New Hampshire DOT
Department of Transportation

William Cass, P.E.
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

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David Rodrigue, P.E.
Assistant Commissioner
Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

Bureau of Highway Design
March 15, 2024

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Transportation to enter into an Agreement with BETA Group, Inc, Lincoln, Rhode Island, Vendor #309702, for an amount not to exceed $372,205.50, for signal coordination and control, effective upon Governor and Council approval through June 30, 2027. 100% Federal Funds.

Funds to support this request are available in the following account in State FY 2024 and State FY 2025, and funding is contingent upon the availability and continued appropriation of funds in FY 2026, with the ability to adjust encumbrances between State Fiscal Years through the Budget Office if needed and justified:

04-096-96-963515-3054	FY 2024	FY 2025	FY 2026
Consolidated Federal Aid			
046-500464 Gen Consultants Non-Benefit	$150,000	$150,000	$72,205.50

EXPLANATION

The Department requires the preliminary design, final design, construction plans, and post construction monitoring and adjustments for the coordination and optimization of 11 signal systems and intersections along NH 125 in Plaistow NH. This agreement is included in the State's Ten-Year Transportation Improvement Plan (Plaistow, 40645).

The consultant selection process employed by the Department for this qualifications-based contract is in accordance with RSAs 21-I:22, 21-I:22-c, 21-I:22-d, 228:4 and 228:5-a, and all applicable Federal laws and the Department's "Policies and Procedures for Consultant Contract Procurement, Management, and Administration" dated August 25, 2017. The Department's Consultant Selection Committee is a standing committee that meets regularly to administer the process and make determinations. The Committee is comprised of the Assistant Director of Project Development (Chair), the Chief Project Manager, the Administrators of the Bureaus of Highway Design, Bridge Design, Environment, and Materials and Research, and the Municipal Highways Engineer.

The consultant selection process for this qualifications-based contract was initiated by a solicitation for consultant services for Plaistow 40645. The assignment was listed as a "Project Soliciting for Interest" on the Department's website on June 18, 2021, asking for letters of interest from qualified firms. From the list of firms that submitted letters of interest, the Committee prepared a long and then short list of Consultants on August 12, 2021, for consideration and approval by the Assistant Commissioner. Upon receipt of that approval, three (3) shortlisted firms were notified on January 4, 2022, through a technical "Request for Proposal" (RFP). Committee members individually rated the firms on February 10, 2022, using a written ballot to score each firm on the basis of

comprehension of the assignment, clarity of the proposal, capacity to perform in a timely manner, quality and experience of the project manager and the team, previous performance, and overall suitability for the assignment. (A compilation of the completed individual rating ballots and the ranking summary form is attached.) The individual rankings were then totaled to provide an overall ranking of the three firms, and the Committee's ranking was submitted to the Assistant Commissioner for consideration and approval. Upon receipt of that approval, the short-listed firms were notified of the results and the highest-ranking firm was asked to submit a fee proposal for negotiations.

The long list of five (5) consultant firms that were considered for this assignment, with the three (3) short-listed firms shown in bold, is as follows:

Consultant Firm	***Office Location***
AECOM Technical Services, Inc	**Manchester, NH**
BETA Group, Inc.	**Manchester, NH**
GM2 Associates, Inc.	Concord, NH
Greenman-Pederson, Inc.	**Bedford, NH**
HNTB Corporation	Concord, NH

The firm of BETA Group, Inc. was recommended for this contract. This firm has an excellent reputation and has demonstrated their capability to perform the required services. Background information on this firm is attached.

BETA Group, Inc. has agreed to furnish the professional engineering services for an amount not to exceed $372,205.50. This is a reasonable fee and is commensurate with the complexity of the project and the scope of the engineering and technical services to be furnished. This project funding is 80% Federal funds with 20% State match. Turnpike toll credit is being utilized for New Hampshire's match requirement, effectively using 100% Federal Funds.

This Agreement has been approved by the Attorney General as to form and execution. The Department has verified that the necessary funds are available. Copies of the fully-executed Agreement are on file at the Secretary of State's Office and the Department of Administrative Services, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

It is respectfully requested that authority be given to enter into an Agreement for consulting services as outlined above.

Sincerely,

William J. Cass, P.E.
Commissioner

Attachments

Plaistow 40645 February 10, 2022

DESCRIPTION:
Signal coordination and control in Plaistow, NH along the NH Route 125 corridor from Main St to Old County Road including remote control of signals network surveillance and monitoring and emergency routing capabilities. Preliminary and Final design for the improved intersection and adjacent roadway

								TOTAL	RANK
AECOM Technical Services, Inc.	3	3	3	3	3	3	3	21	3
BETA Group, Inc.	1	2	1	1	2	1	2	10	1
Greenman-Pedersen, Inc	2	1	2	2	1	2	1	11	2

EVALUATION OF TECHNICAL PROPOSALS

Rating Considerations		Scoring of Firms			
Plaistow 40645		WEIGHT	AECOM Technical Services, Inc.	BETA Group, Inc.	Greenman-Pedersen, Inc
Comprehension of the Assignment		20%	16%	17%	18%
Clarity of the Proposal		20%	17%	17%	17%
Capacity to Perform in a Timely Manner		20%	16%	17%	17%
Quality & Experience of Project Manager/Team		20%	16%	16%	18%
Previous Performance		10%	7%	6%	8%
Overall Suitability for the Assignment		10%	7%	7%	7%
Total:		100%	79%	80%	85%

Ranking of Firms: 1. Greenman-Pedersen, Inc
2. BETA Group, Inc.
3. AECOM Technical Services, Inc.

EVALUATION OF TECHNICAL PROPOSALS

Rating Considerations		Scoring of Firms			
Plaistow 40645		WEIGHT	AECOM Technical Services, Inc.	BETA Group, Inc.	Greenman-Pedersen, Inc
Comprehension of the Assignment		20%	15%	19%	16%
Clarity of the Proposal		20%	13%	19%	17%
Capacity to Perform in a Timely Manner		20%	17%	17%	17%
Quality & Experience of Project Manager/Team		20%	14%	18%	20%
Previous Performance		10%	6%	7%	9%
Overall Suitability for the Assignment		10%	7%	9%	9%
Total:		100%	72%	89%	88%

Ranking of Firms: 1. BETA Group, Inc.
2. Greenman-Pedersen, Inc
3. AECOM Technical Services, Inc.

EVALUATION OF TECHNICAL PROPOSALS

Rating Considerations		Scoring of Firms			
Plaistow 40645		WEIGHT	AECOM Technical Services, Inc.	BETA Group, Inc.	Greenman-Pedersen, Inc
Comprehension of the Assignment		20%	18%	19%	19%
Clarity of the Proposal		20%	16%	17%	18%
Capacity to Perform in a Timely Manner		20%	18%	18%	18%
Quality & Experience of Project Manager/Team		20%	16%	17%	18%
Previous Performance		10%	8%	8%	8%
Overall Suitability for the Assignment		10%	7%	8%	8%
Total:		100%	83%	87%	89%

Ranking of Firms: 1. Greenman-Pedersen, Inc
2. BETA Group, Inc.
3. AECOM Technical Services, Inc.

EVALUATION OF TECHNICAL PROPOSALS

Rating Considerations		Scoring of Firms			
Plaistow 40645		WEIGHT	AECOM Technical Services, Inc.	BETA Group, Inc.	Greenman-Pedersen, Inc
Comprehension of the Assignment		20%	16%	20%	19%
Clarity of the Proposal		20%	17%	19%	19%
Capacity to Perform in a Timely Manner		20%	18%	20%	20%
Quality & Experience of Project Manager/Team		20%	17%	19%	20%
Previous Performance		10%	7%	9%	9%
Overall Suitability for the Assignment		10%	8%	10%	9%
Total:		100%	83%	97%	96%

Ranking of Firms: 1. BETA Group, Inc.
2. Greenman-Pedersen, Inc
3. AECOM Technical Services, Inc.

EVALUATION OF TECHNICAL PROPOSALS

Rating Considerations		Scoring of Firms			
Plaistow 40645		WEIGHT	AECOM Technical Services, Inc.	BETA Group, Inc.	Greenman-Pedersen, Inc
Comprehension of the Assignment		20%	20%	19%	18%
Clarity of the Proposal		20%	16%	19%	17%
Capacity to Perform in a Timely Manner		20%	17%	20%	18%
Quality & Experience of Project Manager/Team		20%	18%	19%	20%
Previous Performance		10%	8%	10%	9%
Overall Suitability for the Assignment		10%	8%	10%	9%
Total:		100%	87%	97%	91%

Ranking of Firms: 1. BETA Group, Inc.
2. Greenman-Pedersen, Inc
3. AECOM Technical Services, Inc.

EVALUATION OF TECHNICAL PROPOSALS

Rating Considerations		Scoring of Firms			
Plaistow 40645		WEIGHT	AECOM Technical Services, Inc.	BETA Group, Inc.	Greenman-Pedersen, Inc
Comprehension of the Assignment		20%	16%	19%	18%
Clarity of the Proposal		20%	18%	18%	18%
Capacity to Perform in a Timely Manner		20%	16%	18%	18%
Quality & Experience of Project Manager/Team		20%	16%	18%	19%
Previous Performance		10%	6%	7%	9%
Overall Suitability for the Assignment		10%	6%	8%	8%
Total:		110%	78%	88%	90%

Ranking of Firms: 1. Greenman-Pedersen, Inc
2. BETA Group, Inc.
3. AECOM Technical Services, Inc.

EVALUATION OF TECHNICAL PROPOSALS

Rating Considerations		Scoring of Firms			
Pinkston 40645		WEIGHT	AECOM Technical Services, Inc.	BETA Group, Inc.	Greenman-Pedersen, Inc
Comprehension of the Assignment		20%	15%	19%	18%
Clarity of the Proposal		20%	15%	19%	18%
Capacity to Perform in a Timely Manner		20%	16%	18%	17%
Quality & Experience of Project Manager/Team		20%	16%	19%	18%
Previous Performance		10%	8%	9%	9%
Overall Suitability for the Assignment		10%	7%	9%	8%
Total:		100%	77%	93%	88%

Ranking of Firms: 1. BETA Group, Inc.
2. Greenman-Pedersen, Inc
3. AECOM Technical Services, Inc.

