

**AUTHORIZATION FOR
AGREEMENTS, MOUs, OR
OTHER DOCUMENTS OBLIGATING
THE CITY**

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: Professional Services Agreement with Public Affairs Counsel

Date: June 23, 2022

Statement of Purpose: Direct contract with Public Affairs Counsel, formerly subcontract through Dig Deep Research, LLC, for state legislative affairs services.

Department Head Signature: [Signature]

Remarks, if any: ~~Cert of insurance will arrive 6/30 - AC~~

City Attorney Review and Signature: [Signature]

Date: 6/28/2022

Other Signatures as Requested by the City Attorney: _____

	Signature				Name/Position	Date:
Budget Confirmed:	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Certificate of Insurance Attached:	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/> <u>see note</u>
City Council Approval Needed:	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Date:	<u>6/20/2022</u>

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature]

Date: 6/29/22

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: _____

Date: _____

Date posted on website: _____

3346

**CITY OF NEWPORT, OREGON
PROFESSIONAL SERVICES AGREEMENT**

PUBLIC AFFAIRS COUNSEL, INC.

THIS AGREEMENT is between City of Newport, an Oregon municipal corporation (City), and Public Affairs Counsel, Inc., an Oregon corporation, which is registered to practice government affairs and advocacy (Consultant).

RECITALS

- A. Pursuant to public contracting rule 137-048-0200, the City of Newport (City) sought professional Consulting services to assist the City in state legislative affairs services.
- B. After reviewing the proposal, the City has selected Public Affairs Counsel, Inc. (Consultant) as a part of the Dig Deep Research, LLC Consultant of Record team, to provide the proposed services.
- C. Consultant is willing and qualified to perform such services.

TERMS OF AGREEMENT

1. Consultant's Scope of Services

Consultant shall perform professional Consulting services related to state legislative affairs advocacy. The City is free to utilize other Consultants or consultant as it deems appropriate. Services include, but are not limited to:

- Coordinating state and government affairs activities:
 - Issue/bill tracking and monitoring for City related to dam legislation, related water policy legislation, and funding for Big Creek Dam replacement for interim and legislative sessions;
 - Development of state legislative funding strategy for Big Creek Dam project;
 - State legislative advocacy for Big Creek Dam project and funding request;
 - Regulatory advocacy for Big Creek Dam project and funding request.
- Coordination of stakeholder advocacy for Big Creek Dam project;
- Attendance and reporting at stakeholder meetings as directed by City; and
- Communications and regular state government affairs updates to stakeholders as directed by City.

2. Effective Date and Duration

This agreement is effective on execution by both parties and shall be effective for the period beginning on July 1, 2022 through June 30, 2023. The parties may extend the term by mutual agreement.

3. Consultant's Fee and Schedules

A. Fee

Fees for services for the term of this Agreement shall be based on a maximum amount payable of \$50,000, pursuant to Exhibit A. Consultant will invoice monthly payments. The maximum monetary limit will not be exceeded without prior written approval by the City. Projects partially

completed may be paid for in proportion to the degree of completion.

Consultant will be reimbursed for direct charges such as the cost of printing, postage, delivery services, and subconsultant fees. Unless specifically noted in the Task Order, direct charges will be billed at cost without any markup. Office expenses such as computer cost, telephone calls, and overhead expenses are incidental and are included in the hourly rates shown in Exhibit A.

B. Payment Schedule for Basic Fee

Payments shall be made within 30 days of receipt of monthly billings based on the work completed. Payment by the City shall release the City from any further obligation for payment to the Consultant for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

C. Payment for Contingency Tasks

When agreed to in writing by the City, the Consultant shall provide services described as Contingency Tasks in a Task Order.

D. Certified Cost Records

Consultant shall furnish certified cost records for all billings to substantiate all charges. Consultant's accounts shall be subject to audit by the City. Consultant shall submit billings in a form satisfactory to the City. At a minimum, each billing shall identify the Task Order under such work is performed, work completed during the billing period, percentage of work completed to date, and percentage of budget used to date for each task.

E. Identification

Consultant shall furnish to the City its employer identification number.

F. Payment – General

- 1)** Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 2)** Consultant shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime. Any subcontractors utilized by Consultant under this Agreement will be paid according to the then prevailing wage.
- 3)** Consultant shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Consultant or all sums which Consultant agrees to pay for such services and all moneys and sums which Consultant collected or deducted from the wages of

employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

- 4) Consultant shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on any account of any service or materials furnished.
- 5) If Consultant fails, neglects or refuses to make prompt payment of any claim for labor, materials, or services furnished to Consultant, sub-consultant or subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of the payment against funds due or to become due to the Consultant. The payment of the claim in this manner shall not relieve Consultant or its surety from obligation with respect to any unpaid claims.

G. Schedule

Consultant shall provide services under this Agreement in accordance with the Project Schedule.

4. Ownership of Plans and Documents: Records; Confidentiality

A. Definitions. As used in this Agreement, the following terms have the meanings set forth below:

- 1) Consultant Intellectual Property means any intellectual property owned by Consultant and developed independently from this Agreement that is applicable to the Services or included in the Work Product.
- 2) Third Party Intellectual Property means any intellectual property owned by parties other than City or Consultant that is applicable to the Services or included in the Work Product.
- 3) Work Product means the Services Consultant delivers or is required to deliver to City under this Agreement. Work Product includes every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein, and all copies of plans, specifications, reports and other materials, whether completed, partially completed or in draft form.

B. Work Product

- 1) Except as provided elsewhere in this Agreement, all Work Product created by Consultant pursuant to this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire" or an employment to invent, shall be the exclusive property of City. City and Consultant agree that such original works of authorship are "work made for hire" of which City is the author within the meaning of the United States Copyright Act. To the extent that City is not the owner of the intellectual property rights in such Work Product, Consultant hereby irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product

created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon City's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in City. Consultant forever waives any and all rights relating to original Work Product created pursuant to this Agreement, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

- 2) In the event Consultant Intellectual Property is necessary for the use of any Work Product, Consultant hereby grants to City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use Consultant Intellectual Property, including the right of City to authorize contractors, Consultants and others to use Consultant Intellectual Property, for the purposes described in this Agreement.
- 3) In the event Third Party Intellectual Property is necessary for the use of any Work Product, Consultant shall secure on City's behalf and in the name of City, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third Party Intellectual Property, including the right of City to authorize contractors, Consultants and others to use the Third Party Intellectual Property, for the purposes described in this Contract.
- 4) In the event Work Product created by Consultant under this Agreement is a derivative work based on Consultant Intellectual Property or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, including the right of City to authorize contractors, Consultants and others to use the pre-existing elements of Consultant Intellectual Property employed in a Work Product, for the purposes described in this Agreement.
- 5) In the event Work Product created by Consultant under this Agreement is a derivative work based on Third Party Intellectual Property, or a compilation that includes Third Party Intellectual Property, Consultant shall secure on City's behalf and in the name of City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property, including the right to authorize contractors, Consultants and others to use the pre-existing elements of the Third Party Intellectual Property, for the purposes described in this Agreement.
- 6) To the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, Consultant shall be indemnified and held harmless by City from liability arising out of re-use or alteration of the Work Product by City which was not specifically contemplated and agreed to by the Parties in this Agreement.
- 7) Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless otherwise specified,

Consultant may use standard line drawings, specifications and calculations on other, unrelated projects.

C. Confidential Information

- 1) Consultant acknowledges that it or its employees, Sub-Consultants, subcontractors or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is the confidential information of City or City's residents. Any and all information provided by City and marked confidential, or identified as confidential in a separate writing, that becomes available to Consultant or its employees, Sub-Consultants, subcontractors or agents in the performance of this Agreement shall be deemed to be confidential information of City ("Confidential Information"). Any reports or other documents or items, including software, that result from Consultant's use of the Confidential Information and any Work Product that City designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Consultant) publicly known; (b) is furnished by City to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (d) is obtained from a source other than City without the obligation of confidentiality; (e) is disclosed with the written consent of City; or (f) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information; or (g) is required to be disclosed by law, subpoena, or other court order.
- 2) Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to City under this Agreement, and to advise each of its employees, Sub-Consultants, subcontractors and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist City in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise City immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with City in seeking injunctive or other equitable relief in the name of City or Consultant against any such person. Consultant agrees that, except as directed by City, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Agreement, and that upon termination of this Agreement or at City's request, Consultant will turn over to City all documents, papers, and other matter in Consultant's possession that embody Confidential Information.

- 3) Consultant acknowledges that breach of this Section 4, including disclosure of any Confidential Information, will give rise to irreparable injury to City that is inadequately compensable in damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of this Section 4, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of City and are reasonable in scope and content.

5. Assignment/Delegation

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other. If City agrees to assignment of tasks to a subcontractor, Consultant shall be fully responsible for the acts or omissions of any subcontractors. Any approval of a subcontractor does not create a contractual relationship between the subcontractor and City.

