts of nature beyond a party's reasonable control. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall,

upon the cessation of the cause, diligently pursue performance of its obligations under the contract.

20. Waiver

The failure of the either party to enforce any provision of this Contract shall not constitute a waiver by the City of that or any other provision.

21. Limitation on Authority

The City retains its authority to execute all applications, contracts and other documents relating to the Project. Contractor has no right or authority, express or implied, to commit or otherwise obligate City or any of its partners, except as permitted by the express terms of this Contract, or as authorized in writing.

22. Attorney Fees and Governing Law

In the event an action, suit or proceeding, including appeal, is brought for failure to observe any of the terms of this Contract, each party shall be responsible for that party's own attorney fees, expenses, costs and disbursements for the action, suit, proceeding or appeal. The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court of the State of Oregon.

23. Merger

No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties. A waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Contractor, by signature of its authorized representative, hereby acknowledges that Contractor understands the Contract and agrees to be bound by its terms and conditions.

24. Notices

All notices shall be in writing and shall be served upon the other party by personal service, by facsimile transmission, E-Mail followed by mail delivery of the original of the notice, by overnight courier with proof of receipt, or by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to City:

City of Newport  
169 SW Coast Highway  
Newport, Oregon 97365

Attn: Ted Jones

Phone: 541.574.3375

Email: t.jones@newportoregon.gov

If to Contractor:

Road and Driveway Co.

PO Box 730

Newport OR 97365

Attn: Bob, Reb or Debbie

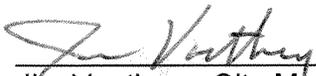
Phone: 541-265-9441

Email: bob@roadanddriveway.com  
or debbie@roadanddriveway.com

Service by mail shall be deemed complete on the date of actual delivery or three (3) business days after being sent via certified mail. Service by facsimile transmission or E-Mail shall be deemed served on receipt of the facsimile or E-Mail, followed by mail delivery.

By the signatures of their respective authorized signatories, the parties agree to all terms and conditions of this Contract.

**CITY OF NEWPORT:**

  
Jim Voetberg, City Manager

11/5/12  
Date

**CONTRACTOR:**

  
By:

10-30-12  
Date

Its: Robert G. Wienert  
President

**EXHIBIT A:**  
**SCOPE OF WORK**

The scope of work includes of all plans, specifications, special provisions, addenda and other documents associated with the solicitation package for the *2012-017: 2012 Pavement Overlay* Project, to be included here by reference.

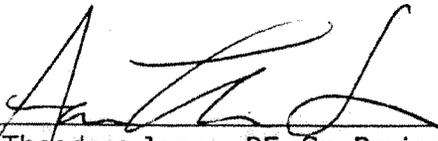
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Exhibit B

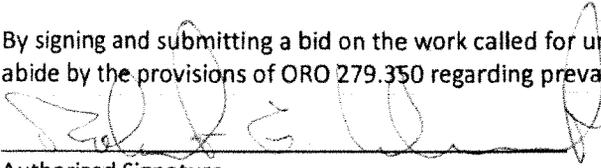
8. BID

	ITEM	UNIT	QTY	UNIT PRICE	TOTAL
1	01 55 26 Traffic Control, (ODOT 00225.90 (b) – Method “B” Lump Sum Basis - Temporary Work Zone Traffic Control, Complete)	LS	1	\$1200	\$ 1200.00
2	01 71 13 Mobilization, Not to exceed 10% of Total Base Bid, (ODOT 00210)	LS	1	\$4500	\$ 4500.00
3	Section 00620 – Cold Plane Pavement Removal, 2”-4” Deep	SY	3,000	\$ 7 <sup>24</sup>	\$ 21720.00
4	Section 00620 – Cold Plane Pavement Removal, greater than 4” Deep	SY	300	\$ 7 <sup>24</sup>	\$ 2172.00
5	Section 00620 – Milling Equipment Mobilization	LS	1	\$2400	\$ 2400.00
6	Section 00640 – Aggregate Base and Shoulders (a) Aggregate Base	TON	40	\$18 <sup>74</sup>	\$ 749.60
7	Section 00744 – Minor Hot Mix Asphalt Concrete (MHMAC) Pavement – Level 3, ½ inch, Dense	TON	1,485	\$ 75 <sup>02</sup>	\$ 111404.70
<b>TOTAL</b>					<b>\$ 144,146.30</b>

  
A. Theodore Jones, PE, Sr. Projects Manager

Date: 24 SEPTEMBER 2012

By signing and submitting a bid on the work called for under this proposal, the bidder certified he will abide by the provisions of ORO 279.350 regarding prevailing rate of wages on public contracts.