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ATTACHMENTS

A. **SCOPE OF SERVICES FOR PRELIMINARY & FINAL DESIGN** Prepared by BETA Group dated [3/18/2022 (Revision Date 10/12/2023)]

AGREEMENT EXECUTION ATACHMENTS

1. CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS, ETC.
2. CONSULTANT DISCLOSURE STATEMENT FOR PREPARATION OF ENVIRONMENTAL EVALUATIONS
3. CERTIFICATION OF CONSULTANT/SUBCONSULTANT
4. CERTIFICATION OF STATE DEPARTMENT OF TRANSPORTATION
5. CERTIFICATION FOR FEDERAL-AID CONTRACTS EXCEEDING $100,000 IN FEDERAL FUNDS
6. SIGNATURE PAGE
7. CERTIFICATION OF GOOD STANDING
8. CERTIFICATION OF AUTHORITY / VOTE
9. CERTIFICATION OF INSURANCE
10. SIGNATURE PAGE

PLAISTOW
X-A0004(454)
40645
PRELIMINARY & FINAL DESIGN

AGREEMENT
FOR PROFESSIONAL SERVICES

PREAMBLE

THIS AGREEMENT made this 3rd day of April in the year 2024 by and between the STATE OF NEW HAMPSHIRE, hereinafter referred to as the STATE, acting by and through its COMMISSIONER OF THE DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the COMMISSIONER, acting under Chapter 228 of the Revised Statutes Annotated, and BETA Group, Inc., with principal place of business at 701 George Washington Highway, in the city of Lincoln, State of Rhode Island, hereinafter referred to as the CONSULTANT, witnesses that:

The Department of Transportation, State of New Hampshire, hereinafter referred to as the DEPARTMENT, requires the coordination and optimization of 11 signal systems and intersections along NH 125 in Plaistow NH.

The DEPARTMENT requires the preliminary design, final design, construction plans, and post construction monitoring and adjustments for the signal coordination and intersection optimizations along NH 125 in Plaistow NH.

The CONSULTANT'S Fee Proposal dated October 12, 2023, is hereby adopted by reference and considered to be part of this AGREEMENT.

This AGREEMENT becomes effective upon approval by the Governor and Council.

ARTICLE I - DESCRIPTION OF PROFESSIONAL SERVICES TO BE RENDERED

NOW THEREFORE, in consideration of the undertakings of the parties hereinafter set forth, the DEPARTMENT hereby engages the CONSULTANT, who agrees to render services to the DEPARTMENT which shall include, but not be restricted to, the following items, in accordance with conditions and terms hereinafter set forth:

A. LOCATION AND DESCRIPTION OF PROJECT

This project involves addressing transportation needs at 11 signalized intersections within the Town of Plaistow, New Hampshire. All signals to be addressed operate under the authority of the DEPARTMENT. There are additional signals located along Route 125 within the Town of Haverhill, Massachusetts which shall be reviewed and if warranted considered for better corridor mobility.

B. GENERAL SCOPE OF WORK

Improvements to each of the project's signalized intersections, most of which are location on the Route 125 corridor, will improve traffic flow, resulting in a reduction to delay and congestion, lowering of the associated vehicles' idle time, and will allow for remote monitoring of traffic signal equipment and vehicular traffic.

The goal is to achieve optimal reductions in overall delay and congestion to vehicular traffic. The CONSULTANT is encouraged to provide suggestions for a project approach and deliverables which will maximize traffic efficiencies and project cost savings.

The implementation of the optimized signal timings for this project includes training with DEPARTMENT personnel, performing field traffic observations during weekday commuting and/or weekend peak hours, signal timings spreadsheets, comparisons of existing condition versus build condition and producing records of final build conditions.

C. SCOPE OF WORK (PRELIMINARY & FINAL DESIGN)

The work, as further described in the CONSULTANT's Scope of Services dated 3/18/2022 (Revised 10/12/2023) hereinafter referred to as Attachment A, requires the development and refinement of engineering plans and technical documentation in accordance with the following criteria and involving the following work efforts:

a. Preliminary & Final Design:

Designs shall conform to the current standards, specifications, policies and guidelines enumerated in the Federal Aid Policy Guide, Subchapter G, Part 625, or to 23 Code of Federal Regulations, Part 625 and the DEPARTMENT'S Design Manual, and most current Standard Plans for Road Construction, except as approved. The scope of work proposed by this AGREEMENT includes:

ARTICLE I

1. Work as detailed in Attachment A, detailed scope of work.
2. The CONSULTANT shall develop plans at the scale of 1" = 50', unless otherwise noted.
3. The CONSULTANT shall be responsible for the incorporation of environmental resource mapping, right-of-way and property line information, geotechnical information, and utility information, by others, etc.
4. The CONSULTANT shall be responsible for the development of the permanent construction sign and warning device package, including the quantity summary sheets. This shall include summary sheets for relocated signs for construction sequencing.
5. The CONSULTANT shall be responsible for the incorporation of utility relocations as designed by the individual utility owner, and the review of constructability and traffic control for the contract plans.
6. The CONSULTANT shall be responsible for construction cost estimates for each major submission (Preliminary, PPS&E, PS&E) shall be completed. Estimates shall be submitted with a narrative explaining all major cost and/or quantity changes.
7. The CONSULTANT shall be responsible for preparation of presentation base plans at the Preliminary, PPS&E, and PS&E submissions.
8. The CONSULTANT shall examine which elements of design, might affect aerial and underground utilities. Any conflict between design elements and utilities shall be identified and brought to the attention of the DEPARTMENT. A special effort shall be made by the CONSULTANT to modify drainage features in order to avoid conflicts with underground utilities, as may be required, during all subsequent design phases.
9. The CONSULTANT shall furnish legible copies of the design calculations, suitably bound, and when directed, all study plans, work plans, alternate studies, and estimates indexed in accordance with DEPARTMENT procedures.
10. The CONSULTANT'S Licensed Professional Engineer stamp for the State of New Hampshire shall appear on the construction plans, reports and any other documents that will be submitted to the DEPARTMENT. Stamps shall be those of the professional engineers who prepared them or under whose direct supervisory control they were prepared.

b. Construction Services:

The CONSULTANT shall perform;

1. Post implementation field traffic observations for each location

2. Post implementation travel runs and adjustments.
3. Develop revised phasing and signal phase timing plans.
4. AS-Built data and plans and updated technical reports.

c. Environment:

The Environmental documentation and Permitting for this project will be performed by the DEPARTMENT. The scope of work involves Environmental Permitting; coordination, and meetings as described in the CONSULTANT's Scope of Services. The CONSULTANT's plans shall include all commitments made in the environmental documents.

d. Project meetings:

The CONSULTANT shall prepare presentation graphics, handouts and support displays for project meetings and posting to the DEPARTMENT's project webpage and be available to make presentations and prepare meeting minutes.

e. Geotechnical:

The DEPARTMENT will complete the full geotechnical program required for the project.

f. Utilities:

The utility coordination for this project will be performed by the DEPARTMENT. The CONSULTANT shall provide existing detail plans to the DEPARTMENT for submission to the utility companies for utility verification. The CONSULTANT shall incorporate utility locations, as identified by the individual utility owner, into the plans.

D. QUALITY CONTROL

The CONSULTANT shall be the Engineer-of-Record for this work, as such the CONSULTANT shall be responsible to ensure that the design and supporting documentation is accurate, checked, and thoroughly reviewed prior to each submission. DEPARTMENT staff will review the CONSULTANT'S submissions to ensure that DEPARTMENT objectives are being met and standard practices and

procedures are adhered to. It is the CONSULTANT's and the Engineer-of-Record's responsibility to ensure the design is complete, accurate and meets all DEPARTMENT requirements.

The DEPARTMENT will reject any data that does not comply with the above. The DEPARTMENT will decide when the data and services have fully met the project requirements. The CONSULTANT will not be paid for insufficient work.

The CONSULTANT's designated Quality Control personnel shall sign-off on each submission prior to transmittal to the DEPARTMENT. The CONSULTANT shall, upon request, provide to the DEPARTMENT any and/or all QC documentation pertaining to work efforts on the project.

E. MATERIAL FURNISHED BY THE DEPARTMENT OF TRANSPORTATION

The DEPARTMENT will furnish the following data to the CONSULTANT:

1. Electronic files in US Customary units of the following information in accordance with the DEPARTMENT'S CAD/D Procedures and Requirements for incorporation into the plans by the CONSULTANT:
    a. Any available electronic topographical mapping within the project area shall be provided along with any pertinent electronic supporting information (survey field notes, ASCII point file, SDR data files, etc.).
    b. Electronic drawings in MicroStation format of roadway typical cross-sections and other detail sheets shall be provided, when available from the DEPARTMENT'S CAD/D library, upon request by the CONSULTANT, in accordance with the current DEPARTMENT CAD/D Procedures and Requirements.
2. Electronic drawings in MicroStation format of recent signal projects at the project locations will be provided for use in developing plans for this contract. Pdf files may be provided if MicroStation files are not available Right-of-Way data: Any additional information collected or prepared by the DEPARTMENT that could supplement the CONSULTANT's Right-of-Way Boundary (e.g. existing right-of-way layout per record plans, property lines to a tax map level, parcel owners, title abstracting, etc.) will be provided by the DEPARTMENT in MicroStation format for incorporation into the plans by the CONSULTANT.
3. Plans of prior highway and bridge construction projects within the project limits, as available.
4. The location of all existing and proposed utilities through direct contact with the various utility companies.
5. Geotechnical investigations and recommendations, if available: Electronic files of the Environmental resource data collected in previous studies.
6. Crash data within the study area.

7. Traffic count data. (historical)
8. The DEPARTMENT's latest high-resolution color aerial photography (which is geo-referenced and ortho-rectified).

F. WORK SCHEDULE AND PROGRESS REPORTS

See Supplemental Scope of Work, Attachment A for additional detail on the services to be provided.

The CONSULTANT shall begin performance of the services designated in the AGREEMENT promptly upon receipt from the DEPARTMENT of a Notice to Proceed and the material to be furnished as herein described. The CONSULTANT shall complete these services without delay unless unable to do so for causes not under the CONSULTANT'S control.

The CONSULTANT'S sequence of operation and performance of the work under the terms of this AGREEMENT shall be varied at the direction of the DEPARTMENT to give priority in critical areas so that schedules and other STATE commitments, either present or future, can be met.

The CONSULTANT shall report progress to the DEPARTMENT in conjunction with DEPARTMENT'S Standardized Invoicing process. Invoices shall be submitted for each month that there has been more than $10,000 in cumulative billable work since the last invoice, and at least quarterly. For months with no progress or less than $10,000 cumulative work since the last invoice, a status report briefly describing the reasons for little or no progress shall be submitted

G. SUBMISSION OF REPORTS, PLANS AND DOCUMENTS

Each submission shall be supplemented with such drawings, illustrations and descriptive matter as are necessary to facilitate a comprehensive review of proposed concepts. Any and all CAD/D-related work during the course of this project shall be performed in conformance with the DEPARTMENT'S CAD/D Procedures and Requirements in effect at the time of execution of this AGREEMENT, which will be coordinated on each assignment.