6. Consultant is Independent Contractor

- A. The City's project director, or designee, shall be responsible for determining whether Consultant's work product is satisfactory and consistent with this Agreement, but Consultant is not subject to the direction and control of the City. Consultant shall be an independent contractor for all purposes and shall not be entitled to compensation other than the compensation provided for under Section 3 of this Agreement. The City's acceptance of the work product as satisfactory does not relieve the Consultant from responsibility for any errors in the work product.
- B. Consultant is an independent contractor and not an employee of City. Consultant acknowledges Consultant's status as an independent contractor and acknowledges that Consultant is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Consultant to provide services under this Agreement are employees of Consultant and not of City. Consultant acknowledges that it is not entitled to benefits of any kind to which a City employee is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Consultant is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Consultant under the terms of the Agreement, to the full extent of any benefits or other remuneration Consultant receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make as a result of the finding.
- C. The Consultant represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Consultant, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- D. Consultant and its employees, if any, are not active members of the Oregon Public Employees Retirement System.

- E. Consultant certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- F. Consultant is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. Indemnity

- A. The City has relied upon the professional ability and training of the Consultant as a material inducement to enter into this Agreement. Consultant represents to the City that the work under this Agreement will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the lobbying profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of an Consultant's work by the City shall not operate as a waiver or release.
- B. Consultant shall defend, hold harmless and indemnify the City, its officers, agents, and employees from all claims, suits, or actions to the extent caused by the alleged negligent or otherwise wrongful acts or omissions of Consultant or its subcontractors, sub-Consultants, agents or employees under this Agreement. This indemnification does not extend to indemnification for negligent or otherwise wrongful acts or omissions of the City. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.
- C. Consultant shall save and hold harmless the City, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, to the extent caused by the professional negligent acts, errors or omissions of Consultant or its subcontractors, sub-Consultants, agents or employees in performance of professional services under this Agreement.
- D. As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly or indirectly, in whole or in part, from the quality of the professional services provided by Consultant, regardless of the type of claim made against the City. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Consultant unrelated to the quality of professional services provided by Consultant.

8. Insurance

Consultant and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement as detailed in this section. The insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Consultant and its subcontractors shall provide at least the following limits and coverages:

- A. Commercial General Liability Insurance

Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form with policy limits of at least per occurrence. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement in an amount of \$2,000,000.

B. Professional Liability

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per claim shall not be less than \$1,300,000, or the equivalent. Annual aggregate limit shall not be less than \$2,000,000 and filed on a "claims-made" form.

C. Commercial Automobile Insurance

Commercial Automobile Liability coverage on an "occurrence" form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,300,000.

D. Workers' Compensation Insurance

The Consultant, its subcontractors, if any, and all employers providing work, labor or materials under this Agreement are 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. 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. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage.

E. Additional Insured Provision

The Commercial General Liability Insurance Policy shall include the City its officers, directors, and employees as additional insureds with respect to this Agreement. Coverage will be endorsed to provide a per project aggregate.

F. Extended Reporting Coverage

If any of the liability insurance is arranged on a "claims made" basis, Extended Reporting coverage will be required at the completion of this Agreement to a duration of 24 months or the maximum time period the Consultant's insurer will provide if less than 24 months. Consultant will be responsible for furnishing certification of Extended Reporting coverage as described or continuous "claims made" liability coverage for 24 months following Agreement completion. Continuous "claims made" coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this Agreement. Coverage will be endorsed to provide a per project aggregate.

G. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days' written notice to the City. Any failure to comply with

this provision will not affect the insurance coverage provided to the City. The 30 days' notice of cancellation provision shall be physically endorsed on to the policy.

H. Insurance Carrier Rating

Coverage provided by the Consultant must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

I. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Consultant shall furnish a Certificate of Insurance to the City. No Agreement shall be effected 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 address below ten days prior to coverage expiration.

J. Primary Coverage Clarification

The parties agree that Consultant'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.

K. Copy of Policy or Certificate of Insurance

A cross-liability clause or separation of insureds clause will be included in the general liability policy required by this Agreement. Consultant shall furnish City with at least 30-days written notice of cancellation of, or any modification to, the required insurance coverages. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Aaron Collett, PE
City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365

Thirty days' cancellation notice shall be provided City by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance. The procuring of the required insurance shall not be construed to limit Consultant's liability under this agreement. The insurance does not relieve Consultant's obligation for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement.

9. Termination Without Cause

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Consultant. If City terminates the Agreement pursuant to this section, Consultant shall be entitled to payment for services provided prior to the termination date.

10. Termination with Cause

A. City may terminate this Agreement effective upon delivery of written notice to Consultant, or at such later date as may be established by City, under any of the following conditions:

- 1)** If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2)** If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3)** If any license or certificate required by law or regulation to be held by Consultant, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

Any termination of this agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of Agreement) to Consultant, may terminate this Agreement:

- 1)** If Consultant fails to provide services called for by this Agreement within the time specified, or
- 2)** If Consultant fails to perform any of the other provisions of this Agreement, or fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten days or such other period as City may authorize.

C. If City terminates this Agreement, it shall pay Consultant for all undisputed invoices tendered for services provided prior to the date of termination.

D. Damages for breach of Agreement shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

11. Non-Waiver

The failure of City to insist upon or enforce strict performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

12. Notice

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

IF TO CITY OF NEWPORT

Aaron Collett, PE
City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365
a.collett@newportoregon.gov

IF TO CONSULTANT

Erin Murphy
Controller
Public Affairs Counsel, Inc.
991 Liberty St SE
Salem, OR 97302
erin@pacounsel.com

The date of deposit in the mail shall be the notice date for first class mail. All other notices, bills and payments shall be effective at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

13. Merger

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

14. Force Majeure

Neither City nor Consultant shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractors or supplies due to such cause; provided that the parties so disenabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. Non-Discrimination

Consultant agrees to comply with all applicable requirements of federal and state statutes, rules, and regulations. By way of example only, Consultant also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

16. Errors

Consultant shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

17. Extra Work

Extra work or work on Contingency Tasks is not authorized unless the City authorizes the additional or

contingency work in writing. Failure of Consultant to secure written authorization for extra work shall constitute a waiver of all right to adjustment in the Agreement price or Agreement time due to unauthorized extra work and Consultant shall be entitled to no compensation for the performance of any extra work not authorized in writing.

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of law principles. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon, and the parties hereby consent to venue in Lincoln County Circuit Court, Oregon, unless exclusive jurisdiction is in federal court, in which case venue shall be in federal district court for the District of Oregon.

19. Compliance with Applicable Law

Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including but not limited to those set forth in ORS 279A, 279B and 279C. While all required contractual provisions are included in Exhibit B, Consultant shall be familiar with and responsible for compliance with all other applicable provisions of the Oregon Public Contracting Code.

20. Conflict Between Terms

This document shall control in the event of any conflict in terms between this document and the RFP and/or Consultant's proposal.

21. Access to Records

City shall have access to the books, documents, papers and records of Consultant that are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

22. Audit

Consultant shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the Agreement period. Consultant agrees to permit City or its duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

23. Severability

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the Agreement.

24. Industrial Accident Fund Payment

Consultant shall pay all contributions or amount due the Industrial Accident Fund that Consultant or subcontractors incur during the performance of this Agreement.

25. Arbitration

All claims, disputes, and other matters in question between the City and Consultant arising out of, or relating to this Contract, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in City's sole discretion, in accordance with the Oregon Uniform Arbitration Act, ORS 36.600, et seq. and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Lincoln County Circuit Court will establish rules to govern the arbitration.

A claim by Consultant arising out of, or relating to this Contract must be made in writing and delivered to the City Administrator not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the City Administrator within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the City Administrator will be considered by the City Board at the Board's next regularly scheduled meeting. At that meeting the Board will render a written decision approving or denying the claim. If the claim is denied by the Board, the Consultant may file a written request for arbitration with the City Administrator. No demand for arbitration shall be effective until the City Board has rendered a written decision denying the underlying claim. No demand for arbitration shall be made later than thirty (30) days after the date on which the City has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the City Board's decision being binding upon the City and Consultant.

Notice of demand for arbitration shall be filed in writing with the other party to the agreement, subject to applicable statutes of limitation, except as set forth above. The City, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, to reject arbitration and require the Consultant to proceed through the courts for relief. If arbitration is followed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law.

26. Attorney Fees

If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this contract without initiating litigation, Consultant agrees to pay City's attorney fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.

27. Complete Agreement

This Agreement and any exhibit(s) hereto and any and all Task Orders executed by the parties constitute the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Any waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose

given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. In the event of a conflict between the documents comprising this Agreement, interpretation shall occur in the following manner: 1) each individual Task Order; 2) this Agreement and any exhibits hereto; and 3) the RFP and Response. The following exhibits are attached to and incorporated into this Agreement:

- A. Exhibit A – Consultant’s Fee Schedule/Proposal
- B. Exhibit B – Oregon Public Contracting Code/required contractual provisions

28. Miscellaneous

- A. Consultant agrees that news releases and other publicity relating to the subject of this Agreement will be made only with the prior written consent of City.
- B. Consultant shall comply with all virus-protection, access control, back-up, password, and other security and other information technology policies of City when using, having access to, or creating systems for any of City’s computers, data, systems, personnel, or other information resources.
- C. Consultant will include in all contracts with subcontractors appropriate provisions as required by ORS 279C.580.
- D. Consultant will comply with environmental and natural resources regulations as set forth in ORS 279B.225 and regulations relating to the salvaging, recycling, composting or mulching yard waste material, and salvage and recycling of construction and demolition debris as set forth in ORS 279B.225 and 279C.510.