  
Authorized Signature

Road and Driveway Co.  
Company Name

PO Box 730  
Address

Newport, OR 97365  
City

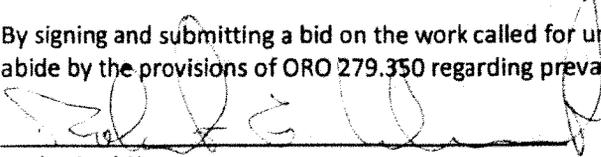
541-765-9441  
Phone

116331  
Oregon Contractor's Board Number

  
A. Theodore Jones, PE, Sr. Projects Manager

Date: 24 SEPTEMBER 2012

By signing and submitting a bid on the work called for under this proposal, the bidder certifies he will abide by the provisions of ORO 279.350 regarding prevailing rate of wages on public contracts.

  
Authorized Signature

Road and Driveway Co.  
Company Name

PO Box 730  
Address

Newport, OR 97365  
City

541-715-9441  
Phone

110331  
Oregon Contractor's Board Number

PAYMENT BOND

SURETY: Merchants Bonding Company (Mutual)  
BOND NO. ORC43815  
BOND AMOUNT \$ 144,146.30

Recitals

A. Road & Driveway Co (Principal) has been awarded a contract by the City of Newport (Obligee) to construct the following project: **2012-017: 2012 Pavement Overlay Project.**

B. Merchants Bonding Company (Mutual) (Surety) is a Iowa corporation, with its head office at 2100 Fleur Dr, Des Moines, IA 50321, and is authorized to conduct business as a surety in the State of Oregon.

C. Obligee requires the contractor on the Project to provide a bond to assure payment of persons providing labor and materials for the project.

Agreement and Bond

1. Principal shall promptly pay all persons supplying labor, materials or both to the Principal or its subcontractors for the Project; and shall promptly pay all contributions due the State Industrial Accident Fund and the State Unemployment Compensation Fund from the Principal or its subcontractors in connection with the work on the Project; and shall pay to the Oregon Department of Revenue all sums required to be deducted and retained from the wages of employees of the Principal and its subcontractors pursuant to ORS 316.167, and shall permit no lien nor claim to be filed against the Project or Obligee.
2. If Principal fails to comply with its obligations under Section 1, Surety shall be obligated to pay Obligee any amounts required to be paid under Section 1 under the following terms:
  - a. Obligee shall provide written notice to Principal and Surety that Principal is required to make payment required under Section 1 within 10 days of the notice.
  - b. If payment is not made within 10 days of the notice described in Section 2.a., Obligee shall provide a written notice to the Surety demanding payment by Surety to Obligee. Surety shall pay Obligee amounts payable under Section 1 within 10 days of receipt of the notice described in this subsection. The maximum total amount of Surety's obligation under this agreement and bond is \$ 144,146.30. Surety's obligations under this section are binding on Surety, its heirs, executors, administrators, successor and assigns.
3. Obligee may maintain an action for breach of this agreement against Principal or Surety

or both, provided, however, that the maximum amount of damages recoverable against Surety shall be the amount set forth in Section 2.b. The prevailing party in any action on this agreement and bond shall be entitled to an award of reasonable attorney fees at trial and on any appeal.

4. This agreement shall cease to have effect and Surety's obligations shall terminate once Principal has paid all suppliers of labor and materials in full and otherwise complied with its obligations under Section 1.

Nonpayment of the bond premium will not invalidate this bond nor shall Obligee be obligated for the payment of any premiums.

This bond is given and received under authority of ORS Chapters 279C and 351. The provisions of ORS Chapters 279C and 351 are incorporated into this bond.

EXECUTED, SIGNED & SEALED BY DULY AUTHORIZED LEGAL REPRESENTATIVES:

Dated this 2nd day of November, 2012.

PRINCIPAL: Road & Driveway Co  
By [Signature]  
Signature  
President  
Official Capacity  
Attest: [Signature]  
Corporation Secretary

SURETY: Merchants Bonding Company (Mutual)

BY ATTORNEY-IN-FACT:  
*[Power of Attorney must accompany each bond]*

Jenifer McCormick  
Name [Signature]  
Signature  
2100 Fleur Dr  
Address  
Des Moines, IA 50321  
City State Zip  
(425)576-4079  
Phone Fax

**PERFORMANCE BOND**

SURETY: Merchants Bonding Company (Mutual)  
BOND NO. ORC43815  
BOND AMOUNT \$ 144,146.30

Recitals

A. Road & Driveway Co (Principal) has been awarded a contract (the Contract) by the City of Newport (Obligee) to construct the following project: **2012-017: 2012 Pavement Overlay Project.**

B. Merchants Bonding Company (Mutual) (Surety) is a IA corporation, with its head office at 2100 Fleur Dr, Des Moines, IA 50321, and is authorized to conduct business as a surety in the State of Oregon.