1) Presentation and Documentation: The CONSULTANT shall prepare presentation plans at each formal submission and for presentation at DEPARTMENT meetings as defined below. This is in addition to any public informational/hearing meetings.
    a) Technical Reports: The CONSULTANT shall prepare technical reports, as necessary, throughout the duration of the project to document and summarize relevant technical data. This includes but is not limited to: Technical Signal Timing Optimization Report. The intent is to support the design through documentation of critical design decisions with technical reports and supporting material.
    b) Design Report: Not Required

c) Design Exceptions: Design exceptions, if required, will be completed by the CONSULTANT.

d) Project Collaboration Meetings: It is expected that over the course of the project, a series of informal collaboration meetings will be held. These collaboration meetings, attended by key Department staff and key Consultant staff, are to be held well in advance of formal submissions. The Consultant will update Department staff on the project status and their approach to various design issues followed by an open and collaborative discussion with Department staff and the Consultant team sharing their thoughts and suggestions on how best to advance the design. The consultant shall be responsible for scheduling the meetings, preparing an agenda and other presentation materials, and for preparing meeting notes.

e) Project Management Meetings: Not Required

f) Department Meeting Presentations: The CONSULTANT shall prepare, present, and explain the project when requested by the DEPARTMENT. These meetings are included in part d) and could include, but aren't limited to, Front Office,Traffic Control Committee, Design Submission meetings, Pre-Advertising meeting, Natural and Cultural Resource meetings. This shall include the preparation and explanation of sketches, alternatives, and plans during the project development process. Meeting notes and conference report memos shall be the responsibility of the CONSULTANT.

Upon completion of the AGREEMENT, the CONSULTANT shall turn over all documentation, including, but not limited to, all reports, test results, drawings, plans, and all financial supporting documentation in their original format and in the format submitted to the DEPARTMENT.

H. DELIVERABLES

All work and supporting documents compiled under this AGREEMENT shall be developed by the CONSULTANT and delivered to the DEPARTMENT according to the following formats;

Electronic Transfer of Data: The DEPARTMENT requires the following to ensure compatibility with software used by the DEPARTMENT and to ensure the efficient and timely exchange of computer files between the DEPARTMENT and the CONSULTANT.

All files submitted must be fully compatible with the formats listed in this document without any conversion or editing by the DEPARTMENT. Any files requiring conversion and/or editing by the DEPARTMENT will not be accepted. All files shall be virus free. All files shall use the DEPARTMENT'S file naming convention.

Computer Aided Design/Drafting (CAD/D) files: All CAD/D files shall be in accordance with the Deliverable Requirements described in the DEPARTMENT'S CAD/D Procedures and

Requirements in effect at the time this AGREEMENT was executed, or any later version. All files submitted must be fully compatible with the current version of MicroStation being used by the DEPARTMENT. (The DEPARTMENT'S CAD/D Procedures and Requirements document can be found on the CAD/D website by following the "Downloads" link at www.nh.gov/dot/cadd/.)

Word Processing, Spreadsheet, and Database Files: For each Phase, all relevant files shall be provided in a format fully compatible, as appropriate, with the following:

Word Processing:	Microsoft Word 2016 or NHDOT compatible version
Spreadsheets:	Microsoft Excel 2016 or NHDOT compatible version
Databases:	Microsoft Access 2016 or NHDOT compatible version

These specifications will be updated as necessary to reflect changes in DEPARTMENT software such as adding new software or updating to new versions of existing software. In such instances, the CONSULTANT will be promptly notified.

Computer File Exchange Media: Electronic files shall be exchanged between the DEPARTMENT and the CONSULTANT using the following media as appropriate for Windows Operating Systems:

File Transfer Sites, Bluebeam, SharePoint.

Email: Files 20 MB or smaller may be transferred via Email. If compressed, the files should be self-extracting and encrypted based on content.

Copies: The CONSULTANT shall provide hard (paper) and electronic copies of the deliverables for each Phase of Work. For all deliverables, provide electronic copies in two electronic versions; an electronic version in the original electronic file format (i.e., MicroStation (*.dgn), Microsoft Word (*.docx), Microsoft Excel (*.xlsx), etc.) and an electronic version in Adobe Acrobat (*.pdf) file format.

Website Information:

a. Website Content: All external NHDOT websites created under this AGREEMENT shall meet the ADA Section 508 requirements as stated in the NH DoIT Website Standards. Those standards are outlined in Vendor Resources and Procurement | NH Department of Information Technology.

b. Website Documents: All documents posted to a website created under this AGREEMENT, or that are submitted to be posted to a NHDOT website, shall meet ADA Section 508 accessibility requirements. Compliance requirements can be found at https://www.section508.gov/create/.

Upon completion of the AGREEMENT, the CONSULTANT shall turn over all documentation, including, but not limited to, all reports, test results, drawings, plans, and all financial supporting documentation in the formats described above.

ARTICLE I

Bridge Design Submissions: The plan submissions for bridge structures shall follow, in general, the NHDOT Bridge Design Manual and the "Instructions for Consulting Engineers Concerning Routine Procedures on Bridge Design Projects" formats prepared by the DEPARTMENT

I. **SCOPE OF WORK (CONSTRUCTION SUPPORT SERVICES)**

If a contract for construction of the project, or part of it, is entered into within two years after completion by the CONSULTANT of the services outlined in Articles I, III and IV, the CONSULTANT shall, without additional compensation therefor, render services to the DEPARTMENT, including, but not restricted to, the following:

1. Construction

   If and when required by the DEPARTMENT during the construction of the project, the CONSULTANT shall:

   a. At the CONSULTANT'S sole expense, correct and resolve errors and/or omissions within the contract plans and specifications found during construction.

   b. Render interpretations, as necessary, of the contract plans and specifications and submit recommendations for necessary modifications in either or both and, upon approval of recommendations by the DEPARTMENT, revise the contract plans and specifications to cover same and prepare other detailed drawings as may be needed to supplement the contract plans in order to permit the proper completion of the project. This work effort, if required, will be viewed as additional services, subject to an adjustment in the fee.

2. Shop Drawings

   The CONSULTANT shall:

   a. Review, check and approve all working drawings prepared by others including the construction contractors or their subcontractors subject to the provisions of Section 105. Only that work designed by the DEPARTMENT will be excluded from this requirement.

   b. 615 and 616 shop drawings will be reviewed by both the Bureau of Traffic and the CONSULTANT within one week of receipt and submitted back to the Bureau of Construction by the Bureau of Traffic.

   c. During the course of construction there may be the need for professional design services for the following including but not limited to: Alterations in Design, Revisions After Proposals, and Change Orders. This work will be administered in a manner similar to an on-call task order assignment.

3. ROW monumentation – Not required.

J. **Date of Completion**

The Final Design completion date shall coincide with the Governor and Council Resolution for the construction contract, currently estimated to be July 15, 2025. After this date only Construction Services shall be permitted.

In accordance with the Governor and Council Resolution authorizing this AGREEMENT, the date of completion for the Design of professional services rendered under this AGREEMENT is June 30, 2027.

ARTICLE II – COST PLUS FIXED FEE CONPENSATION OF CONSULTANT

A. GENERAL FEE

In consideration of the terms and obligations of this AGREEMENT, the STATE, through the DEPARTMENT, hereby agrees to pay and the CONSULTANT agrees to accept as full compensation for all services rendered to the satisfaction of the DEPARTMENT under this AGREEMENT, an amount equal to the sum of the following costs:

1) Actual salaries approved by the DEPARTMENT paid to technical and other employees by the CONSULTANT, including salaries to principals, for the time such employees are directly utilized on work necessary to fulfill the terms of this AGREEMENT.

   An overtime premium of one and one half times the direct labor rate for non-exempt employees working beyond the standard 40 hours per workweek may be allowed for special circumstances when approved by the DEPARTMENT in writing in advance. The overhead portion of non-exempt employees' salary rates shall not be adjusted. Engineers are not eligible for overtime premium rates.

   Direct salary costs are estimated at:

   $112,840.72

2) Overhead costs applicable to the direct salary costs. The audited indirect cost rate, as submitted to and approved by the DEPARTMENT, will be applied to the direct salary costs. The CONSULTANT'S audited indirect cost rate for fiscal year ending June 30, 2024, **167.87%** shall be used for invoicing for the life of the AGREEMENT.

   Overhead costs are estimated at:

   $189,425.72

3) A fixed fee amount based on the estimated risk to be borne by the CONSULTANT [maximum 10.00% of Labor Costs (including overhead costs)] for profit and non-reimbursed costs.

   The fixed fee is: $30,226.64

4) Reimbursement for direct expenses, including, but not limited to, subconsultants with a subcontract value of less than $200,000, printing, reproductions and travel not included in normal overhead expenses. The reimbursable costs for mileage and for per diem (lodging and meals) shall be that allowed by the CONSULTANT'S established policy but shall not exceed

that allowed in the Federal Acquisition Regulations (Subpart 31.205-46) and in the Federal Travel Regulation. Mileage and per diem costs shall be subject to approval by the DEPARTMENT. Subconsultants with a subcontract value of less than $200,000 shall be invoiced as direct expenses and do not require individual invoices.

Direct expenses are estimated at: $13,451.00

AGREEMENT NOT-TO-EXCEED TOTAL $372,205.50

The amount payable under categories 1), 2), 4), and 5) may be reallocated within the not-to-exceed total upon mutual agreement of the DEPARTMENT and the CONSULTANT. Reallocations shall be properly documented for Final Audit purposes, but do not require a formal amendment.

The total amount to be paid under this AGREEMENT shall not exceed **$372,205.50**, the sum of the amounts shown in Article II, Section A (which amount is based on the CONSULTANT'S fee and manhour estimates of 1723 hours), except by agreement of all parties made after supplemental negotiations and documented by a formal amendment to the AGREEMENT. Should circumstances beyond the control of the CONSULTANT require extension of the time of completion more than one (1) year, the general fee may be renegotiated and documented by a formal amendment to the AGREEMENT; however, the fixed fee (b) shall not change for reasons of work duration alone. The fixed fee (b) shall only change when there has been a significant increase or decrease in the scope of work outlined in this AGREEMENT.