By their signatures hereunder, the parties acknowledge they have read and understand this Agreement and agree to be bound by its terms. This Agreement is effective on the date last signed below by a party below:

CITY OF NEWPORT



Spencer R. Nebel, City Manager

PUBLIC AFFAIRS COUNSEL, INC.

By: 

Its: President

Date: 06-29-2022

Date: June 27, 2022

EXHIBIT A
Consultant's Fee Schedule/Proposal

EXHIBIT B
Oregon Public Contracting Requirements
ORS CHAPTERS 279B AND 279C REQUIREMENTS

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1); 279C.505(1)(a)
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2); 279C.505(1)(b)
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the Contracting Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3); 279C.505(1)(c)
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. ORS 279B.220(4); 279C.505(1)(d)
- (5) Contractor agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid. ORS 279C.515
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1); 279C.530(1)
- (7) All subject employers working under the contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2); 279C.530(2)
- (8) Contractor shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq). ORS 279B.235(3); 279C.520(3)
- (9) The Contractor must give notice to employees who work on this contract in writing, 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 the days per week that

the employees may be required to work. ORS 279B.235(2); 279C.520(2)

- (10) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430
- (11) The contract may be canceled at the election of City for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- (12) Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- (13) Contractor certifies that it has not discriminated against minorities, women, service-disabled veterans, or emerging small business or disadvantaged business enterprises in obtaining any required subcontractors. ORS 279A.110
- (14) As used in this section, "nonresident contractor" means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120



CITY OF NEWPORT

*RESPONSE TO REQUEST FOR
LOBBYING & STATE
GOVERNMENT AFFAIRS*



City of Newport

Response to Request for Lobbying and State Government Affairs

June 27, 2022

Scope of Work

Public Affairs Counsel (PAC) employs a full team of talented professionals to engage in legislative and regulatory advocacy and counsel, Ways & Means funding requests, and bill and issue tracking.

Public Affairs Counsel's reputation in the lobbying profession is for providing its clients with influential, tireless and strategic representation. Our firm provides clients with gavel-to-gavel coverage during the legislative session and legislative/regulatory representation during the legislative interim. We work with legislators, the Governor's office, staff, agencies, and other organizations and allies in the lobby to influence positive outcomes for our clients.

Public Affairs Counsel proposes the below scope of services:

- Coordinating state and government affairs activities
 - Issue/bill tracking and monitoring for City related to dam legislation, related water policy legislation, and funding opportunities;
 - Development of state legislative funding strategy for Big Creek Dam project;
 - State legislative advocacy for Big Creek Dam project and funding request;
 - Regulatory advocacy for Big Creek Dam project and funding request;
- Coordination of stakeholder advocacy for Big Creek Dam project;
- Attendance and reporting at stakeholder meetings as directed by City; and
- Communications and regular state government affairs updates to stakeholders as directed by City.

As it pertains to funding requests and legislative support for the Big Creek Dams replacement project, the City can expect the following services from the Public Affairs Counsel team:

- **Issue Identification:** PAC partners with clients to identify issues of importance that are likely to be considered by the legislature and develop strategies to address these issues. In addition, PAC partners with clients to identify all other issues of concern to the client that arise during the legislative session.

Strategy Setting: We will likely need to work closely with the City's local delegation members and appropriate policy committee chairs to advance the project through the state permitting process.

Procedure, Access and Diligence: In setting and executing strategies, PAC puts to work its complete insider's knowledge of how the legislative process and Ways & Means process works. In order to achieve the best possible results, it is critical to influence the process. PAC also uses its access to key legislators to the advantage of its clients.

Bill and Committee Tracking: As the legislative schedule is developed each day, PAC lobbyists cover all issues and hearings for clients. This also occurs during the interim. The firm possesses sufficient personnel resources – four registered lobbyists – to assure complete coverage of relevant hearings and issue development for clients.

Meetings with Legislators: PAC lobbyists meet with members of the legislative leadership, committee chairs, and other members to identify issues of importance to the client and to seek support on client issues. These contacts are constantly occurring each day. PAC also works to put its clients in front of key legislators to build relationships and rapport.

Coordination of Allies/Stakeholders: PAC coordinates client activity in the Capitol – making sure our allies and stakeholders are talking to the right legislators with the right messages. Sometimes this happens on an ad hoc or remote basis, but many times it requires coordinated “lobby days” in which clients gather in the capitol to advocate. PAC manages logistics.

Liaison with Other Interest Groups/Lobbyists: PAC maintains on-going relationships with lobbyists and organizations who share common interests and positions with clients. In this way, effective coalitions can be formed to advance issues.

Reporting and Client Updates: PAC communicates with clients in the manner and frequency prescribed by the client. Usually, this means a mix of regularly scheduled calls and written updates which are supplemented by updates as issues evolve on a real time basis. At the conclusion of each legislative session, PAC prepares a final in-depth report on all legislation which has been prioritized by the client. Of particular importance, PAC catalogs its activity for each client along with a determination of next steps, if necessary.

Monitoring of Interim Legislative Committees and Emergency Board: PAC monitors the interim activities of all legislative committees and task forces, including the Emergency Board, that are dealing with issues of interest to clients. It also includes reports to clients about the status of issues being discussed by these committees when the legislature is not in session.

Monitoring of Administrative Agencies: PAC monitors and actively participates with state agencies that are in a position to affect client interests. In some instances this involves agency rulemaking. In others it concerns influencing policy decisions through direct contact with agency administrators and staff. PAC clients are always informed on these matters.

Political Insight: Oftentimes, clients make decisions based on where they believe the political winds are blowing. This involves a lot of qualitative data – personalities, ambitions, relationships, deal making – that are not apparent to most people. Very few firms have the ability to deliver the incisive political insight needed to make important decisions. Public Affairs Counsel is one of those firms.

Experience and Expertise

Public Affairs Counsel has been a leader in government affairs and legislative advocacy since 1981. Our team of lobbyists is trained to navigate difficult political environments. We have had great successes in crafting and passing client-directed policy, securing funding through the Joint Ways and Means process, and stopping bad policy from being enacted into law. In addition to support the City of Newport's request for state funding in 2021, the following examples include a full range of ways in which PAC was successful in serving our clients:

- PAC played a key role in securing new early learning investments for the Oregon Head Start Association. These new investments almost doubled the amount of General Fund dollars that was previously allocated to fund Head Start programs, securing an additional \$132 million plus cost-of-living adjustments for the Oregon Pre-Kindergarten Program and Early Head Start. **Client: Oregon Head Start Association.**
- PAC helped pass perhaps the most groundbreaking mental health parity legislation in a decade – HB 3046 (2021) – after several years of trying to remedy insurer discrimination against mental health providers. Our victory was predicated on our passage of SB 860 in 2017 that required DCBS to study discrepancies in reimbursement rates between physicians and mental health providers and enact regulation based on the findings. **Client: Oregon Independent Mental Health Professionals**
- After years of state support funding being threatened, PAC was hired by the Oregon Fairs Association to lobby for sustained funding. PAC restored \$1 million in funding cuts proposed for Oregon's 36 county fairs in the 2020 special session. In 2021, OFA protected baseline funding of \$3.8 million and secured over \$16 million for county fair infrastructure/capital needs, and operations. **Client: Oregon Fairs Association**
- Since 1990, the Oregon Metals Initiative has been a dynamic public/private partnership that allows private industry partners to conduct metals research using state university research capabilities. Public Affairs Counsel secured a record \$1.915 million for the program in 2021. **Client: Oregon Metals Initiative**
- The Willamette Career Academy will open in the Fall of 2021 and serve thousands of students in the mid-valley as they pursue career-technical education. PAC worked successfully with legislative leadership and champions in the Ways & Means process to

secure over \$7 million in funding for the project. PAC led community efforts to find private dollars to match. **Client: Willamette Education Service District**

Lead Lobbyist Designation

PAC proposes that Jenny Dresler continue to serve as lead lobbyist for the City of Newport. Jenny will directly assist in the execution of the scope of work and will serve as primary point of contact. As is customary, the entire PAC lobby team will register for the City of Newport and support Jenny's work on behalf of the City.

Contract and Pricing

PAC maintains a very straightforward business relationship with our clients. We generally operate on session-only, or 1-year or 2-year retainer contracts that are split into equal monthly, quarterly or semi-annual payments.

PAC would be pleased to perform the specified services for the City of Newport for a 12-month contract term (July 1, 2022 through June 30, 2023) for a total retainer of \$50,000. This would include a monthly retainer payment of \$4,167 per month.

The Public Affairs Counsel Team

Public Affairs Counsel is a full-service government affairs firm specializing in legislative lobbying, regulatory advocacy, campaign management, public opinion survey research, grassroots, and coalition management. Public Affairs Counsel has specialized in these services since 1981, successfully representing a broad range of clients.



JL Wilson – JL Wilson is the President of Public Affairs Counsel. He has worked over 23 years in the Oregon legislature – 20 as a lobbyist. His career began as the Legislative Director for two Speakers of the Oregon House of Representatives. JL then served as Senior Vice President at Associated Oregon Industries before joining Public Affairs Counsel in 2014.