C. Obligee requires the contractor on the Project to provide a bond to assure completion of the work.

Agreement and Bond

1. Principal shall comply with its contractual obligations to satisfactorily complete all work on the Project, within the time specified in the Contract.
2. If Principal fails to comply with its obligations under Section 1, Surety shall pay City, on written demand of Obligee, the amount necessary to complete Principal's obligations under the Contract, provided however, that Surety's maximum obligation shall be: \$ 144,146.30. As an alternative to payment, Surety may complete Principal's obligations under the Contract.
3. Obligee may maintain an action for breach of this agreement against Principal or Surety or both, provided, however, that the maximum amount of damages recoverable against Surety shall be the amount set forth in Section 2.b. The prevailing party in any action on this agreement and bond shall be entitled to an award of reasonable attorney fees at trial and on any appeal.
4. This agreement shall cease to have effect and Surety's obligations shall terminate if Principal has complied with its obligations under Section 1.

Nonpayment of the bond premium will not invalidate this bond nor shall Obligee be obligated for the payment of any premiums.

This bond is given and received under authority of ORS Chapters 279C and 351. The provisions of ORS Chapters 279C and 351 are incorporated into this bond.

EXECUTED, SIGNED AND SEALED BY DULY AUTHORIZED LEGAL REPRESENTATIVES:

Dated this 2nd day of November, 20 12.

PRINCIPAL: Road & Driveway Co

By [Signature]

Signature

President  
Official Capacity

Attest: [Signature]

Corporation Secretary

SURETY: Merchants Bonding Company (Mutual)

BY ATTORNEY-IN-FACT:

*[Power of Attorney must accompany each bond]*

Jenifer McCormick

[Signature]  
Name

Signature

2100 Fleur Dr

Address

Des Moines, IA 50321

City

State

Zip

(425)576-4079

Phone

Fax

**MERCHANTS**  
**BONDING COMPANY™**  
**POWER OF ATTORNEY**

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations duly organized under the laws of the State of Iowa (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint, individually,

James S. Ewald, Wolter VanDoorninck, Coralee Aho, Jenifer McCormick

of Portland and State of Oregon their true and lawful Attorney-in-Fact, with full power and authority hereby conferred in their name, place and stead, to sign, execute, acknowledge and deliver in their behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

**FIVE MILLION (\$5,000,000.00) DOLLARS**

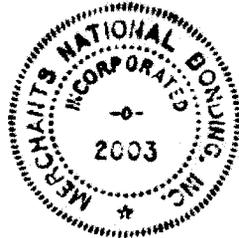
and to bind the Companies thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the Companies, and all the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following By-Laws adopted by the Board of Directors of the Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 5th day of June, 2012.



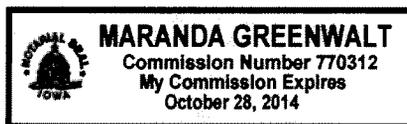
MERCHANTS BONDING COMPANY (MUTUAL)  
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*  
President

STATE OF IOWA  
COUNTY OF POLK ss.

On this 5th day of June, 2012, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument is the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.

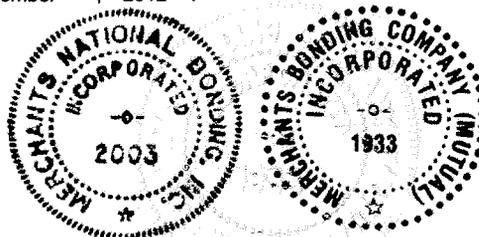


*Maranda Greenwalt*  
Notary Public, Polk County, Iowa

STATE OF IOWA  
COUNTY OF POLK ss.

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 2nd day of November, 2012.



*William Warner Jr.*  
Secretary

# OREGON WORKERS COMPENSATION CERTIFICATE OF INSURANCE



**CERTIFICATE HOLDER:**

CITY OF NEWPORT  
169 SW COAST HIGHWAY  
NEWPORT, OR 97365

**The policy of insurance listed below has been issued to the insured named below for the policy period indicated. The insurance afforded by the policy described herein is subject to all the terms, exclusions and conditions of such policy.**

<b>POLICY NO.</b>	<b>POLICY PERIOD</b>	<b>ISSUE DATE</b>
812716	10/01/2012 to 10/01/2013	10/30/2012

**INSURED:**

ROAD & DRIVEWAY CO  
PO BOX 730  
NEWPORT, OR 97365-0053

**BROKER OF RECORD:**

WARD INSURANCE AGENCY INC  
PO BOX 10167  
EUGENE, OR 97440

**LIMITS OF LIABILITY:**

Bodily Injury by Accident	\$500,000	each accident
Bodily Injury by Disease	\$500,000	each employee
Body Injury by Disease	\$500,000	policy limit

**DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL ITEMS:**

RE: 2012 Pavement Overlay Project

**IMPORTANT:**

The coverage described above is in effect as of the issue date of this certificate. It is subject to change at any time in the future.