B. LIMITATION OF COSTS

1. Costs incurred against this AGREEMENT shall not exceed the total amount specified in Article II, Section A unless otherwise authorized. The CONSULTANT shall give the DEPARTMENT a ninety (90)-day written notice when it appears that this limit will be exceeded.
2. It is expected that the total cost to the STATE shall be the not-to-exceed amount specified in Article II, Section A, and the CONSULTANT agrees to use best efforts to perform the work specified in the AGREEMENT and all obligations under this contract within this not-to-exceed amount.
3. The STATE shall not be obligated to reimburse the CONSULTANT for costs incurred in excess of the not-to-exceed amount specified in Article II, Section A.
4. Changes to the scope of work shall not be considered an authorization to the CONSULTANT to exceed the not-to-exceed amount specified in Article II, Section A.

C. PAYMENTS

Monthly payments on account of services rendered under this AGREEMENT may be made upon submission of invoices by the CONSULTANT to the DEPARTMENT. The CONSULTANT shall follow the DEPARTMENT'S Standardized Invoicing format. The fixed fee shall be invoiced during the billing period based upon the overall percent complete calculated within the approved progress report found in the DEPARTMENT'S Standardized Invoicing.

Actual salaries paid and the indirect cost rate shown in Article II, Section A, shall be used until such time as true costs of salary burden and overhead are fixed by Final Audit. At that time, payments shall be adjusted to agree with the indirect cost rates as determined by Final Audit for the period in which the work was performed, as approved by the DEPARTMENT.

D. ANNUAL INDIRECT COST RATE SUBMISSIONS

The CONSULTANT and all subconsultants with a subcontract value of $200,000 or greater shall submit their audited indirect cost rate and related documents annually for the life of this AGREEMENT as follows:

To comply with the Federal Acquisition Requisitions (FAR), the CONSULTANT'S Indirect Cost Rate Audit must meet the following requirements:

- Be conducted by an independent Certified Public Accountant (CPA), a Federal government agency, or another state transportation agency.
- Be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the U.S. Government Accountability Office (GAO) and with the cost principles and procedures set forth in Part 31 of the FAR.
- Follow the guidance of the most recent American Association of State Highway Transportation Officials Uniform Audit and Accounting Guide for Audits of Architectural and Engineering Consulting Firms (AASHTO Audit Guide).

In addition to the Indirect Cost Rate Audit, CONSULTANTS shall submit the following documentation:

- AASHTO Internal Control Questionnaire (ICQ) for Consulting Engineers form with the required attachments.
- Certification of Final Indirect Costs as required pursuant to 23 CFR 172.11 and FHWA Order 4470.1A.
- Complete copy of the CONSULTANT'S annual audited financial statements.
- Analysis of reasonableness of executive compensation as outlined in the AASHTO Audit Guide.
- Cognizant letter, if available.

- A listing of all contracts, with dollar amounts, the CONSULTANT has currently with the DEPARTMENT as a prime consultant or subconsultant.

Annual indirect cost rate submissions are due within 6 months of the CONSULTANT'S fiscal year end and shall be submitted to the DEPARTMENT'S Internal Audit Office electronically to DOT-InternalAudit@dot.nh.gov or in writing.

E. RECORDS, REPORTS AND FINAL AUDIT

The CONSULTANT shall maintain adequate cost records for all work performed under this AGREEMENT. All records and other evidence pertaining to cost incurred shall be made available at all reasonable times during the AGREEMENT period and for three (3) years from the date of final expenditure report for examination by the STATE, Federal Highway Administration, or other authorized representatives of the Federal Government, and copies thereof shall be furnished if requested. Applicable cost principles are contained in the Federal Acquisition Regulations (FAR) in Title 48 of the Code of Federal Regulations (Subpart 31.2 and Subpart 31.105).

The DEPARTMENT shall have the right, at the time of Final Audit, to review all items charged on this project. If, in the opinion of the DEPARTMENT, such payment is unreasonable, the CONSULTANT shall be required to justify such payment or payments before they will be approved as direct or indirect costs.

All costs as described in Article II Section A.1 through A.5 are to be determined by actual records kept during the term of the AGREEMENT, which are subject to Final Audit by the STATE and Federal Governments. The final payment, and all partial payments made, may be adjusted to conform to this Final Audit. In no case will any adjustments exceed the not-to-exceed amount specified in Article II, Section A. All Subconsultant costs may also be subject to Final Audit by the STATE and Federal Governments.

ARTICLE III – GENERAL PROVISIONS

A. HEARINGS, ETC.

The DEPARTMENT will make all arrangements for and hold all necessary hearings in connection with the project.

B. CONTRACT PROPOSALS

After the CONSULTANT has furnished to the DEPARTMENT contract drawings, special provisions, specifications, and estimate of quantities by items, the DEPARTMENT will prepare the documents for receipt of proposals from construction contractors and for execution of a construction contract or contracts.

ARTICLE IV – STANDARD PROVISIONS

A. STANDARD SPECIFICATIONS

The CONSULTANT agrees to follow the provisions of the Design Manuals, Standard Specifications for Road and Bridge Construction, and Standard Plans for Road and Bridge Construction of the DEPARTMENT; A Policy on Geometric Design of Highways and Streets and LRFD Bridge Design Specifications of the American Association of State Highway and Transportation Officials (AASHTO), and amendments thereto, and/or other professional codes or standards applicable to the services to be performed under this AGREEMENT. When a publication (including interim publications) is specified, it refers to the most recent date of issue in effect at the time of execution of this AGREEMENT.

B. REVIEW BY STATE AND FHWA – CONFERENCES – INSPECTIONS

It is mutually agreed that all portions of the work covered by this AGREEMENT shall be subject to the inspection by duly-authorized representatives of the STATE and Federal Highway Administration, United States Department of Transportation, at such time or times as the STATE or Federal Highway Administration deems appropriate.

The location of the office where the work will be available for inspection by STATE and Federal Highway Administration representatives is 315 Norwood Park South, Second Floor, Norwood, MA 02062.

It is further mutually agreed that any party, including the duly-authorized representatives of the Federal Highway Administration, may request and obtain conferences, visits to the site, and inspection of the work at any reasonable time.

C. EXTENT OF CONTRACT

1. Contingent Nature of AGREEMENT

   Notwithstanding anything in this AGREEMENT to the contrary, all obligations of the STATE, including, without limitation, the continuance of payments, are contingent upon the availability and continued appropriation of funds, and in no event shall the STATE be liable for any payments in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the STATE shall have the right to terminate this AGREEMENT.

2. Termination

   The DEPARTMENT shall have the right at any time, and for any cause, to terminate the work required of the CONSULTANT by this AGREEMENT by written notice of such termination provided to the CONSULTANT by the DEPARTMENT, and, in the event of such a termination

of this AGREEMENT without fault on the part of the CONSULTANT, the CONSULTANT shall be entitled to compensation for all work theretofore satisfactorily performed, pursuant to this AGREEMENT, such compensation to be fixed, insofar as possible, based upon the work performed prior to termination. If no contract or contracts for construction of the project contemplated by this AGREEMENT is (are) entered into within two (2) years after satisfactory completion of the services outlined in Article I, all of the services contemplated by this AGREEMENT shall be deemed to have been completed.

It shall be a breach of this AGREEMENT if the CONSULTANT shall fail to render timely the services required under this AGREEMENT, in accordance with sound professional principles and practices, to the reasonable satisfaction of the DEPARTMENT, or shall be in such financial condition as to be unable to pay its just debts as they accrue, or shall make an assignment for the benefit of creditors, or shall be involved in any proceeding, voluntary or involuntary, resulting in the appointment of a receiver or trustee over its affairs, or shall become dissolved for any cause. In the event of the happening of any one or more of the foregoing contingencies, or upon the substantial breach of any other provisions of this AGREEMENT by the CONSULTANT, its officers, agents, employees, and subconsultants, the DEPARTMENT shall have the absolute right and option to terminate this AGREEMENT forthwith, and, in addition, may have and maintain any legal or equitable remedy against the CONSULTANT for its loss and damages resulting from such breach or breaches of this AGREEMENT; provided, however, that as to all plans, drawings, tracings, estimates, specifications, reports, proposals, sketches, diagrams, and calculations, together with all material and data theretofore furnished to the DEPARTMENT by the CONSULTANT, of a satisfactory nature in accordance with this AGREEMENT, which plans, drawings, tracings, etc., are of use to the DEPARTMENT, the CONSULTANT shall be entitled to a credit, based on the contract rate for the work so performed in a satisfactory manner and of use and benefit to the DEPARTMENT.

D. REVISIONS TO REPORTS, PLANS OR DOCUMENTS

The CONSULTANT shall perform such additional work as may be necessary to correct errors in the work required under the AGREEMENT caused by errors and omissions by the CONSULTANT without undue delays and without additional cost to the DEPARTMENT.

Furthermore, prior to final approval of plans, specifications, estimates, reports, or documents by the DEPARTMENT, the CONSULTANT shall make such revisions of them as directed by the DEPARTMENT, without additional compensation therefor, except as hereinafter provided:

1. If, after its written approval thereof, the DEPARTMENT shall require changes to the plans or documents that revise engineering or other factors specifically approved, thereby necessitating revisions of the contract plans or documents, or,
2. When applicable, if during the term of this AGREEMENT, a revision of the alignment is ordered by the DEPARTMENT to the extent that the revised alignment will lie completely or partially outside the limit of the survey data plotted by the CONSULTANT (this does not apply to those adjustments and refinements to the alignments anticipated under the scope of work), or,
3. If, after approval by the DEPARTMENT of the final contract plans or documents, the CONSULTANT shall be ordered in writing by the DEPARTMENT to make revisions, or to perform services other than those necessary to adapt said plans, reports, or documents to conditions observed during field inspections and encountered during construction; the CONSULTANT shall be entitled to compensation therefor in accordance with Article II, Section A, such compensation to be in addition to the fee specified in Article II, Section A, for its original work on the plans, reports or documents.

E. ADDITIONAL SERVICES

If, during the term of this AGREEMENT, additional professional services are required due to a revision in the limits of the project, or it becomes necessary to perform services not anticipated during negotiation, the DEPARTMENT may, in writing, order the CONSULTANT to perform such services, and the CONSULTANT shall be paid a fee in accordance with the provisions of Article II, Section A.

If, during the term of this AGREEMENT, additional professional services are performed by the CONSULTANT due to the fact that data furnished by the DEPARTMENT are not usable or applicable, the STATE will, upon written approval by the DEPARTMENT, reimburse the CONSULTANT for such additional design services in accordance with the provisions of Article II, Section A.

If additional services are performed by the CONSULTANT through its own acts, which are not usable or applicable to this project, the cost of such additional services shall not be reimbursable.