Justen Rainey – Justen Rainey is the Director of Government Affairs for Public Affairs Counsel since 2012. Justen's political experience began when he joined U.S. Congressman Greg Walden's team as a legislative aide, working in both his Bend, Oregon office and his office in Washington D.C. He also served as Legislative Director to Senator Ted Ferrioli and later to House Co-Speaker Bruce Hanna.



Jenny Dresler – Jenny Dresler is the Director of Grassroots & Regulatory Affairs and lobbyist at Public Affairs Counsel. She previously served as Director of State Public Policy at the Oregon Farm Bureau, where she oversaw the execution of OFB's statewide legislative agenda. She is also renowned as one of the state's best grassroots coordinators having served as OFB's statewide grassroots coordinator.



Patrick Sieng is the Director of Strategic Partnerships and association management specialist and lobbyist at Public Affairs Counsel. He previously was a lobbyist at the Association of Oregon Counties covering telecommunications/broadband and public safety issues for eight years after having spent five years as legislative aide to State Rep. Jean Cowan and the Ports Policy Analyst at Business Oregon. Patrick is the current Vice President of the Oregon Capitol Club, the statewide association for lobbyists.



Dylan Frederick – Dylan Frederick is the Director of Marketing and Communications. He was previously the Agency Coordinator at a local Salem, Oregon marketing agency and recently obtained a Masters of Strategic Communication from University of Oregon. Dylan has a wide-range of skills that stem from 12 years in communications, marketing, and public affairs.



Alicia Givens – Alicia Givens is the Operations Manager, providing administrative, scheduling and other operational services for the PAC team. She oversees agenda tracking, bill tracking, and legislative reports for clients. Alicia handles all filings with the Oregon Government Ethics Commission to ensure that clients and lobbyists are fully compliant with all reporting requirements.



Erin Murphy – Erin Murphy is Public Affairs Counsel's controller and administers PAC's business transactions. She is responsible for billing, bookkeeping, and financial reporting.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/13/2022

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

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

PRODUCER Salem Insurance Agency, Inc PO Box 888 Salem, OR 97308		CONTACT NAME: Gordon Brouse PHONE (A/C, No, Ext): 503-585-8001 FAX (A/C, No): 503-587-7811 E-MAIL ADDRESS: gbrouse@salemagency.com	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Mutual of Enumclaw Ins. Co.	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

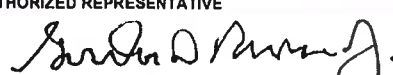
COVERAGES **CERTIFICATE NUMBER:** 00006504-113454 **REVISION NUMBER:** 1

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			BOP0020660	10/26/2021	10/26/2022	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

certificate holder is an additional insured

CERTIFICATE HOLDER	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  (GDB)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESSOWNERS ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

(The Coverages and Limits shown below are subject to the terms and conditions found in the remainder of this Endorsement.)

Schedule

1. Covered Property	Signs attached to buildings and business personal property.	
2. Additional Coverages		Limits of Insurance
a. Debris Removal		\$25,000
b. Preservation of Property		60 days
c. Fire Department Service Charge		\$15,000
d. Collapse		Refer to Page 3
e. Water Damage, Other Liquids, Powder Or Molten Material Damage		Refer to Page 4
f. Business Income		Actual Loss Sustained
g. Extra Expense		Actual Loss Sustained
h. Pollutant Clean-Up And Removal		\$15,000
i. Civil Authority		4 weeks/72 hr. deductible
j. Money Orders And "Counterfeit Money"		\$5,000
k. Employee Dishonesty		\$15,000
l. Forgery Or Alteration		\$15,000
m. Ordinance Or Law Coverage – Blanket – Coverages 1, 2 and 3		\$100,000
n. Business Income From Dependent Properties		\$10,000
o. Glass Expenses		Refer to Page 9
p. Fire Extinguisher Systems Recharge Expense		\$10,000
q. Electronic Data		\$25,000
r. Interruption Of Computer Operations		\$25,000
s. Limited Coverage For "Fungi", Wet Rot Or Dry Rot		\$15,000
t. Lock And Key Replacement		\$2,500
u. Utility Services		\$10,000
v. Reward Payment		\$10,000
w. Inventory And Loss Adjustment Expense		\$5,000
x. Back-Up of Sewers, Drains or Sumps		\$25,000
y. Money and Securities		\$10,000 Inside/\$2,000 Outside
z. Fine Arts		\$10,000
aa. Voluntary Parting		\$10,000
3. Coverage Extensions		
a. Newly Acquired Or Constructed Property		
Buildings		\$500,000
Business Personal Property		\$250,000
b. Personal Property Off-Premises Including Transportation		\$25,000
c. Outdoor Property		\$10,000/\$1,000 per tree, shrub or plant
d. Personal Effects And Property Of Others		\$2,500 per person/\$10,000 maximum
e. Valuable Papers and Records		\$25,000 On Premises/\$5,000 Off Premises
f. Accounts Receivable		\$25,000 On Premises/\$5,000 Off Premises
g. Detached Signs		\$10,000
h. Business Personal Property Temporarily In Portable Storage Units		\$10,000
4. Limits Of Insurance		
5. Deductibles		
6. Loss Payment		
7. Optional Coverages		
8. Other Insurance Condition		
9. Definitions		
10. Additional Insured – Building Owner		
11. Blanket Additional Insured		

The proximity limitation found anywhere within the Businessowners Policy is amended from **"within 100 feet"** of the described premises, to **"within 1,000 feet"** of the described premises.

1. The following is added to Paragraph A.1. - Covered Property in Section I – Property of the Businessowners Coverage Form.

- a. **Buildings**

- (7) Signs attached to buildings.

- b. **Business Personal Property**

- (6) Signs attached to buildings.

2. Paragraph 5. **Additional Coverages** in Section I – Property is deleted in its entirety and replaced by the following:

- a. **Debris Removal**

- (1) Subject to Paragraphs (2), (3) and (4), we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.

- (2) Debris Removal does not apply to costs to:

- (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;

- (b) Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;

- (c) Remove any property that is Property Not Covered, including property addressed under the Outdoor Property Coverage Extension;

- (d) Remove property of others of a type that would not be Covered Property under this policy;

- (e) Remove deposits of mud or earth from the grounds of the described premises;

- (f) Extract "pollutants" from land or water; or

- (g) Remove, restore or replace polluted land or water.

- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:

- (a) The most that we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of

Insurance applicable to the Covered Property that has sustained loss or damage.

- (b) Subject to Paragraph (3)(a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.

- (4) We will pay up to an additional \$25,000, unless a higher limit of insurance is shown in the Declarations, for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

- (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

- (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if Paragraphs (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.

- b. **Preservation of Property**

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss of or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and

- (2) Only if the loss or damage occurs within 60 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$15,000 for service at each premises described in the Declarations.

Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

This Additional coverage applies to your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

d. Collapse

The coverage provided under this Additional Coverage – Collapse applies only to an abrupt collapse as described and limited in Paragraphs d.(1) through d.(7).

- (1) For the purpose of this Additional Coverage – Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.
- (2) We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this policy or that contains Covered Property insured under this policy, if such collapse is caused by one or more of the following:
 - (a) Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
 - (b) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
 - (c) Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation;
 - (d) Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
 - (i) A cause of loss listed in Paragraph (2)(a) or (2)(b);
 - (ii) One or more of the "specified causes of loss";

(iii) Breakage of building glass;

(iv) Weight of people or personal property; or

(v) Weight of rain that collects on a roof.

(3) This Additional Coverage – Collapse does not apply to:

- (a) A building or any part of a building that is in danger of falling down or caving in;
- (b) A part of a building that is standing, even if it has separated from another part of the building; or
- (c) A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

(4) With respect to the following property:

- (a) Awnings;
- (b) Gutters and downspouts;
- (c) Yard fixtures;
- (d) Outdoor swimming pools;
- (e) Piers, wharves and docks;
- (f) Beach or diving platforms or appurtenances;
- (g) Retaining walls; and
- (h) Walks, roadways and other paved surfaces;

if an abrupt collapse is caused by a cause of loss listed in Paragraphs (2)(a) through (2)(d), we will pay for loss or damage to that property only if such loss or damage is a direct result of the abrupt collapse of a building insured under this policy and the property is Covered Property under this policy.

(5) If personal property abruptly falls down or caves in and such collapse is not the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:

- (a) The collapse of personal property was caused by a cause of loss listed in Paragraphs (2)(a) through (2)(d) of this Additional Coverage;
- (b) The personal property which collapses is inside a building; and
- (c) The property which collapses is not of a kind listed in Paragraph (4), regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph (5) does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

(6) This Additional Coverage – Collapse does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

(7) This Additional Coverage – Collapse will not increase the Limits of Insurance provided in this policy.

(8) The term Covered Cause of Loss includes the Additional Coverage – Collapse as described and limited in Paragraphs d.(1) through d.(7).

e. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

We will not pay the cost to repair any defect that caused the loss or damage, but we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:

(1) Results in discharge of any substance from an automatic fire protection system; or

(2) Is directly caused by freezing.

f. Business Income

(1) Business Income

(a) We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 1,000 feet of such premises.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises means:

(i) The portion of the building which you rent, lease or occupy;

(ii) The area within 1,000 feet of the building or within 1,000 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and

(iii) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

(b) We will only pay for loss of Business Income that you sustain during the "period of restoration" and that occurs within 12 consecutive months, unless a revised period of indemnity is shown in the Declarations, after the date of direct physical loss or damage. We will only pay for ordinary payroll expenses for 60 days following the date of direct physical loss or damage, unless a greater number of days is shown in the Declarations.