This certificate is issued as a matter of information only and confers no rights to the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies above. This certificate does not constitute a contract between the issuing insurer, authorized representative or producer and the certificate holder.

**CANCELLATION:**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED TO THE POLICYHOLDER AND CERTIFICATE HOLDER IN ACCORDANCE WITH THE POLICY PROVISIONS AND OREGON LAW. SAIF WILL ENDEAVOR TO PROVIDE WRITTEN NOTICE WITHIN 30 DAYS WHENEVER POSSIBLE.

AUTHORIZED REPRESENTATIVE

A handwritten signature in black ink that reads "Brenda JP Reddick" with a long, sweeping flourish at the end.

President and CEO

400 High Street SE  
Salem, OR 97312  
P: 800.285.8525  
F: 503.373.8020



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/30/2012

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> <b>Ward Insurance Agency</b> <b>P O Box 10167</b>  <b>Eugene OR 97440</b>	<b>CONTACT NAME:</b> Margie Hargett <b>PHONE (A/C, No, Ext):</b> (541) 687-1117 <b>E-MAIL ADDRESS:</b> margie@wardinsurance.net	<b>FAX (A/C, No):</b> (541) 342-8280
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> <b>Road &amp; Driveway</b> <b>PO Box 730</b>  <b>Newport OR 97365</b>	<b>INSURER A:</b> Continental Western Ins. Co.	<b>NAIC #</b> 10804
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER:** 12/13 GL/AL/UMB-AI                      **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	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$2,000 PD DEDUCTIBLE <b>PER OCCURRENCE</b> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X	X	CWP2899606  LOGGERS BFPD @ \$1,000,000  LIMITED POLLUTION LIABILITY @ \$1,000,000	10/1/2012	10/1/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	X	CWP2899606  \$1,000,000 AUTO POLLUTION LIABILITY	10/1/2012	10/1/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP-Basic \$ 15,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CU2899607	10/1/2012	10/1/2013	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER 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)  
 RE: 2012 PAVEMENT OVERLAY PROJECT

CITY OF NEWPORT IS NAMED AS ADDITIONAL INSURED WITH RESPECTS TO WORK PERFORMED BY THE NAMED INSURED AND WHEN REQUIRED BY WRITTEN CONTRACT PER THE ATTACHED CLCG0020 FOR GENERAL LIABILITY AND CW3468 FOR AUTO. PRIMARY & NON-CONTRIBUTORY COVERAGE IS INCLUDED IN CLCG0020.

**CERTIFICATE HOLDER**

(541) 574-3355

CITY OF NEWPORT  
 169 SW COAST HWY  
 NEWPORT, OR 97365

**CANCELLATION**

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

AUTHORIZED REPRESENTATIVE

Paul Jensen/DANAK

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONTRACTORS' COMMERCIAL GENERAL LIABILITY ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. MEDICAL PAYMENTS

If **SECTION I – COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit provided by this policy, subject to the terms of **SECTION III - LIMITS OF INSURANCE**, shall be the greater of:
  - a. \$10,000; or
  - b. The Medical Expense Limit shown in the Declarations of this Coverage Part.

#### B. FIRE, LIGHTNING, EXPLOSION, SMOKE AND SPRINKLER LEAKAGE DAMAGE TO PREMISES YOU RENT

If damage to premises rented to you under **Coverage A**, is not otherwise excluded from this policy, the following applies:

1. The last paragraph of **SECTION I – COVERAGE A.2. Exclusions** is deleted and replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE**.

2. Paragraph 6. of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to 5. above, the greater of:
  - a. \$300,000; or
  - b. the Damage To Premises Rented To You Limit shown in the Declarations;

is the most we will pay under **COVERAGE A** for damages because of "property damage" to any one premises, while rented to you, or temporarily occupied by you with the permission of the owner arising out of any one fire, lightning, explosion or sprinkler leakage incident.

3. Paragraph 4.b.(1)(b) **Other Insurance of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted and replaced by the following:

(b) That is Fire, Lightning, Explosion or Sprinkler Leakage Insurance for premises rented to you or temporarily occupied by you with the permission of the owner;

4. Paragraph 9.a. of **SECTION V – DEFINITIONS** is deleted and replaced by the following:

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, explosion or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

#### C. NON-OWNED WATERCRAFT

1. Paragraph g.(2) of **SECTION I – COVERAGE A.2. Exclusions** is deleted and replaced by the following:

A watercraft you do not own that is:

- (a) Less than 51 feet long; and
- (b) Not used to carry persons or property for a charge.

#### D. SUPPLEMENTARY PAYMENTS

**SECTION I – SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

1. The limit of insurance in paragraph 1.b. is increased from \$250 to \$2,500; and
2. The limit of insurance in paragraph 1.d. is increased from \$250 to \$500.