F. OWNERSHIP OF PLANS

All data, plans, drawings, tracings, estimates, specifications, proposals, sketches, diagrams, calculations, reports, or other documents collected, prepared, or undertaken either manually or electronically by the CONSULTANT under the provisions of this AGREEMENT, immediately shall become the property of the DEPARTMENT, and, when completed, shall bear the CONSULTANT'S endorsement. The CONSULTANT shall surrender to the DEPARTMENT, upon demand at any time,

or submit to its inspection, any data, plan, drawing, tracing, estimate, specification, proposal, sketch, diagram, calculation, report, or document which shall have been collected, prepared, or undertaken by the CONSULTANT pursuant to this AGREEMENT, or shall have been hitherto furnished to the CONSULTANT by the DEPARTMENT. The CONSULTANT shall have the right, with the written approval of the DEPARTMENT, to use any of the data prepared by it and hitherto delivered to the DEPARTMENT at any later stage of the project contemplated by this AGREEMENT.

G. SUBLETTING

The CONSULTANT shall not sublet, assign or transfer any part of the CONSULTANT'S services or obligations under this AGREEMENT without the prior approval and written consent of the DEPARTMENT.

All subcontracts shall be in writing and those exceeding $10,000 shall contain all provisions of this AGREEMENT, including "Certification of CONSULTANT/Subconsultant". A copy of each subcontract shall be submitted for the DEPARTMENT'S files.

For subconsultants working on design, hazardous materials, geotechnical services, etc., the minimum limits of their professional liability (errors and omissions) insurance coverage shall be not less than $2,000,000 in the aggregate, with a deductible of not more than $75,000. For subconsultant contracts with less risk, e.g., wetland evaluations, materials inspection and testing, structural steel fabrication inspection, underwater bridge inspection, research, bridge deck condition surveys, land surveying, mapping, noise studies, air-quality studies, etc., the minimum limits of their professional liability (errors and omissions) insurance coverage shall be not less than $1,500,000 in the aggregate, with a deductible of not more than $50,000. For subconsultant contracts with no risk, e.g., archaeology, cultural resources, data gathering, traffic counting etc., professional liability insurance shall not be required. Subconsultants completing field exploration for geotechnical, hazardous materials/environmental, and subsurface exploration shall also have pollution liability insurance coverage not less than $2,000,000 in the aggregate, with a deductible of not more than $75,000. If coverage is claims made, the period to report claims shall extend for not less than three years from the date of substantial completion of the construction contract.

H. GENERAL CONPLIANCE WITH LAWS, ETC.

The CONSULTANT shall comply with all Federal, STATE, and local laws and ordinances applicable to any of the work involved in this AGREEMENT and shall conform to the requirements and standards of STATE, municipal, railroad, and utility agencies whose facilities and services may be

affected by the construction of this project. The services shall be performed so as to cause minimum interruption to said facilities and services.

I. BROKERAGE

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the STATE shall have the right to annul this Contract without liability, or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

J. CONTRACTUAL RELATIONS

1. Independent Contractor

   The CONSULTANT agrees that its relation to the STATE is as an independent contractor and not as an agent or employee of the STATE.

2. Claims and Indemnification

   a. Non-Professional Liability Indemnification

      The CONSULTANT agrees to defend, indemnify and hold harmless the STATE and all of its officers, agents, and employees from and against any and all claims, liabilities, or suits arising from (or which may be claimed to arise from) any (i) acts or omissions of the CONSULTANT or its subconsultants in the performance of this AGREEMENT allegedly resulting in property damage or bodily injury, and/or, (ii) misconduct or wrongdoing of the CONSULTANT or its subconsultants in the performance of this AGREEMENT.

   b. Professional Liability Indemnification

      The CONSULTANT agrees to indemnify and hold harmless the STATE and all of its officers, agents, and employees from and against any and all claims, liabilities, or suits arising from (or which may be claimed to arise from) any negligent acts or omissions of the CONSULTANT or its subconsultants in the performance of professional services covered by this AGREEMENT.

   c. These covenants shall survive the termination of the AGREEMENT. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the STATE, which immunity is hereby reserved by the STATE.

3. Insurance

a. Required Coverage

The CONSULTANT shall, at its sole expense, obtain and maintain in force the following insurance:

1. Commercial or comprehensive general liability insurance, including contractual coverage, for all claims of bodily injury, death, or property damage, in policy amounts of not less than $250,000 per occurrence and $2,000,000 in the aggregate (STATE to be named as an additional insured); and
2. Comprehensive automobile liability insurance covering all motor vehicles, including owned, hired, borrowed, and non-owned vehicles, for all claims of bodily injury, death, or property damage, in policy amounts of not less than $500,000 combined single limit; and
3. Professional liability (errors and omissions) insurance coverage of not less than $2,000,000 in the aggregate. If coverage is claims made, the period to report claims shall extend for not less than three years from the date of substantial completion of the construction contract. No retention (deductible) shall be more than $75,000; and
4. workers' compensation and employer's liability insurance as required by law.

b. Proof of Insurance

The policies described in paragraph (a) of this section and Section G shall be in the standard form employed in the STATE, issued by underwriters licensed or approved by the Department of Insurance of the STATE. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than 30 days, or 10 days in cases of non-payment of premium, after written notice thereof has been received by the STATE. The CONSULTANT shall provide to the STATE a certificate of insurance evidencing the required coverages, retention (deductible), and cancellation clause prior to submittal of the AGREEMENT to Governor and Council for approval and shall have a continuing duty to provide new certificates of insurance as the policies are amended or renewed.

4. No Third-Party Rights

It is not intended by any of the provisions of the AGREEMENT to make the public, or any member thereof, a third-party beneficiary of the AGREEMENT, or to authorize anyone not a party to this AGREEMENT to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract. The duties, obligations, and responsibilities of the parties to this AGREEMENT with respect to third parties shall remain as imposed by law. No

portion of this AGREEMENT shall be understood to be a waiver of the STATE'S sovereign immunity.

5. Construction of AGREEMENT

This AGREEMENT is executed in a number of counterparts, each of which is an original and constitutes the entire AGREEMENT between the parties. This AGREEMENT shall be construed according to the laws of the STATE.

K. AGREEMENT MODIFICATION

The assignment of the CONSULTANT, generally established by the scope of work in this AGREEMENT, shall not be modified in any way without prior approval of the Governor and Council.

L. EXTENSION OF COMPLETION DATE(S)

If, during the course of the work, the CONSULTANT anticipates that one or more of the completion dates specified in this AGREEMENT cannot be met, it shall be the CONSULTANT'S responsibility to notify the DEPARTMENT in writing at least ninety (90) days prior to the completion date(s) in question. The CONSULTANT shall state the reasons that a completion date(s) cannot be met and request a revised date(s) for consideration by the DEPARTMENT.

M. TITLE VI (NONDISCRIMINATION OF FEDERALLY-ASSISTED PROGRAMS) COMPLIANCE

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

(1) Compliance with Regulations: The CONSULTANT shall comply with Title VI of the Civil Rights Act of 1964 regulations relative to nondiscrimination in federally-assisted programs of the DEPARTMENT, such regulations entitled Title 49 Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the REGULATIONS), and which are herein incorporated by reference and made a part of this AGREEMENT.

(2) Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, religion, age, sex, handicap, sexual orientation, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment specific to this project. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all

solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment specific to the project, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the REGULATIONS relative to nondiscrimination on the grounds of race, color, religion, age, sex, handicap, sexual orientation, or national origin.

(4) Information and Reports: The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the DEPARTMENT or the Federal Highway Administration to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the DEPARTMENT or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the CONSULTANT'S noncompliance with nondiscrimination provisions of this AGREEMENT, the DEPARTMENT shall impose sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies; and/or

(b) cancellation, termination, or suspension of the AGREEMENT, in whole or in part.

(6) The CONSULTANT shall take such action with respect to any subcontract or procurement as the DEPARTMENT or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the DEPARTMENT to enter into such litigation to protect the interests of the STATE, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

(7) 23 CFR 710.405(b) and Executive Order 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in Department of Labor REGULATIONS (41 CFR Part 60), shall be applicable to this AGREEMENT and any subagreements hereunder.

(8) Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (7) in every subcontract, including procurements of materials and leases of equipment specific to the project, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

In accordance with EXECUTIVE ORDER 11246, the DEPARTMENT has the authority and responsibility to notify the Office of Federal Contract Compliance Programs of the United States Department of Labor if they become aware of any possible violations of Executive Order 11246 and 41 CFR Part 60. The Office of Federal Contract Compliance Programs is solely responsible for determining compliance with Executive Order 11246 and 41 CFR Part 60 and the CONSULTANT should contact them regarding related compliance issues.

N. DISADVANTAGED BUSINESS ENTERPRISE POLICY REQUIREMENTS

1. Policy. It is the policy of the United States Department of Transportation (USDOT) to ensure nondiscriminatory opportunity for Disadvantaged Business Enterprises (DBE's), as defined in 49 Code of Federal Regulations (CFR) Part 26, to participate in the performance of agreements and any subagreements financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.
2. Disadvantaged Business Enterprise (DBE) Obligation. The STATE and its CONSULTANTS agree to ensure nondiscriminatory opportunity for disadvantaged business enterprises, as defined in 49 CFR Part 26, to participate in the performance of agreements and any subagreements financed in whole or in part with Federal funds. In this regard, the STATE and its CONSULTANTS shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the opportunity to compete for and perform work specified in the agreements. The STATE and its CONSULTANTS shall not discriminate on the basis of race, color, religion, age, sex, handicap, sexual orientation, or national origin in the award and performance of agreements financed in whole or in part with Federal funds.
3. Sanctions for Non-Compliance. The CONSULTANT is hereby advised that failure of the CONSULTANT, or any Subconsultant performing work under this AGREEMENT, to carry out the requirements set forth in paragraphs 1 and 2 above, shall constitute a breach of agreement and, after the notification of the United States Department of Transportation, may result in termination of this AGREEMENT by the STATE or such remedy as the STATE deems appropriate.

O. DOCUMENTATION

The CONSULTANT shall document the results of the work to the satisfaction of the DEPARTMENT and the Federal Highway Administration. This shall include preparation of progress reports, plans, specifications, and estimates and similar evidences of attainment of objectives called for in this AGREEMENT.

P. CLEAN AIR AND WATER ACTS

If the amount of the AGREEMENT or subcontract thereunder exceeds $100,000, the CONSULTANT or subconsultant shall comply with applicable standards, orders, or requirements issued under Section 306 of the Federal Clean Air Act (43 U.S.C. 1857(h), Section 508 of the Federal Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The CONSULTANT or subconsultant shall report violations to the FHWA and to the U. S. Environmental Protection Agency Assistant Administrator for Enforcement (EN-329).