(c) Business Income means:

(i) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses; and

(ii) Continuing normal operating expenses incurred, including payroll.

(d) Ordinary payroll expenses:

(i) Means payroll expenses for all your employees except:

i. Officers;

ii. Executives;

iii. Department Managers;

iv. Employees under contract; and

v. Additional Exemptions shown in the Declarations as:

- Job Classifications; or
- Employees.

(ii) Include:

- i. Payroll;
- ii. Employee benefits, if directly related to payroll;
- iii. FICA Payments you pay;
- iv. Union dues you pay; and
- v. Workers' compensation premiums.

(2) Extended Business Income

(a) If the necessary suspension of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

(i) Begins on the date property except finished stock is actually repaired, rebuilt or replaced and "operations" are resumed; and

(ii) Ends on the earlier of:

- i. The date you could restore your "operations", with reasonable speed, to the level which would generate the Business Income amount that would have existed if no direct physical loss or damage had occurred; or
- ii. 60 consecutive days after the date determined in Paragraph (a)(i) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

(b) Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

(3) With respect to the coverage provided in this Additional Coverage, suspension means:

- (a) The partial slowdown or complete cessation of your business activities; or
- (b) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.

(4) This Additional Coverage is not subject to the Limits of Insurance of Section I – Property.

g. Extra Expense

(1) We will pay necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 1,000 feet of such premises. With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises means:

- (a) The portion of the building which you rent, lease or occupy;
- (b) The area within 1,000 feet of the building or within 1,000 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and
- (c) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

(2) Extra Expense means expense incurred:

- (a) To avoid or minimize the suspension of business and to continue "operations":
 - (i) At the described premises; or
 - (ii) At the replacement premises or at temporary locations, including relocation expenses, and costs to equip and operate the replacement or temporary locations.
- (b) To minimize the suspension of business if you cannot continue "operations".
- (c) To:
 - (i) Repair or replace any property; or
 - (ii) Research, replace or restore the lost information on damaged "valuable papers and records";

To the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage or Additional Coverage f.

Business Income.

- (3) With respect to the coverage provided in this Additional Coverage, suspension means:

- (a) The partial slowdown or complete cessation of your business activities, or
- (b) That part or all of the described premises is rendered untenable, if coverage for Business Income applies.

- (4) We will only pay for Extra Expense that occurs within 12 consecutive months, unless a revised period of indemnity is shown in the Declarations, after the date of direct physical loss or damage.

This Additional Coverage is not subject to the Limits of Insurance of Section I – Property.

h. Pollutant Clean-up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay for each location under this Additional Coverage is \$15,000 for the sum of all such expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

i. Civil Authority

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation

of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for necessary Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
- (2) When your Civil Authority Coverage for Business Income ends;

whichever is later.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Civil Authority Additional Coverage. The Civil Authority Additional Coverage is not subject to the Limits of Insurance of Section I – Property.

j. Money Orders And "Counterfeit Money"

We will pay for loss resulting directly from your having accepted in good faith, in exchange for merchandise, "money" or services:

- (1) Money orders issued by any post office, express company or bank that are not paid upon presentation; or
- (2) "Counterfeit money" that is acquired during the regular course of business.

The most we will pay for any loss under this Additional Coverage is \$5,000.

No Deductible applies to this Additional Coverage.

k. Employee Dishonesty

- (1) We will pay for direct loss of or damage to Business Personal Property and "money" and "securities" resulting from dishonest acts committed by any of your employees acting alone or in collusion with other persons (except you or your partner) with the manifest intent to:
 - (a) Cause you to sustain loss or damage; and also
 - (b) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment) for:

- (i) Any employee; or
 - (ii) Any other person or organization.
 - (2) We will not pay for loss or damage:
 - (a) Resulting from any dishonest or criminal act that you or any of your partners commit whether acting alone or in collusion with other persons.
 - (b) Resulting from any dishonest act committed by any of your employees (except as provided in Paragraph a.), "managers" or directors:
 - (i) Whether acting alone or in collusion with other persons; or
 - (ii) While performing services for you or otherwise.
 - (c) The only proof of which as to its existence or amount is:
 - (i) An inventory computation; or
 - (ii) A profit and loss computation.
 - (d) Caused by an employee if the employee had also committed theft or any other dishonest act prior to the effective date of this policy and you or any of your partners, "members", "managers", officers, directors or trustees, not in collusion with the employee, learned of that theft or dishonest act prior to the policy period shown in the Declarations.
 - (3) The most we will pay for loss or damage in any one occurrence is:
 - (a) \$15,000; or
 - (b) the Limit of Insurance shown in the Declarations for Employee Dishonesty; whichever is greater.
 - (4) All loss or damage:
 - (a) Caused by one or more persons; or
 - (b) Involving a single act or series of related acts;
 is considered one occurrence.
 - (5) We will pay only for loss or damage you sustain through acts committed or events occurring during the Policy Period. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.
 - (6) This Additional Coverage does not apply to any employee immediately upon discovery by:
 - (a) You; or
 - (b) Any of your partners, officers or directors not in collusion with the employee;

of any dishonest act committed by that employee before or after being hired by you.
 - (7) We will only pay for covered loss or damage sustained during the policy period and discovered no later than one year from the end of the Policy Period.
 - (8) If you (or any predecessor in interest) sustained loss or damage during the period of any prior insurance that you could have recovered under that insurance except that the time within which to discover loss or damage had expired, we will pay for it under this Additional Coverage, provided:
 - (a) This Additional Coverage became effective at the time of cancellation or termination of the prior insurance; and
 - (b) The loss or damage would have been covered by this Additional Coverage had it been in effect when the acts or events causing the loss or damage were committed or occurred.
- With respect to the Employee Dishonesty Additional Coverage, employee means:
- (a) Any natural person:
 - (i) While in your services or for 30 days after termination of service;
 - (ii) Who you compensate directly by salary, wages or commissions; and
 - (iii) Who you have the right to direct and control while performing services for you;
 - (b) Any natural person who is furnished temporarily to you:
 - (i) To substitute for a permanent employee, as defined in Paragraph (1) above, who is on leave; or
 - (ii) To meet seasonal or short-term workload conditions;
 - (c) Any natural person who is leased to you under a written agreement between you and a lab leasing firm, to perform duties related to the conduct of your business but does not mean a temporary employee as defined in Paragraph (b) above;
 - (d) Any natural person who is a former employee, director, partner, member, manager, representative or trustee retained as a consultant while performing services for you; or

- (e) Any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of property outside any building you occupy in conducting your business.

But employee does not mean:

- (a) Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character;
- (b) Any "manager", director or trustee except while performing acts coming within the usual duties of an employee.

I. Forgery Or Alteration

- (1) We will pay for loss resulting directly from forgery or alteration of, any check, draft, promissory note, bill of exchange or similar written promise of payment in "money", that you or your agent has issued, or that was issued by someone who impersonates you or your agent.
- (2) If you are sued for refusing to pay the check, draft, promissory note, bill of exchange or similar written promise of payment in "money", on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.
- (3) For the purpose of this coverage, check includes a substitute check as defined in the Check Clearing for the 21st Century Act, and will be treated the same as the original it replaced.
- (4) The most we will pay for any loss, including legal expenses, under this Additional Coverage is:
 - (a) \$15,000; or
 - (b) the Limit of Insurance shown in the Declarations for Forgery Or Alteration; whichever is greater.

m. Ordinance Or Law Coverage

This Additional Coverage applies only to buildings insured on a replacement cost basis.

Exclusion **B.1.a.** Ordinance Or Law in Section I - Property is deleted.

(1) Coverage

- (a) **Coverage 1 - Coverage for Loss to the Undamaged Portion of the Building.**

If a Covered Cause of Loss occurs to Covered Building Property, we will pay for loss to the undamaged portion of the building caused by enforcement of

or compliance with any ordinance or law that:

- (i) Requires the demolition of parts of the same property not damaged by a Covered Cause of Loss;
- (ii) Regulates the construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
- (iii) Is in force at the time of loss.

(b) Coverage 2 - Demolition Cost Coverage.

We will pay the cost to demolish and clear the site of undamaged parts of the property caused by enforcement of building, zoning or land use ordinance or law.

(c) Coverage 3 - Increased Cost of Construction Coverage.

We will pay for the increased cost to repair, rebuild or construct the property caused by enforcement of or compliance with building, zoning or land use ordinance or law. If the property is repaired or rebuilt, it must be intended for similar occupancy as the current property, unless otherwise required by zoning or land use ordinance or law. Coverage also applies if the ordinance or law requires relocation to another premises.

However, we will not pay for the increased cost of construction if the building is not repaired or replaced.