#### E. AUTOMATIC ADDITIONAL INSURED – SPECIFIED RELATIONSHIPS

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

- e. Any person or organization described in paragraph f. below, whom you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.

Such person or organization is an insured provided:

- (1) The written or oral contract or agreement is:
  - (a) Currently in effect or becomes effective during the policy period; and
  - (b) Executed prior to an "occurrence" or offense to which this insurance would apply.
- (2) They are not specifically designated as an additional insured under any other provision of, or endorsement added to, this policy.

f. Only the following persons or organizations are additional insureds under this endorsement, and coverage provided to such additional insureds is limited as provided herein:

- (1) The manager or lessor of a premise leased to you, but only with respect to liability arising from the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to be a tenant of that premises.
  - (b) Structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
- (2) Any person or organization from whom you lease 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).

However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- (3) Any state or political subdivision, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

- (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- (b) The construction, erection, or removal of elevators; or

- (c) The ownership, maintenance, or use of any elevators.

#### F. ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS

1. **SECTION II – WHO IS AN INSURED** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this policy ends when your operations for that additional insured are completed.

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

This insurance does not apply to:

- a. "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 failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

- b. "Bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

3. The insurance provided by this endorsement is primary insurance and we will not seek contribution under any insurance policy under which such additional insured is a named insured, if such policy was procured and paid for by such additional insured, or a parent or related entity of such additional insured.

4. With respect to the insurance afforded to these additional insureds, **SECTION III - LIMITS OF INSURANCE** is amended as follows:

The limits applicable to the additional insured are those specified in the written contract or agreement or the limits stated in the Declarations, whichever is less. If no limits are specified in the written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

#### G. PROPERTY DAMAGE TO BORROWED EQUIPMENT

1. Paragraph 2.j. of **SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is amended as follows:

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

2. **SECTION III - LIMITS OF INSURANCE** is deleted and replaced by the following:

The most we will pay in any one "occurrence" for "property damage" to borrowed equipment is \$15,000. This limit of insurance is 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".

3. **Deductible**

a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of \$250 as applicable to "property damage" as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".

b. The terms of this insurance, including those with respect to our right and duty to defend the insured against any "suits" seeking those damages; and your duties in the event of an "occurrence", claim, or "suit" apply irrespective of the application of the deductible amount.

c. We may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken; you shall promptly reimburse us for such part of the deductible amount as we have paid.

#### H. BROADENED NAMED INSURED

Paragraph 3. of **SECTION II - WHO IS AN INSURED** is deleted and replaced by the following:

Any organization, other than a joint venture, over which you maintain ownership or majority interest of more than 50% will be 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.

b. **COVERAGE A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

c. **COVERAGE B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

#### I. CONSTRUCTION PROJECT GENERAL AGGREGATE LIMIT

1. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which can be attributed only to ongoing operations at a single construction project away from premises owned by or rented to the insured:

a. A Single Construction Project General Aggregate Limit applies to each construction project away from premises owned by or rented to the insured, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.

b. The Single Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under **COVERAGE A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **COVERAGE C** regardless of the number of:

(1) Insureds;

(2) Claims made or "suits" brought; or

(3) Persons or organizations making claims or bringing "suits".

- c. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the Single Construction Project General Aggregate Limit for that construction project away from premises owned by or rented to the insured. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Single Construction Project General Aggregate Limit for any other separate construction project away from premises owned by or rented to the insured.
  - d. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Single Construction Project General Aggregate Limit.
2. For all sums which the Insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which cannot be attributed only to ongoing operations at a single designated construction project away from premises owned by or rented to the insured:
- a. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
  - b. Such payments shall not reduce any Single Construction Project General Aggregate Limit.
3. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Single Construction Project General Aggregate Limit.
4. If the applicable construction project away from premises owned by or rented to the insured has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
5. The provisions of **Limits Of Insurance (SECTION III)** not otherwise modified by this endorsement shall continue to apply as stipulated.

**J. KNOWLEDGE OF OCCURRENCE**

The following is added to paragraph 2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

- e. A report of an "occurrence", offense, claim or "suit" to:
  - (1) You, if you are an individual,
  - (2) A partner, if you are a partnership,
  - (3) An executive officer, if you are a corporation, or
  - (4) A manager, if you are a limited liability company;
 is considered knowledge and requires you to notify us of the "occurrence", offense, claim, or "suit" as soon as practicable.
- f. We are considered on notice of an "occurrence", offense, claim or "suit" that is reported to your Workers' Compensation insurer for an event which later develops into an "occurrence", offense, claim or "suit" for which there is coverage under this policy. However, we will only be considered on notice if you notify us as soon as you know the claim should be addressed by this policy rather than your Workers' Compensation policy.