ARTICLE I – DESCRIPTION OF PROFESSIONAL SERVICES TO BE RENDERED

NOW THEREFORE, in consideration of the undertakings of the parties hereinafter set forth, the DEPARTMENT hereby engages the CONSULTANT, who agrees to render services to the DEPARTMENT which shall include, but not be restricted to, the following items, in accordance with conditions and terms hereinafter set forth:

A. LOCATION AND DESCRIPTION OF PROJECT

1. This project involves addressing transportation needs at 11 signalized intersections within the Town of Plaistow, New Hampshire. All signals to be addressed operate under the authority of the DEPARTMENT. There is an additional traffic signal within the Town of Haverhill, Massachusetts which shall be reviewed and if warranted considered for better corridor mobility. The Rte. 125/Rte. 121A (Main Street) intersection, located in Haverhill, Massachusetts is approximately 300 feet apart from the Route 125 @ Stateline Plaza Drive and they are not coordinated. As part of this project, collaboration with Haverhill, MA would be considered to ensure a regional traffic operational improvement along the Rte. 125 corridor and more importantly, a cohesive signal system coordination timing plan.

   In general, the signal optimization of the project corridor in Plaistow will consist of signal coordination and optimization of eleven (11) intersection signal systems coupled with the implementation of remote access/control availability, network surveillance and monitoring and emergency routing capabilities. The project will focus on improvement of vehicular flow while also providing for increased safety and accessibility for all users. These improvements would entail upgrading/retrofitting existing traffic signal control equipment, communications, modest lane modification to provide additional vehicle queue storage, lane marking modifications, and traffic software upgrade at the eleven signalized intersections listed as follows:

1. Route 125 @ Stateline Plaza Drive/Hazeltine Street (S-375-08)
2. Route 125 @ Wentworth Avenue (S-375-03)
3. Route 125@ Market Basket (S-375-04)
4. Route 125@ Pentucket Shopping Plaza (S-375-02)
5. Route 125@ Westville Road (S-375-06)
6. Route 125 @ East Road (S-375-05)
7. Route 125 @ Samuel H. Clifton Way (S-375-11)
8. Route 125 @ Danville Road (S_375-09)
9. Route 125 @ Route 121A (Main Street) (S-375-01)
10. Route 125 @ Old County Road (S-375-07)
11. Main Street @ Danville Road (S-375-10)
12. Route 125 @ Cushing Ave (Haverhill , MA)

The engineering and subsequent implementation for this project includes the following:

1. Agency coordination,
2. Preferred remote signal communication & type
3. Preferred location for video camera with pan, tilt, zoom capabilities (PTZ)
4. Existing Communication Evaluation
5. Construction Inspection
6. Develop Construction Plans, Specifications, and Cost Estimate
7. Data collection and field observations, traffic modeling,
8. Development of optimized signal phasing and timing,
9. Field training DEPARTMENT staff,
10. Further field traffic observations after implementation,
11. Traffic modeling adjustments based on field observations,
12. Implementation of refined timings, and
13. Final conditions documentation with plan updates.
14. Detection evaluation and signal equipment diagnostics
15. Environmental resources evaluation/permitting

B. SCOPE OF WORK (GENERAL)

Improvements to each of the project's signalized intersections, most of which are location on the Route 125 corridor, will improve traffic flow, resulting in a reduction to

delay and congestion, lowering of the associated vehicles' idle time, and will allow for remote monitoring of traffic signal equipment and vehicular traffic.

The goal is to achieve optimal reductions in overall delay and congestion to vehicular traffic. The CONSULTANT is encouraged to provide suggestions for a project approach and deliverables which will maximize traffic efficiencies and project cost savings.

The engineering for this project is to include:

1. Agency coordination,
2. Review of existing records,
3. Field inventory and data collection,
4. Field traffic observation during weekday commuting and weekend peak hours,
5. Field data analysis,
6. Traffic modeling of existing conditions using Trafficware's software Synchro,
7. Traffic modeling of optimized signal timings using Trafficware's software Synchro,
8. Existing intersection design and layout evaluation,
9. PTZ design and layout,
10. Existing & Proposed Network Architecture,
11. Existing and proposed detection upgrades,
12. Review/ Inspection of implementation,
13. Post Implementation Observations and Adjustments,
14. Update Existing Signal Plans & Report to reflect As-Built Implementation, and
15. Environmental Resources Evaluation

The implementation of the optimized signal timings for this project includes

1. 8 hours training with DEPARTMENT personnel,
2. Performing post implementation field traffic observations during weekday, midday, commuting and/or weekend peak hours,
3. Signal timings spreadsheets, and comparisons of existing condition vs. implemented condition emissions estimates.
4. Update existing signal plans of final implemented conditions.

C. SCOPE OF WORK (SPECIFIC)

The scope of work has been separated into seventeen (17) tasks:

1. Agency Coordination,
2. Review Existing Records
3. Field Inventory and Data Collection,
4. Traffic Data Collection/Field Traffic Observation During Weekday A.M. Peak and P.M. Peak and Weekend Peak,
5. Field Data Analysis,
6. Traffic Modeling of Existing Conditions,
7. Traffic Modeling of Optimized Signal Timings,
8. Existing intersection design and layout review and Modeling
9. Update Existing Signal Plan with Recommended Improvements
10. PTZ Design/Network Architecture Plan
11. Train with DEPARTMENT personnel,
12. Review and Inspect Implemented Optimized Signal Timings,
13. Post Implementation Field Traffic Observation During Weekday A.M. Peak and P.M. Peak and/or Weekend Peak
14. Update Existing Signal Plans and Reports to Reflect As-Built Implementation
15. Environmental Resources Evaluation/Permitting
16. Project Team Meetings, and
17. Project Management.

1. Agency Coordination

The DEPARTMENT will consult internally with its Traffic Signal Operations and Maintenance section (TSOM) to obtain information on special issues for each of the selected signalized intersections. Any remote access requirement of the existing signal system will be discussed and coordinated with the DEPARTMENT. Local signal communication or interconnect information will be provided by the DEPARTMENT. The PTZ effort for this project will be discussed and defined in association with its integration as part of the Department's regional PTZ system architecture plan. The CONSULTANT will provide a summary of the feedback received for each intersection, accompanied with a log of all communications.

The CONSULTANT will review with the DEPARTMENT for environmental, Right-Of-Way, Federal Compliance for Americans with Disabilities Act (ADA) regulations, and Highway Design's Safety Section concerns.

2. Review of Existing Records

The DEPARTMENT will provide the CONSULTANT for its review a copy of all existing signal plans, phase timings and signal permits, network architecture, and PTZ regional planlocal signal communication interconnect in AutoCAD and PDF files. All intersection based plans will be created using available Microstation and PDF files. Where Microstation files are not available, the PDF files will be used as the base plan and recommended improvements will be drawn directly on the pdf files. For the intersection location (Route 125 @ Cushing Avenue) in Haverhill, MA, it is assumed that a copy of the PDF signal plan will be available.

The DEPARTMENT will provide the CONSULTANT with crash data, if it exists, from each of the intersections for use in determining signal operations improvements.

3. Field Inventory and Data Collection

Any work on or within the traffic signal controller cabinet or other traffic signal devices shall be performed by a person holding current certification as a Traffic Signal Bench Technician Level II, a Traffic Signal Field Technician Level II, or the equivalent or higher, by the International Municipal Signal Association (IMSA). For consistency purposes, the CONSULTANT will utilize the DEPARTMENT's Bureau of Traffic numbering system that consists of a three-part identifier.

The CONSULTANT shall field verify the existing plan, network architecture, communication, phase timings and permit and note any differences from actual observations. If no existing plan or phase timings exist, the CONSULTANT shall create such documentation using GIS mapping.

The CONSULTANT shall evaluate an intersection's compliance with the DEPARTMENT'S Title II Regulation requirements for ADA. The DEPARTMENT will provide a list of compliance items to be checked. The input fields of the CONSULTANT's findings shall be exportable in a format that is compatible to Microsoft Office (i.e. Excel or Access) and/or ESRI software platforms.

The CONSULTANT shall develop a checklist to evaluate an intersection's signal equipment and signage associated with signal equipment for its compliance with the latest version of the Manual of Uniform Traffic Control Devices (MUTCD). The checklist shall include pedestrian signal equipment including APS system. The input fields of this checklist shall be exportable in a format that is compatible to Microsoft Office (i.e. Excel or Access) and/or ESRI software platforms.

The following shall be part of the inventory data collection and diagnostic of signal equipment for each of the intersections:

- Detector loop locations and confirmation of proper loop function; similar for other detection methods, where applicable
- Signal Timing, Signal Phasing and pedestrian phase type
- Coordination presence, and if utilized, associated time of day programs
- Generator Transfer Switch type, where applicable
- Controller model, MMU and pre-emption system
- Obvious deficiencies in condition of Mast Arm, signal poles and signal heads
- Completed checklist for intersection compliance to latest version of the Manual on Uniform Traffic Control Devices (DEPARTMENT will provide the checklist)
- Comparison of existing APS location and height , sidewalk, and pedestrian ramp compliance with prior assessments for any significant change or obvious non-compliance
- Signal Heads alignment and indication configuration for MUTCD compliance
- Obvious deficiencies in condition of Controller cabinet and service connection
- Existing condition of communication system, including individual components and interconnect
- Other information as determined applicable by the DEPARTMENT

4. <u>Traffic Data Collection /Field Traffic Observation During Weekday A.M. Peak and P.M. Peak and Weekend Peak</u>

The CONSULTANT's sub consultant shall conduct mainline one-week, directional automatic traffic recorder (ATR) counts (one ATR per subsystem assumed) and intersection turning movement counts (TMCs) during peak periods (weekday morning between 6 A.M. to 9 A.M., weekday midday 9 A.M. to 3 P.M. and evening between 3 P.M. to 6 P.M., and weekend Saturday/Sunday 10 A.M. to 2 P.M. The DEPARTMENT will confirm which intersections require the additional weekend count data prior to initiating work. The ATR counts shall identify vehicle classification. The TMCs shall identify vehicle

classification and include pedestrian and bicycle activity. The turning movement count data shall be provided to the DEPARTMENT via digital .PDF and Microsoft Excel formats for each intersection. The method used for the turning movement count shall be approved by the DEPARTMENT.

The CONSULTANT shall conduct travel time runs using GPS/Bluetooth receivers (or another device approved by the DEPARTMENT) on locations that are grouped in corridors as indicated on the attached signal list. The travel time runs duration will be discussed and determined jointly by the DEPARTMENT and CONSULTANT.