- (2) We will not pay under this endorsement for the costs associated with the enforcement of or compliance with any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants."
- (3) We will not pay under this endorsement for loss due to any ordinance or law that:
 - (a) You were required to comply with before the loss, even if the building was undamaged; and
 - (b) You failed to comply with.
- (4) The most we will pay under this Additional Coverage for loss or damage to Covered Property is;
 - (a) \$100,000 at each location; or
 - (b) the Limit of Insurance shown in the Ordinance Or Law Coverage endorsement;

whichever is greater.

n. Business Income From Dependent Properties

- (1) We will pay for the actual loss of Business Income you sustain due to physical loss or damage at the premises of a dependent property caused by or resulting from any Covered Cause of Loss.

However, this Additional Coverage does not apply when the only loss at the dependent property is loss or damage to "electronic data", including destruction or corruption of "electronic data". If the dependent property sustains loss or damage to "electronic data" and other property, coverage under this Additional Coverage will not continue once the other property is repaired, rebuilt or replaced.

The most we will pay under this Additional Coverage is \$10,000.

- (2) We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations", in whole or in part, by using any other available:
- (a) Source of materials; or
 - (b) Outlet for your products.
- (3) If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.
- (4) Dependent property means property owned by others whom you depend on to:
- (a) Deliver materials or services to you, or to others for your account. But services does not mean water supply services, wastewater removal services, communication supply services or power supply services;
 - (b) Accept your products or services;
 - (c) Manufacture your products for delivery to your customers under contract for sale; or
 - (d) Attract customers to your business.

The dependent property must be located in the coverage territory of this policy.

- (5) The coverage period for Business Income under this Additional Coverage:
- (a) Begins 72 hours after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the premises of the dependent property; and

- (b) Ends on the date when the property at the premises of the dependent property should be repaired, rebuilt or replaced with reasonable speed and similar quality.

- (6) The Business Income coverage period, as stated in Paragraph (5), does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:

- (a) Regulates the construction, use or repair, or requires the tearing down of any property; or
- (b) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not reduce the Business Income coverage period.

- (7) The definition of Business Income contained in the Business Income Additional Coverage also applies to this Business Income From Dependent Properties Additional Coverage.

o. Glass Expenses

- (1) We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- (2) We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

p. Fire Extinguisher Systems Recharge Expense

- (1) We will pay:
- (a) The cost of recharging or replacing, whichever is less, your fire extinguishers and fire extinguishing systems (including hydrostatic testing if needed) if they are discharged on or within 100 feet of the described premises; and
 - (b) For loss or damage to Covered Property if such loss or damage is the result of an accidental discharge of chemicals from a fire extinguisher or a fire extinguishing system.
- (2) No coverage will apply if the fire extinguishing system is discharged during installation or testing.

- (3) The most we will pay under this Additional Coverage is \$10,000 in any one occurrence.

No Deductible applies to this Additional Coverage.

q. Electronic Data

- (1) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore "electronic data" which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that "electronic data" is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the "electronic data" was stored, with blank media of substantially identical type.
- (2) The Covered Causes of Loss applicable to Business Personal Property include a computer virus, harmful code or similar instruction introduced into or enacted on a computer system (including "electronic data") or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including "electronic data") by any employee, including a temporary or leased employee, or by an entity retained by you, or for you, to inspect, design, install, modify, maintain, repair or replace that system.
- (3) The most we will pay under this additional Coverage – Electronic Data for all loss or damage sustained in any one policy year is \$25,000, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in, but not after, that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.
- (4) This Additional Coverage does not apply to your "stock" of prepackaged software, or to "electronic data" which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

r. Interruption Of Computer Operations

- (1) Subject to all provisions of this additional

Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a suspension of "operations" caused by an interruption in computer operations due to destruction or corruption of "electronic data" due to a Covered Cause of Loss.

- (2) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
- (a) Coverage under this Additional Coverage – Interruption Of Computer Operations is limited to the "specified causes of loss" and Collapse.
- (b) If the Businessowners Coverage Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage.
- (c) The Covered Causes of Loss include a computer virus, harmful code or similar instruction introduced into or enacted on a computer system (including "electronic data") or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including "electronic data") by any employee, including a temporary or leased employee, or by an entity retained by you, or for you, to inspect, design, install, modify, maintain, repair or replace that system.
- (3) The most we will pay under this Additional Coverage – Interruption Of Computer Operations is \$25,000 for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.

- (4) This Additional Coverage – Interruption Of Computer Operations does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (3) above has not been exhausted.
- (5) Coverage for Business Income does not apply when a suspension of "operations" is caused by destruction or corruption of "electronic data", or any loss or damage to "electronic data", except as provided under Paragraphs (1) through (4) of this Additional Coverage.
- (6) Coverage for Extra Expense does not apply when action is taken to avoid or minimize a suspension of "operations" caused by destruction or corruption of "electronic data", or any loss or damage to "electronic data", except as provided under Paragraphs (1) through (4) of this Additional Coverage.
- (7) This Additional Coverage does not apply when loss or damage to "electronic data" involves only "electronic data" which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

s. Limited Coverage For "Fungi", Wet Rot Or Dry Rot

- (1) The coverage described in Paragraphs s.(2) and s.(6) only applies when the "fungi", wet rot or dry rot is the result of a "specified cause of loss" other than fire or lightning that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

This Additional Coverage does not apply to lawns, trees, shrubs or plants which are part of a vegetated roof.

- (2) We will pay for loss or damage by "fungi", wet rot or dry rot. As used in this Limited Coverage, the term loss or damage means:
 - (a) Direct physical loss or damage to Covered Property caused by "fungi", wet rot or dry rot, including the cost of removal of the "fungi", wet rot or dry rot;
 - (b) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungi", wet rot or dry rot; and
 - (c) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is

completed, provided there is a reason to believe that "fungi", wet rot or dry rot are present.

- (3) The coverage described under this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungi", wet rot or dry rot, we will not pay more than the total of \$15,000 even if the "fungi", wet rot or dry rot continues to be present or active, or recurs, in a later policy period.
- (4) The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungi", wet rot or dry rot, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungi", wet rot or dry rot, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungi", wet rot or dry rot causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

- (5) The terms of this Limited Coverage do not increase or reduce the coverage provided under the Water Damage, Other Liquids, Powder Or Molten Material Damage or Collapse Additional Coverages.
- (6) The following applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the suspension of "operations" satisfies all the terms and conditions of the applicable Business Income and/or Extra Expense Additional Coverage.
 - (a) If the loss which resulted in "fungi", wet rot or dry rot does not in itself necessitate a suspension of "operations", but such suspension is necessary due to loss or damage to property caused by "fungi", wet rot or dry rot, then our payment under the Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a

period of not more than 30 days. The days need not be consecutive.

- (b) If a covered suspension of "operations" was caused by loss or damage other than "fungi", wet rot or dry rot, but remediation of "fungi", wet rot or dry rot prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

t. Lock and Key Replacement

We will pay the cost of:

- (1) Premises entry key(s) replacement, if keys are stolen; or
(2) Premises entry lock repair or replacement made necessary by theft or attempted theft at the described premises.

The most we will pay under this Additional Coverage is \$2,500 any one occurrence, unless a higher limit of insurance is shown in the Declarations.

No Deductible applies to this Additional Coverage.

u. Utility Services

We will pay for:

- (1) Direct physical loss or damage to Covered Property caused by an interruption of services to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to property described in Paragraph (3) Utility Services that is located outside of a covered building described in the Declarations; and
(2) The actual loss of Business Income or Extra Expense at the described premises caused by the interruption of services to the described premises, subject to the terms and conditions of the Business Income and/or Extra Expense Additional Coverages found in this endorsement. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to property described in Paragraph (3) Utility Services that is located outside of a covered building described in the Declarations.
(3) Utility Services include:
(a) Water Supply Services, meaning the following types of property supplying water to the described premises:

(i) Pumping stations;

(ii) Water mains.

- (b) Communication Supply Services, meaning property supply communication services, including telephone, radio, microwave or television services to the described premises, such as:

(i) Communication transmission lines, including optic fiber transmission lines;

(ii) Coaxial cables; and

(iii) Microwave radio relays except satellites.

- (c) Power Supply Services, meaning the following types of property supplying electricity, steam or gas to the described premises:

(i) Utility generating plants;

(ii) Switching stations;

(iii) Substations;

(iv) Transformers;

(v) Transmissions lines.

- (4) Exclusion B.1.e.(1) in Section I - Property does not apply to this Additional Coverage.

- (5) The most we will pay under this Additional Coverage is:

(a) \$10,000 any one occurrence; or

(b) the limit of insurance shown in the applicable Utility Services coverage endorsement;

whichever is greater.

v. Reward Payment

We will pay for reasonable expenses you incur for rewards that lead to:

- (1) An arson conviction in connection with a covered fire or explosion loss; or
(2) A theft conviction in connection with a covered theft loss.

The most we will pay under this Additional coverage is \$10,000 each occurrence, regardless of the number of persons providing information.

No Deductible applies to this Additional Coverage.

w. Inventory and Loss Adjustment Expenses

We will pay up to \$5,000 each occurrence for the cost of any inventory or appraisal required as a result of direct physical loss or damage to Covered Property caused by or resulting from a Covered Cause of Loss. This Additional Coverage will not pay for expenses incurred in using the services of a public adjuster.

No Deductible applies to this Additional Coverage.

x. Back-Up of Sewers, Drains or Sumps

We will pay for loss or damage to Covered Property caused by or resulting from water that backs up or overflows from a sewer, drain or sump.