**K. UNINTENTIONAL OMISSIONS**

The following is added to paragraph 6. **Representations of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

- d. If you unintentionally fail to disclose any exposures existing at the inception date of your policy, we will not deny coverage under this Coverage Part solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

This provision does not apply to any known injury or damage which is excluded under any other provision of this policy.

**L. MENTAL ANGUISH**

Paragraph 3. of **SECTION V - DEFINITIONS** is deleted and replaced by the following:

- 3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these at any time.

**M. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS**

Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract requiring such waiver with that person or organization and included in the "products-completed operations hazard".

However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

#### N. LIMITED JOB SITE POLLUTION

1. Exclusion f. under **Section I – Coverage A** is replaced by the following:

##### 2. Exclusions

This insurance does not apply to:

##### f. Pollution

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

(a) At or from any premises, site or location 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"; or

(b) At or from a storage tank or other container, ducts or piping which is below or partially below the surface of the ground or water and which, at any time, has been buried under the surface of the ground or water and then subsequently exposed by erosion, excavation or any other means if the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" arises at or from any premises, site or location 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.

Subparagraph (b) does not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement issued or made pursuant to any environmental protection or environmental liability statutes or regulations that any insured 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 those sums the insured becomes legally obligated to pay as 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.

2. With respect to "bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

a. The "Each Occurrence Limit" shown in the Declarations does not apply.

b. Paragraph 7. of **Limits Of Insurance (Section III)** does not apply.

c. Paragraph 1. of **Section III – Limits Of Insurance** is replaced by the following:

The Limits Of Insurance shown in this endorsement, or in the Declarations and the rules below fix the most we will pay regardless of the number of:

(1) Insureds;

- (2) Claims made or "suits" brought; or
  - (3) Persons or organizations making claims or bringing "suits".
- d. The following are added to **Section III – Limits Of Insurance:**

8. Subject to 2. or 3. above, whichever applies, the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C

because of "bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" is \$100,000.

9. Subject to 8. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".

**O. OTHER INSURANCE**

If this policy includes a Coverage Form or an Endorsement which provides coverage for loss or damage covered by one or more of the Extensions of this endorsement, the limit and the coverage provided by this endorsement are deleted and replaced by the limit and coverage provided by that Coverage Form or Endorsement.

## COMMERCIAL AUTOMOBILE EXPANSION ENDORSEMENT - PLATINUM

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

The following provides a broad range of coverage in addition to that provided by the basic policy. In some instances, a higher limit or broader coverage is available. Should the policy indicate broader coverage or higher limits than provided by this endorsement, the higher limits or broader coverage shall apply.

#### A. BROADENED NAMED INSURED

The Named Insured shown in the Declarations is amended to include:

Any organization, other than a joint venture, over which you maintain ownership or majority interest of more than 50%, unless that organization is an "insured" under any other automobile policy or would be an "insured" under such a policy but for the exhaustion of its Limit of Insurance, however;

1. 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.
2. Coverage does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

#### B. ADDITIONAL INSURED BY CONTRACT OR AGREEMENT

The following is added to Section II - Liability Coverage, Paragraph A.1.:

- d. Any person or organization for whom you are performing operations if you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.

- (1) Such person or organization is an additional insured only with respect to liability for "bodily injury" or "property damage":

- (a) Caused by an "accident", and
- (b) Resulting from the ownership, maintenance or use of a covered "auto".

- (2) A person's or organization's status as an additional insured exists only while you are performing operations for that additional insured.
- (3) Section II, Paragraph C. Limits of Insurance for person or organization added as additional insured are

those specified in the written contract or agreement, or in this coverage form, whichever is less. These limits of insurance are inclusive of and are not in addition to the Limits of Insurance shown in the Declarations.

- (4) This insurance applies on a primary and non-contributory basis if that is required by the written contract or agreement.
- (5) This insurance does not apply unless the written contract or agreement has been executed prior to the "bodily injury" or "property damage".

#### C. ADDITIONAL INSURED - EMPLOYEES

The following is added to the Section II - Liability Coverage, Paragraph A.1. Who Is An Insured Provision:

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

#### D. EXTENDED COVERAGE - BAIL BONDS

Section II - Liability Coverage, Paragraph A.2.a.(2). is deleted and replaced by the following:

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

#### E. EXTENDED COVERAGE - LOSS OF EARNING

Section II - Liability Coverage, Paragraph A.2.a.(4) is deleted and replaced by the following:

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

**F. FELLOW EMPLOYEE COVERAGE**

The Fellow Employee Exclusion contained in Section II -Liability Coverage does not apply. This coverage is excess over any other collectable insurance.

**G. AUTO MEDICAL PAYMENTS COVERAGE - INCREASED LIMIT**

If the "insured" is wearing a seat belt at the time an "accident" occurs, the LIMIT OF INSURANCE for AUTOMOBILE MEDICAL PAYMENTS COVERAGE shown in the Declarations will be double the limit shown. All other terms and conditions applicable to MEDICAL PAYMENTS remain unchanged.