The CONSULTANT shall observe peak period traffic operations at each subject intersection. Operations observations shall include:

- Queues and Cycle Length failures
- Any special circumstances which should be accounted for in signal optimization, including:
    - Pedestrian behaviors and vehicular conflicts
    - Frequency and length of queues which block access to turn lanes (storage blocking)
    - Frequency and length of queues which spill back into an upstream intersection
    - Lane utilization
    - Right turns on red
    - Potential signal modifications that could improve safety considering the recorded crash type incidences and frequencies

5. Field Data Analysis

The DEPARTMENT will provide applicable average month and annual growth rate adjustment factors for each location.

The CONSULTANT shall apply a COVID adjustment factor to assure that the volumes reflect pre-pandemic levels. This may involve evaluating driveway approaches based on

permitted trip generation vs. actual counts, vacancy rates in shopping centers, and business trends for various land uses pre-pandemic vs. post-pandemic.

The CONSULTANT shall apply adjustment factored growth rates to produce projected no-build and build condition traffic volumes. The adjusted and projected turning movement traffic volumes shall be provided to the DEPARTMENT for review via digital .PDF and Microsoft Excel formats for each intersection.

The CONSULTANT shall review the field data and document any discrepancies between timing programs depicted on the signal permit and installed in the field.

6. Traffic Modeling of Existing Conditions

The CONSULTANT shall develop existing condition traffic models based on analyzed traffic counts using Trafficware's software Synchro, versions 10.x or 11.x. Digital Synchro files (.syn) shall be provided to the DEPARTMENT in addition to .PDF files of Synchro reports for each of the intersections. The CONSULTANT shall set up their Synchro models based on the checklist published on the DEPARTMENT's website.

The DEPARTMENT will review and approve the existing condition models prior to the CONSULTANT initiating work on signal timing optimizations.

7. Traffic Modeling of Optimized Signal Timings

The DEPARTMENT and the CONSULTANT will discuss the goals for the optimization of the intersections or coordinated system.

The CONSULTANT shall develop optimized phasing and signal phase timing plans based on projected traffic counts using Trafficware's software Synchro, versions 10.x or 11.x. Optimizations shall also include time of day or day of week plans and corridor coordination, if appropriate. Digital Synchro files (.syn) shall be provided to the DEPARTMENT in addition to .PDF files of Synchro reports for each of the intersections.

The CONSULTANT shall report to the DEPARTMENT any hardware or software which will require upgrade prior to implementation of new optimized signal timings. Conceptual cost estimates shall be developed to accompany the upgrade recommendations. The DEPARTMENT will approve recommendations prior to the CONSULTANT developing plans and specifications.

8. Existing intersection design and layout review and Modeling

The CONSULTANT shall evaluate and review the existing intersections designs including pedestrian accommodation. This review shall include the overall design of the intersections and consideration of potential modest improvements to the layout. With the assistance of the existing and optimized timing modeling; evaluate the need for and feasibility of improvements such as modified lane configurations, extension of existing turn lane lengths, or modest widening that would further enhance the efficiency or operations. The modified lane configuration will be limited to lane configuration changes using pavement markings and signage. The extension of existing turn lane lengths or modest widening will also be limited to pavement marking and signage improvements. Right of way encroachment will be avoided as much as possible. This task will also include a review of the intersection geometries for appropriate design vehicle turning movements. If **physical reconfiguration** of any intersection involving lane extension, turning radius or pedestrian ramps are required, topographic survey with ROW establishment would be required to verify any potential right of way impacts under a separate scope of services. Topographic survey is not included under this scope and fee. In addition, ADA Ramp modifications due to APS upgrade are not included under this scope and fee.

9. Update Existing Intersection Plans with Recommended Improvements

The CONSULTANT will update the existing traffic signal plans to reflect the recommended improvements for implementation. The base plans will be developed using the MicroStation and PDF files provided by the Department. The recommended improvements will be drawn directly on the PDF plans when only existing PDF plans are available.

This task will also include the preparation of the technical report documenting and summarizing relevant data and findings and will include the plan work noted in the previous paragraph. This report will serve as the project comprehensive Engineering Report. The report will be submitted to the Department for review and preferred alternatives and improvements will be agreed to. The report will be updated based on the Departments review and then the submissions discussed in Section 18 will be developed. The budget assumes MicroStation and PDF files from previous signal projects in this project area will be provided by NHDOT to the consultant. No existing condition plan preparation will be required by the Consultant.

As the plans will be derived from previous signal projects, the then proposed conditions will simply be considered existing conditions and deletion or modification of the previously propose work will not be needed. The Consultant will not be responsible for the accuracy of the existing conditions as no new survey will be acquired.

The Engineering Report shall be developed as a draft (electronic format) for DEPARTMENT review and comment and then finalize the report addressing comments (issued in both bound and electronic format). The final report shall contain, at a minimum:

- Recommendations to improve intersection safety, including items needed to comply with Manual on Uniform Traffic Control Devices;
- Markup of existing signal phase timings sheets with the latest optimized signal phasing timings shown in red color
- Traffic modeling using Trafficware's Synchro, version 10.x or 11.x, for the existing signal timings and the optimized build condition signal timings, with emission estimates
- Raw turning movement count data
- Adjusted turning movement traffic volumes used in existing and projected no-build and build traffic modeling
- Completed field inventory sheets.

10. PTZ Design/Network Architecture

As part of the recommended signal timing improvements, the CONSULTANT will collaborate with the Department's ITS group to incorporate and identify **one**a PTZ location. It is anticipated that the PTZ will be mounted on an existing Mast Arm pole at a location to be identified by the CONSULTANT. PTZ communication and power source will be integrated at the existing signalized intersection location. The existing communication network architecture will be provided by the Department for reference and for proposed PTZ communication integration. The Department's ITS group will provide PTZ specifications for this project. PTZ mounting equipment, communication, and integration of the system into the existing DEPARTMENT remote operation control center will be designed and defined. As needed, design plans will be developed to document the design detailsConstruction cost estimate and specifications will be

developed and included as part of the bidding packet under Section 18.It is assumed that no structural evaluation of the existing poles or mast arms with PTZ attached will be necessary nor is included herein.

11. Train with DEPARTMENT Personnel

The CONSULTANT will provide training to DEPARTMENT TSOM staff on signal timing concepts and signal optimization methods to enable the DEPARTMENT staff to maintain the long-term benefits of the signal optimization. The training shall be at least one day of office/classroom-based training and shall be provided by the CONSULTANT's representative holding a current certification as a Traffic Signal Bench Technician Level II, Traffic Signal Field Technician Level II, or the equivalent or higher, by the International Municipal Signal Association (IMSA). In addition, opportunities for "over-the-shoulder" observation and training for TSOM staff will be afforded as part of other tasks (particularly Task 12) when mutually convenient for the CONSULTANT and DEPARTMENT.

12. Review and Inspect Implemented Optimized Signal Timings

Following the implementation of the proposed signal timing, as a joint effort at each signalized intersection, the DEPARTMENT and the CONSULTANT will review the timings implemented by the contractor. As part of the review, fine tuning of the signal timing will be noted and performed by the contractor. The CONSULTANT performing any work on or within the traffic signal controller cabinet or other traffic signal devices shall hold current certification as a Traffic Signal Bench Technician Level II, Traffic Signal Field Technician Level II or the equivalent or higher, by the International Municipal Signal Association (IMSA).

13. Post Implementation Field Traffic Observation during Weekday A.M. Peak, Midday, and P.M. Peak and/or Weekend Peak

Once the DEPARTMENT's contractor installs equipment and implements timings, the DEPARTMENT will establish a trial period for monitoring the operation of the implemented signal timing. The DEPARTMENT will notify the CONSULTANT to field review implementation and observe operations at each signal location. The CONSULTANT shall conduct post travel runs and provide a report on overall improvements to the corridor. Additional visits (2) and adjustments may be necessary based on any trouble calls received. The DEPARTMENT and the CONSULTANT will discuss consideration of the public input received by DEPARTMENT staff prior to implementing any adjustments to the signal timing.

Where necessary, the CONSULTANT shall develop revised phasing and signal phase timing plans using Trafficware's software Synchro, versions 10.x or 11.x to incorporate adjustments made based on field observations. Revised digital Synchro files (.syn) shall be provided to the DEPARTMENT in addition to .PDF files of Synchro reports for each of the adjusted intersections.

14. Update Existing Signal Plan and Technical Reports/Plans to Reflect As-Built Condition

The CONSULTANT shall update thetechnical reports and plans, to reflect as-built conditions based on the post implementation monitoring findings. A comprehensive Engineering Report shall be prepared to summarize all relevant design elements of the project.

15. Environmental Resources Evaluation/Permitting

The Department will perform all of the environmental and cultural resource identification, evaluation, NEPA (CE) documents preparation and environmental permitting. The Department's Environmental Permitting efforts will include:

- Gathering of information from state/federal agencies relative to potential impacts to cultural and/or natural resources.
- Development and submission of a Categorical Exclusion.
- Development of a Request for Project Review (RPR) and associated follow-up.
- Attendance at a monthly Natural Resource meeting at NHDOT.

Attendance at a monthly Cultural Resource meeting at NHDOT

BETA will assist the department in these efforts by providing the project specific information needed. No new exhibits or plans will be developed for the environmental work. Exhibits or plans already developed for the project development will be provided. One BETA representative will attend one cultural resources meeting and one natural resources meeting in-person at NHDOT. The Department will develop minutes from these meetings and BETA will review.

16. Project Team Meetings

It is expected that throughout the duration of the project, project team meetings will be held. It is anticipated that a total of 12 meetings will be required. Of the 12 meetings, two will be allocated for meeting with the Town of Plaistow, two with Haverhill, MA and three on-site meetings with DEPARTMENT staff. The remaining 5 meetings are for project coordination purposes. These are informal meetings that will take place to discuss a variety of project issues including resource constraints, cost issues, and impacts of alternatives. These meetings will include the CONSULTANT and the DEPARTMENT, but could also include staff from the various RPCs, Towns, or other State or Federal agencies, or others as appropriate. The CONSULTANT shall be responsible for supplying support graphics, making presentations, and drafting and finalizing meeting minutes.

17. Project Management

The CONSULTANT shall provide project management responsibilities for overseeing the work under the contract to include schedule of work, progress reporting and invoicing, contract administration, and coordination throughout with the DEPARTMENT.

18. PS&E Submittals

For project bidding purposes, this task will include the preparation of plans, specifications and construction cost estimate. Under this task, three submittals (listed below) to the DEPARTMENT are anticipated. For each of the submittal review, the CONSULTANT will respond to the Department's comments accordingly. Comments will be addressed/incorporated in the next submission.