Exclusion **B.1.g.(3)** in Section **I** - Property does not apply to this Additional Coverage.

The most we will pay under this Additional Coverage is \$25,000 each occurrence, unless a higher limit of insurance is shown in the Declarations.

y. Money And Securities

(1) We will pay for loss of "money" and "securities" used in your business while at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee (including temporary or leased employee) having use and custody of the property, at the described premises, or in transit between any of these places, resulting directly from:

- (a) Theft, meaning any act of stealing;
- (b) Disappearance; or
- (c) Destruction.

(2) In addition to the Limitations and Exclusions applicable to property coverage, we will not pay for loss:

- (a) Resulting from accounting or arithmetical errors or omissions;
- (b) Due to the giving or surrendering of property in any exchange or purchase; or
- (c) Of property contained in any "money" - operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

(3) The most we will pay for loss in any one occurrence is:

- (a) \$10,000 for Inside the Premises for "money" and "securities" while in or on the described premises or within a bank or savings institution and \$2,000 for Outside the Premises for "money" and "securities" while anywhere else, or

(b) the Limit of Insurance shown for Money and Securities in the Declarations; whichever is greater.

(4) All loss:

- (a) Caused by one or more persons; or

(b) Involving a single act or series of related acts;

is considered one occurrence.

(5) You must keep records of all "money" and "securities" so we can verify the amount of any loss or damage.

z. Fine Arts

(1) We will pay for loss or damage to your "fine arts" and "fine arts" owned by others in your care, custody or control at covered locations. We cover such property against direct physical loss or damage from a Covered Cause of Loss applying to your business personal property at the location.

(2) We will not pay for loss caused by processing of or work upon the covered property including repairs or restoration. We will not pay for any reduction in the value of damaged property after the damage has been repaired.

(3) The most we will pay for loss or damage in any one occurrence is \$10,000 subject to an Annual Policy Aggregate of \$10,000.

The Business Personal Property deductible, as shown in the Declarations, applies to this Additional Coverage.

(4) The value of fine arts will be the least of the following amounts:

- (a) The actual cash value of that property;
- (b) The cost of reasonably restoring that property to its condition immediately before loss; or
- (c) The cost of replacing that property with substantially identical property.

(5) In the event of loss, the value of the property will be determined as of the time of loss.

(6) If there is other insurance covering the same loss or damage provided by this Additional Coverage, whether covered by this policy or any other policy, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, but we will not pay more than the applicable limit of insurance shown in Paragraph (3) above.

aa. Voluntary Parting

We will pay for loss or damage to covered property when you or your employees are fraudulently induced to part with Covered Property to or by:

- (1) Persons who falsely represent themselves as the proper persons to receive the property; or
- (2) Acceptance of fraudulent bills of lading or shipping receipts.

This additional coverage is not subject to the terms of the Voluntary Parting Exclusion.

The most we will pay under this Additional Coverage for loss or damage in any one occurrence is \$10,000. The limit is part of, not in addition to, the applicable Limit of Insurance.

3. Paragraph 6. Coverage Extensions in Section I – Property is deleted in its entirety and replaced by the following:

In addition to the Limits of Insurance of Section I – Property, you may extend the insurance provided by this policy as provided below.

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 1,000 feet of the described premises.

a. Newly Acquired Or Constructed Property

(1) Buildings

If this policy covers Buildings, you may extend that insurance to apply to:

- (a)** Your new buildings while being built on the described premises; and
- (b)** Buildings you acquire at premises other than the one described, intended for:
 - (i)** Similar use as the building described in the Declarations; or
 - (ii)** Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$500,000 at each building.

(2) Business Personal Property

If this policy covers Business Personal Property, you may extend that insurance to apply to:

- (a)** Business Personal Property, including such property that you newly acquire, at any location you acquire; or
- (b)** Business Personal Property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or

This Extension does not apply to personal property that you temporarily acquire in the course of installing or performing work on such property or your wholesale activities.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

(3) Period Of Coverage

With respect to insurance provided under this Coverage Extension for Newly Acquired Or Constructed Property,

coverage will end when any of the following first occurs:

- (a)** This policy expires;
- (b)** 90 days expire after you acquire the property or begin construction of that part of the building that would qualify as Covered Property; or
- (c)** You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as Covered Property.

b. Personal Property Off-Premises

You may extend the insurance that applies to Business Personal Property to apply to covered Business Personal Property, other than "money" and "securities" and "valuable papers and records," while it is in the course of transit or temporarily away from the described premises. The most we will pay for loss or damage under this Extension is \$25,000, unless a higher limit of insurance is shown in the Declarations.

c. Outdoor Property

You may extend the insurance provided by this policy to apply to your outdoor fences, radio and television antennas (including satellite dishes), lawns, trees, shrubs and plants (other than "stock" of trees, shrubs or plants or trees, shrubs or plants which are part of a vegetated roof), including debris removal expense, caused by or resulting from any of the following causes of loss:

- (1)** Fire;
- (2)** Lightning;
- (3)** Explosion;
- (4)** Riot or Civil Commotion; or
- (5)** Aircraft.

The most we will pay for loss or damage under this Extension is \$10,000 but not more than \$1,000 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others, except in the situation in which you are a tenant and such property is owned by the landlord of the described premises.

d. Personal Effects and Property Of Others

You may extend this insurance that applies to Business Personal Property to apply to:

- (1) Personal effects, including tools, owned by you, your officers, your partners or "members", your "managers" or your employees, including temporary or leased employees. This extension does not apply to loss or damage by theft.

The most we will pay for loss or damage under **d.(1)** is \$2,500 per person up to a maximum of \$10,000 at each described premises.

- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under **d.(2)** is \$2,500 at each described premises, unless a higher limit of insurance is shown in the Declarations for Personal Property Of Others.

e. Valuable Papers And Records

- (1) You may extend the insurance that applies to Business Personal Property to apply to direct physical loss or damage to "valuable papers and records" that you own, or that are in your care, custody or control caused by or resulting from a Covered Cause of Loss. This Coverage Extension includes the cost to research, replace or restore the lost information on "valuable papers and records" for which duplicates do not exist.

- (2) This Coverage Extension does not apply to:

- (a) Property held as samples or for delivery after sale; and
(b) Property in storage away from the premises shown in the Declarations.

- (3) The most we will pay under this Coverage Extension for loss or damage to "valuable papers and records" in any one occurrence at the described premises is \$25,000. This limit is in addition to any amount shown in the Declarations.

For "valuable papers and records" not at the described premises, the most we will pay is \$5,000.

- (4) Loss or damage to "valuable papers and records" will be valued at the cost of restoration or replacement of the lost or damaged information. To the extent that the contents of the "valuable papers and records" are not restored, the "valuable papers and records" will be valued at the cost of replacement with blank materials of substantially identical type.

- (5) Paragraph **B. Exclusions in Section I – Property** does not apply to this Coverage Extension except for:

- (a) Paragraph **B.1.c.**, Governmental Action;
(b) Paragraph **B.1.d.**, Nuclear Hazard;
(c) Paragraph **B.1.f.**, War And Military Action;
(d) Paragraph **B.2.f.**, Dishonesty;
(e) Paragraph **B.2.g.**, False Pretense;
(f) Paragraph **B.2.m.(2)**, Errors Or Omissions; and
(g) Paragraph **B.3.**

f. Accounts Receivable

- (1) You may extend the insurance that applies to Business Personal Property to apply to accounts receivable. We will pay:

- (a) All amounts due from your customers that you are unable to collect;
(b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
(c) Collection expenses in excess of your normal collection expenses that are made necessary by loss or damage; and
(d) Other reasonable expenses that you incur to reestablish your records of accounts receivable;

that result from direct physical loss or damage by any Covered Cause of Loss to your records of accounts receivable.

- (2) The most we will pay under this Coverage Extension for loss or damage in any one occurrence at the described premises is \$25,000. This limit is in addition to any amount shown in the Declarations.

For accounts receivable not at the described premises, the most we will pay is \$5,000.

- (3) Paragraph **B. Exclusions in Section I – Property** does not apply to this Coverage Extension except for:

- (a) Paragraph **B.1.c.**, Governmental Action;
(b) Paragraph **B.1.d.**, Nuclear Hazard;
(c) Paragraph **B.1.f.**, War And Military Action;
(d) Paragraph **B.2.f.**, Dishonesty;
(e) Paragraph **B.2.g.**, False Pretense;
(f) Paragraph **B.3.**; and

(g) Paragraph B.6., Accounts Receivable Exclusion.

g. Detached Signs

- (1) We will pay for direct physical loss of or damage to all detached signs at the described premises:
 - (a) Owned by you; or
 - (b) Owned by others but in your care, custody or control.
- (2) Paragraph A.3., Covered Causes Of Loss, and Paragraph B., Exclusions in Section I – Property, do not apply to this Coverage Extension, except for:
 - (a) Paragraph B.1.c., Governmental Action;
 - (b) Paragraph B.1.d., Nuclear Hazard; and
 - (c) Paragraph B.1.f., War and Military Action.
- (3) We will not pay for loss or damage caused by or resulting from:
 - (a) Wear and tear;
 - (b) Hidden or latent defect;
 - (c) Rust;
 - (d) Corrosion; or
 - (e) Mechanical breakdown
- (4) The most we will pay for loss or damage in any one occurrence is:
 - (a) \$10,000; or
 - (b) the Limit of Insurance shown in the Declarations for Detached Signs; whichever is greater.

h. Business Personal Property Temporarily In Portable Storage Units

- (1) You may extend the insurance that applies to Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the buildings or structures described in the Declarations or within 100 feet of the described premises, whichever distance is greater.
- (2) The limitation under Paragraph A.4.a.(5) also applies to property in a portable storage unit.
- (3) Coverage under this Extension:
 - (a) Will end 90 days after the Business Personal Property has been placed in the storage unit;
 - (b) Does not apply if the storage unit itself has been in use at the described premises for more than

90 consecutive days, even if the Business Personal Property has been stored there for 90 or fewer days as of the time of loss or damage.