**H. COVERAGE EXTENSION AS A CONSEQUENCE OF THEFT OF AN "AUTO"**

**1. Transportation Expense**

Section III - Physical Damage Coverage, Paragraph A.4.a. is deleted and replaced by the following:

- a. We will also pay up to \$75 per day to a maximum of \$2,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the "private passenger type". We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

We will also pay reasonable and necessary expenses to facilitate the return of the stolen "auto" to you.

**I. EXTENDED COVERAGE - AIRBAGS**

Section III - Physical Damage Coverage, Paragraph B.3.a. does not apply to the unintended discharge of an airbag. Coverage is excess over any other collectible insurance or warranty specifically designed to provide coverage.

**J. LEASED OR FINANCED "AUTOS" - PHYSICAL DAMAGE COVERAGE**

The following is added to Section III - Physical Damage Coverage, Paragraph C.

- 4. In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

- a. The amount under the Physical Damage Coverage section of the policy; and
- b. Any:
  - (1) Overdue lease/loan payments at the time of the "loss";
  - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;

- (3) Security deposits not returned by the lessor;
- (4) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
- (5) Carry-over balances from previous loans or leases.

**K. GLASS DEDUCTIBLE**

Section III - Physical Damage Coverage, Paragraph D. is deleted and replaced by the following:

**D. DEDUCTIBLE**

For each covered "auto" our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to:

- 1. "Loss" caused by fire or lightning; or
- 2. "Loss" when you elect to patch or repair glass rather than replace.

**L. EXTENDED COVERAGE - ELECTRONIC EQUIPMENT**

The following is added to Section III - Physical Damage Coverage, Paragraph A.4.:

- c. Physical Damage Coverage on a covered "auto" also applies to "loss" to any electronic equipment that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound. This coverage applies only if the equipment is permanently installed in the covered "auto" at the time of "loss" or the equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto".

We will pay with respects to a covered "auto" for "loss" to antennas and other accessories necessary for use of the electronic equipment. However, this does not include tapes, records or discs.

**M. EXTENDED COVERAGE - PERSONAL EFFECTS**

The following is added to Section III - Physical Damage Coverage, Paragraph A.4.:

- d. Physical Damage Coverage on a covered "auto" may be extended to "loss" to your personal property or, if you are an individual, the personal property of a family member, that is in the covered "auto" at the time of "loss".

The most we will pay for any one "loss" under this coverage extension is \$500.

#### N. TOWING AND LABOR COVERAGE

Section III – Physical Damage Coverage, Paragraph A.2. is deleted and replaced by the following:

If a private passenger type "auto" or light truck "auto" (0-10,000 Lbs. GVW) is provided both Comprehensive and Collision Coverage, we will pay up to \$100 for towing and labor costs incurred each time such "auto" is disabled. However, the labor must be performed at the place of disablement.

#### O. EXTENDED COVERAGE - CUSTOMIZED FURNISHINGS

The following is added to Section III – Physical Damage Coverage, Paragraph A.4.:

- e. Physical Damage Coverage on a covered "auto" may be extended to "loss" to custom furnishings including, but not limited to special carpeting and insulation, height-extending roofs, and custom murals, paintings or other decals or graphics.

Our limit of liability for loss to custom furnishings shall be the least of:

- (1) Actual cash value of the stolen or damaged property;
- (2) Amount necessary to repair or replace the property; or
- (3) \$500.

This coverage extension does not apply to electronic equipment.

#### P. PHYSICAL DAMAGE COVERAGE - HIRED "AUTOS"

You may extend the Comprehensive, Specified Causes of Loss and Collision coverages provided on your owned "autos" to any "auto" you lease, rent, hire or borrow from someone other than your employees or partners or members of their households subject to the following:

1. The most we will pay in any one "loss" is the least of \$50,000, the actual cash value of the "auto" or the cost to repair or replace the "auto", except that such amount will be reduced by a deductible to be determined as follows:
  - a. The deductible shall be equal to the amount of the highest deductible shown for any owned "auto" of the same classification for that coverage. In the event there is no owned "auto" of the same classification, the highest deductible for any owned "auto" will apply for that coverage.
  - b. No deductible will apply to "loss" caused by fire or lightning.
2. Coverage provided under this extension will:
  - a. Be excess over any other collectible insurance;

- b. Pay, in addition to the limit set forth in P.1. above, up to \$500 per day, not to exceed \$3,500 per "loss" for:

- (1) Any costs or fees associated with the "loss" to a hired "auto"; and
- (2) Loss of use, provided it is the consequence of an "accident" for which you are legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.

#### Q. RENTAL REIMBURSEMENT COVERAGE

We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto".

1. Payment applies in addition to the otherwise applicable amount of each coverage you have on the covered "auto".
2. No deductible applies to this coverage.
3. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the expiration date of the policy, with the lesser of the following:
  - a. When the covered "auto" has been repaired or replaced, or
  - b. When the total amount paid under this coverage extension reaches \$2,500.
4. Our payment is limited to the lesser of the following amounts:
  - a. Necessary and actual expenses incurred.
  - b. Not more than \$75 per day.
5. We will pay up to an additional \$300 for the reasonable and necessary expenses you incur to remove your materials and equipment from the covered "auto" and replace such materials and equipment on the rental "auto".
6. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
7. If "loss" results from the total theft of a covered "auto" of the "private passenger type", we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the Physical Damage Coverage Extension.

#### R. DRIVE OTHER CAR COVERAGE

##### 1. Changes In Liability Coverage

- a. Any "auto" you don't own, hire or borrow is a covered "auto" for Liability Coverage while being used by:
- (1) You, if you are designated in the Declarations as an individual;

- (2) Your partners or members, if you are designated in the Declarations as a partnership or joint venture;
- (3) Your members or managers, if you are designated in the Declarations as a limited liability company;
- (4) Your "executive officers", if you are designed in the Declarations as an organization other than an individual, partnership, joint venture or limited liability company; and
- (5) The spouse of any person named in R.1.a.1. through R.1.a.(4) while a resident of the same household.

except:

- (a) Any "auto" owned by that individual or by any member of his or her household.
- (b) Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

## 2. Changes In Auto Medical Payments And Uninsured And Underinsured Motorists Coverages

The following is added to **Who Is An Insured**:

Any individual named in R.1.a and his or her "family members" are "insured" while "occupying" or while a pedestrian when being struck by any "auto" you don't own except:

Any "auto" owned by that individual or by any "family member".

## 3. Changes In Physical Damage Coverage

Any private passenger type "auto" you don't own, hire or borrow is a covered "auto" while in the care, custody or control of any individual named in R.1.a or his or her spouse while a resident of the same household except:

- a. Any "auto" owned by that individual or by any member of his or her household.
- b. Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

## 4. The most we will pay for the total of all damages under LIABILITY COVERAGE, AUTO MEDICAL PAYMENTS, UNINSURED MOTORISTS COVERAGE and UNDERINSURED MOTORISTS COVERAGE is the LIMIT OF INSURANCE shown in the Declarations as applicable to owned "autos".

## 5. Our obligation to pay for, repair, return or replace damaged or stolen property under PHYSICAL DAMAGE COVERAGE, will be reduced by a deductible equal to the amount of the largest deductible shown for any owned private passenger type "auto" applicable to that coverage. If there are no

owned private passenger type "autos", the deductible shall be \$50 for Comprehensive Coverage and \$100 for Collision Coverage. No deductible will apply to "loss" caused by fire or lightning.

## E. Additional Definition

As used in this section; **R. DRIVE OTHER CAR COVERAGE:**

"Family member" means a person related to the individual named in R.1.a by blood, marriage or adoption who is a resident of the individual's household, including a ward or foster child.

## S. KNOWLEDGE OF OCCURRENCE

The following is added to Section IV – Business Auto Conditions, Paragraph A.2.:

- d. Notice of an "accident" or "loss" will be considered knowledge of yours only if reported to you, if you are an individual, a partner, an executive officer or an employee designated by you to give us such notice.
- e. Notice of an "accident" or "loss" to your Workers Compensation insurer, for an event which later develops into a claim for which there is coverage under this policy, shall be considered notice to us, but only if we are notified as soon as you know that the claim should be addressed by this policy, rather than your Workers Compensation policy.
- f. Your rights under this policy shall not be prejudiced if you fail to give us notice of an "accident" or "loss", solely due to your reasonable and documented belief that the event is not covered by this policy.

The following is added to Section IV – Business Auto Conditions, Paragraph 2.b.:

- (6) Knowledge of the receipt of documents concerning a claim or "suit" will be considered knowledge of yours only if receipt of such documents is known to you, if you are an individual, a partner, an executive officer or an employee designated by you to forward such documents to us.

## T. WAIVER OF SUBROGATION BY CONTRACT OR AGREEMENT

The following is added to Section IV - Business Auto Conditions, Paragraph A.5.:

We waive any right of recovery we may have against any "insured" provided coverage under this endorsement under B., ADDITIONAL INSURED BY CONTRACT OR AGREEMENT, but only as respects "loss" arising out of the operation, maintenance or use of a covered "auto" pursuant to the provisions or conditions of the written contract or agreement.

**U. UNINTENTIONAL OMISSIONS**

The following is added Section IV - Business Auto Conditions, Paragraph B.2.:

We will not deny coverage under this policy if you fail to disclose all hazards existing as of the inception date of the policy, provided such failure is not intentional.

**V LIBERALIZATION**

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.