- (4) Under this Extension, the most we will pay for the total of all loss or damage to Business Personal Property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units.
- (5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form, and does not apply to loss or damage to the storage unit itself.

4. Paragraph C. Limits Of Insurance in Section I – Property is deleted in its entirety and replaced by the following:

1. The most we will pay for loss or damage in any one occurrence is the Limits of Insurance of Section I – Property shown in the Declarations or the limit shown in this endorsement, whichever is applicable.
2. The amounts of insurance applicable to the Coverage Extensions and the following Additional Coverages apply in accordance with the terms of such coverages and are in addition to the Limits of Insurance of Section I – Property:
 - a. Fire Department Service Charge;
 - b. Pollutant Clean-up And Removal;
 - c. Ordinance Or Law;
 - d. Business Income From Dependent Properties;
 - e. Electronic Data; and
 - f. Interruption Of Computer Operations
3. **Building Limit – Automatic Increase**
 - a. In accordance with Paragraph C.3.b., the Limit of Insurance for Buildings will automatically increase by 4%, unless a different percentage of annual increase is shown in the Declarations.
 - b. The amount of increase is calculated as follows:
 - (1) Multiply the Building limit that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Building limit by:
 - (a) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 7% is .07); or

(b) .04, if no percentage of annual increase is shown in the Declarations; and

- (2) Multiply the number calculated in accordance with b.(1) by the number of days since the beginning of the current policy year, or the effective date of the most recent policy change amending the Building limit, divided by 365.

Example:

If:

The applicable Building limit is \$100,000. The annual percentage increase is 4%. The number of days since the beginning of the policy year (or last policy change) is 146.

The amount of increase is

$$\$100,000 \times .04 \times 146 \div 365 = \$1,600$$

4. Business Personal Property Limit – Seasonal Increase

- a. Subject to Paragraph 3.b., the Limit of Insurance for Business Personal Property is automatically increased by:

- (1) The Business Personal Property – Seasonal Increase percentage shown in the Declarations; or
- (2) 25% if no Business Personal Property – Seasonal Increase percentage is shown in the Declarations;

to provide for seasonal variances.

- b. The increase described in Paragraph 3.a. will apply only if the Limit of Insurance shown for Business Personal Property in the Declarations is at least 100% of your average monthly values during the lesser of:

- (1) The 12 months immediately preceding the date the loss or damage occurs; or
- (2) The period of time you have been in business as of the date the loss or damage occurs.

5. Paragraph **D. Deductibles** in Section I – Property is deleted in its entirety and replaced by the following:

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage per location in excess of the Deductible up to the applicable Limit of Insurance of Section I – Property.
2. Regardless of the amount of the Deductible shown in the Declarations, the most we will deduct per location from any loss of or damage

to the following coverages is \$500 any one occurrence:

- a. Building Glass;
- b. Employee Dishonesty;
- c. Money and Securities;
- d. Outdoor Signs (whether attached or detached); and
- e. Forgery or Alteration.

This Deductible will not increase the Deductible shown in the Declarations. The Deductible will be used to satisfy the requirements of the Deductible shown in the Declarations.

3. No deductible applies to the following coverages:

- a. Fire Department Service Charge;
- b. Business Income;
- c. Extra Expense;
- d. Civil Authority; and
- e. Fire Extinguisher Systems Recharge Expense.

6. Paragraph **E.5. Loss Payment** of the Property Loss Conditions in Section I – Property is deleted and replaced by the following:

In the event of loss or damage covered by this policy:

- a. At our option, we will either:
- (1) Pay the value of lost or damaged property;
- (2) Pay the cost of repairing or replacing the lost or damaged property;
- (3) Take all or any part of the property at an agreed or appraised value; or
- (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to Paragraph d.(1)(e) below.
- b. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- c. We will not pay you more than your financial interest in the Covered Property.
- d. We will determine the value of Covered Property as follows:
- (1) At replacement cost without deduction for depreciation, except as provided in (2) through (7) below.
- (a) You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss or damage.

- (b) We will not pay on a replacement cost basis for any loss or damage:
 - (i) Until the lost or damaged property is actually repaired or replaced; and
 - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.
- (c) We will not pay more for loss or damage on a replacement cost basis than the least of:
 - (i) The amount it would cost to replace the damaged item at the time of the loss with new property of similar kind and quality to be used for the same purpose on the same site; or
 - (ii) The amount you actually spend in repairing the damage, or replacing the damaged property with new property of similar kind and quality.
- (d) The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.
- (2) If the "Actual Cash Value - Buildings" option applies, as shown in the Declarations, paragraph (1) above does not apply to Buildings. Instead, we will determine the value of Buildings at actual cash value.
- (3) The following property at actual cash value:
 - (a) Used or second-hand merchandise held in storage or for sale;
 - (b) Property of others. However, if an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance;
 - (c) Household contents, except personal property in apartments or rooms furnished by you as landlord;
 - (d) Manuscripts; and
 - (e) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac.
- (4) Glass at the cost of replacement with safety glazing material if required by law.
- (5) Tenants' Improvements and Betterments at:
 - (a) Replacement cost if you make repairs promptly.
 - (b) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
 - (i) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
 - (ii) Divide the amount determined in (i) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
 - (c) Nothing if others pay for repairs or replacement.
- (6) Applicable only to the Money and Securities and Employee Dishonesty Additional Coverages:
 - (a) "Money" at its face value; and
 - (b) "Securities" at their value at the close of business on the day the loss is discovered.
- (7) Applicable only to Accounts Receivable:
 - (a) If you cannot accurately establish the amount of accounts receivable outstanding as of the time of loss or damage:
 - (i) We will determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the loss or damage occurs; and
 - (ii) We will adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the loss or damage occurred or for any demonstrated variance from the average for that month.
 - (b) The following will be deducted from the total amount of accounts receivable, however that amount is established:
 - (i) The amount of the accounts for which there is no loss or damage;

- (ii) The amount of the accounts that you are able to reestablish or collect;
 - (iii) An amount to allow for probable bad debts that you are normally unable to collect; and
 - (iv) All unearned interest and service charges.
 - e. Our payment for loss of or damage to personal property of others will only be for the account of the owners of the property. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
 - f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
 - g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, provided you have complied with all of the terms of this policy; and
 - (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.
 - h. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.
7. Paragraph **G. Optional Coverages** in Section I – Property is deleted in its entirety.
8. **OTHER INSURANCE UNDER THE SAME POLICY**
- If there is other insurance under this policy covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the sum of:

- a. The amount that such other insurance paid for the loss or damage; and
- b. The amount of the deductible applicable to the loss or damage under the other insurance.

However, we will not pay more than the applicable Limit of Insurance.

9. The following is added to Paragraph **H. Property Definitions**.

“Fine Arts” means paintings, etchings, pictures, tapestries, rare or art glass, art glass windows, valuable rugs, statuary, sculptures, “antique” furniture, “antique” jewelry, bric-a-brac, porcelains and similar property of rarity, historical value or artistic merit. “Antique” means an object having value because its craftsmanship is in the style or fashion of former times and its age is 100 years or older.

10. **Additional Insured – Building Owner**

The following is added to Section I – Property.

If you are a building owner(s), you are an insured, but only with respect to the coverage provided under this Policy for direct physical loss or damage to the building(s) described in the Declarations and owned by you. All other policy terms and conditions apply.

11. **Blanket Additional Insured**

The following changes revise Section II – Liability.

Paragraph **C. Who Is An Insured** is amended to include the following:

1. **Blanket Additional Insured**

- a. Any person or organization when you and such person or organization have agreed in writing in a contract or agreement, executed prior to any “occurrence”, 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:

- (1) Your acts or omission; or
- (2) The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured, or in connection with your premises owned by or rented to you.

A person's or organization's status as an additional insured under this endorsement ends when your contract or agreement with such person or organization ends.

- (b) The Limits of Insurance applicable to the Additional insured are those specified in the written contract or agreement but not more than the Limits of Insurance specified in the Declarations of this policy. The Limits of Insurance applicable to the Additional Insured are inclusive of and not in addition to the Limits of Insurance shown in the declarations for the Named Insured.

All other policy terms and conditions apply.

The following changes revise Section III – Common Policy Conditions.

Paragraph H. **Other Insurance** is amended to add the following subparagraph:

4. Other Insurance As Excess Insurance

To the extent required by an "insured contract", this insurance is primary on behalf of the additional insured, and any other insurance maintained by the additional insured is excess and not contributory with this insurance. If the "insured contract" does not require this provision, then Paragraph 1. above will apply.