- Preliminary Plans
  - Title Cover Sheet
  - Notes
  - Signalization Plans and Details
  - PTZ Camera Plan and Details
  - Communications Network Plans
  - Preliminary Quantity Calculations
  - Opinion of Probable Cost
- Pre-PS&E Plans and Documents (Final for Review)
  - Title Cover Sheet
  - Notes
  - Signalization Plans and Details
  - PTZ Camera Plan and Details

  - Communications Network Plans
  - Quantity Calculations
  - Opinion of Probable Cost
  - Special Provisions
- PS&E Plans and Documents (Final Stamped for Proposal)
  - Title Cover Sheet
  - Notes
  - Signalization Plans and Details
  - PTZ Camera Plan and Details
  - Communications Network Plans
  - Quantity Calculations
  - Opinion of Probable Cost
  - Special Provisions

Plan work assumed is limited to those noted above. Geometric changes to the roadway, intersections or cross walks or designs, plans or specifications for any new structures (signal poles, etc.) are not included.

Anticipated special provisions to be developed or provided by the Department and updated for project specifics as needed by BETA are:

- Signal equipment by intersection
- ITS Device (PTZ Camera and Data Communications)

All of the contract documents including the Prosecution of Work, except for modifications to the special provisions noted above, shall be provided by the Department.

19. Construction Support Services

a. Respond to Contractor RFIs

If and when required by the DEPARTMENT during the construction of the project, the CONSULTANT shall respond to Requests For Information (RFI). Render interpretations, as necessary, of the contract plans and specifications and submit responses and recommendations for necessary modifications in either or both and, upon approval of recommendations by the DEPARTMENT, revise the contract plans and specifications to cover same and prepare other detailed drawings as may be

needed to supplement the contract plans in order to permit the proper completion of the project. Five RFI submittals are anticipated.

b. Shop Drawing Review

The CONSULTANT shall:

a. Review, check and approve all working drawings prepared by others including the construction contractors or their subcontractors. Only that work designed by the DEPARTMENT will be excluded from this requirement.

b. Shop drawings will be reviewed by both the Bureau of Traffic and the CONSULTANT within one week of receipt, and submitted back to the Bureau of Construction by the Bureau of Traffic. Five shop drawings are anticipated.

c. Additional Construction Phase Engineering Services.

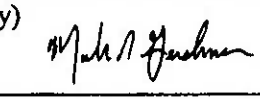
During the course of construction there may be the need for professional engineering services for the following including but not limited to: Alterations in Design, Change Orders and site visits. Two site visits are anticipated for this task.

Attachment 1

CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS

The CONSULTANT X, proposed subconsultant ____, hereby certifies that it has X, has not ____, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Order 11246 and that it has X, has not ____, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

BETA Group, Inc.
(Company)

By: 

Mark Gershman / Secretary
(Title)

Date: March 4, 2024

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1), and must be submitted by consultants and proposed subconsultants only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts or subcontracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime consultants and subconsultants who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such consultant submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

(Revised: June, 1980) **NOTE:** TO BE COMPLETED BY CONSULTANT WHEN SIGNING AGREEMENT.

Attachment 2

CONSULTANT DISCLOSURE STATEMENT
FOR PREPARATION OF
ENVIRONMENTAL EVALUATIONS

I hereby affirm that I have read and reviewed the Council on Environmental Quality (CEQ) regulation [40 CFR 1506.5(b)(4)] and related guidance issued by CEQ and that pursuant thereto this firm has no financial or other interest in the outcome of this project.

I further hereby affirm that the information provided herein is true and correct and acknowledge that any knowingly false statement or false representation as to any material part contained herein may subject me to a fine and/or imprisonment, pursuant to pertinent provisions of the United States Code.

March 4, 2024
(Date)

(Signature)

Attachment 3

CERTIFICATION OF CONSULTANT/SUBCONSULTANT

I hereby certify that I am the Secretary and duly-authorized representative of the firm of BETA Group, Inc., and that neither I nor the above firm I here represent has:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Contract,

(b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the Contract:

I/WE do also, under penalty of perjury under the laws of the United States, certify that, except as noted below, the company or any person associated therewith in the capacity of (owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of Federal funds): (a) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency; (b) has not been suspended, debarred, voluntarily excluded or determined ineligibility by any Federal agency within the past three years; (c) does not have a proposed debarment pending; and (d) has not been indicted, convicted or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

except as here expressly stated (if any):

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate below to whom it applies, the initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

I acknowledge that this certificate is to be furnished to the State Department of Transportation and the Federal Highway Administration, U. S. Department of Transportation, in connection with this Contract involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

March 4, 2024
(Date)

(Signature)

Attachment 4

CERTIFICATION OF STATE DEPARTMENT OF TRANSPORTATION

I hereby certify that I am the DAVID RODRIGUE, P.E. ASSISTANT COMMISSIONER of the Department of Transportation of the State of New Hampshire, and the above consulting firm or its representatives has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Contract, to:

(a) employ or retain, or agree to employ or retain, any firm or person, or

(b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind:

except as here expressly stated (if any):

4/3/2024
(Date)

(Signature)

Attachment 5

CERTIFICATION FOR FEDERAL-AID CONTRACTS EXCEEDING $100,000 IN FEDERAL FUNDS

The prospective participant certifies, by signing and submitting this agreement, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower-tier subcontracts which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

Attachment 6

IN WITNESS WHEREOF the parties hereto have executed this AGREEMENT on the day and year first above written.

Consultant

WITNESS TO THE CONSULTANT

By: _____

President & COO

Dated: March 21, 2024

CONSULTANT

By: _____

Senior Vice President

(TITLE)

Dated: March 4, 2024

Department of Transportation

WITNESS TO THE STATE OF NEW HAMPSHIRE

By: _____

Dated: 4/3/24

THE STATE OF NEW HAMPSHIRE

By: _____

DAVID RODRIGUE, P.E.
ASSISTANT COMMISSIONER

~~DOT COMMISSIONER~~

Dated: 4/3/2024

Attorney General

This is to certify that the above AGREEMENT has been reviewed by this office and is approved as to form and execution.

Dated: 4/24/2024

By: _____

Assistant Attorney General

Secretary of State

This is to certify that the GOVERNOR AND COUNCIL on _____ approved this AGREEMENT.

Dated: _____

Attest:

By: _____

Secretary of State

PLAISTOW
X-A0004(454)
40645

Certificate of Authority # 1 *(Corporation, ~~Non-Profit Corporation~~)*

Corporate Resolution

I, Mark R. Gershman *(Name)*, **hereby certify** that I am duly elected ~~Clerk~~/Secretary/~~Officer~~ of BETA Group, Inc. *(Name of Corporation)*. I hereby certify the following is a true copy of a vote taken at a meeting of the Board of Directors/~~shareholders~~, duly called and held on December 13, 2023, at which a quorum of the Directors/~~shareholders~~ were present and voting.

VOTED: That Kien Ho / Senior VP *(Name and Title)* (may list more than one person) is duly authorized to enter into contracts or agreements on behalf of BETA Group, Inc. *(Name of Corporation)* with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any documents which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract to which this certificate is attached. This authority **remains valid for thirty (30)** days from the date of this Corporate Resolution. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

DATED: March 4, 2024

ATTEST: Mark R. Gershman

(Name & Title)
Mark R. Gershman / Secretary

State of New Hampshire

Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that BETA GROUP, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on July 24, 2000. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **351598**

Certificate Number: **0006662668**

IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 9th day of April A.D. 2024.

David M. Scanlan

Secretary of State

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/29/2024

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
Fitts Insurance Agency, Inc.
2 Willow St. Suite 102
Southborough, MA 01745
License #: 3686812

CONTACT NAME: Genesis Pereira
PHONE (A/C, No, Ext): (508)620-6200 **FAX (A/C, No):** (508)481-0227
E-MAIL ADDRESS: GPereira@FittsInsurance.com

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A :	Travelers Indemnity of America	25666
INSURER B :	Travelers Indemnity Company	25658
INSURER C :	Travelers P&C Ins Co of Americ	25674
INSURER D :	Travelers Cas Ins. Co. America	19046
INSURER E :	Endurance American Specialty Insurance	41718
INSURER F :		

INSURED
Beta Group, Inc.
701 George Washington Hwy
Lincoln, RI 02865

COVERAGES **CERTIFICATE NUMBER:** 00001255-14794084 **REVISION NUMBER:** 352

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	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC OTHER:	Y	Y	6306K894484	04/12/2024	04/12/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG Valuable Papers Lim	$ 1,000,000 $ 1,000,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $ 250,000
B	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	8105P933019	04/12/2024	04/12/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $ $
C	[ ] UMBRELLA LIAB [X] OCCUR [X] EXCESS LIAB [ ] CLAIMS-MADE DED [X] RETENTION $ 10000	Y	Y	CUP6K922739	04/12/2024	04/12/2025	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000 $
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	UB6K772536	04/12/2024	04/12/2025	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
E	Professional Liab			DPL300183821	04/12/2024	04/12/2025	Ea Claim	5,000,000
E	Pollution Liab			DPL300183821	04/12/2024	04/12/2025	Aggregate	5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
When required by written contract provided the contract is executed prior to loss The State of New Hampshire is an additional insureds per forms listed below.

See attached forms for Additional Insured, Waiver of Subrogation and Primary Non-Contributory language when required by written contract provided the contract is executed prior to loss: CAT4200215 CAT4740216 CGD4680219 WC00031300 CGD6040219 CGD3790219 CGT1000219 EU00010716 DPL20010120 DLP30751020

CERTIFICATE HOLDER
NH Department of Transportation
7 Hazen Drive
Concord, NH 03302

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

(GLP)

a. We have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses; or

b. The conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
   a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
   b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
   c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
   d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
   e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
   a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
      (1) "Bodily injury" or "personal injury":
         (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
         (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
         (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph **(1)(a)** or **(b)** above; or
         (d) Arising out of his or her providing or failing to provide professional health care services.

      Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a)**, **(b)**, **(c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

      (2) "Property damage" to property:
         (a) Owned, occupied or used by;
         (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

      you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
   b. Any person (other than your "employee" or "volunteer worker"), or any organization, while acting as your real estate manager.
   c. Any person or organization having proper temporary custody of your property if you die, but only:
      (1) With respect to liability arising out of the maintenance or use of that property; and
      (2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

e. Any person or organization that, with your express or implied consent, either uses or is responsible for the use of a watercraft that you do not own that is:

(1) 50 feet long or less; and

(2) Not being used to carry any person or property for a charge.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

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

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

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

a. An organization, other than a partnership, joint venture or limited liability company; or

b. A trust;

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

4. Any person or organization that is a premises owner, manager or lessor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that:

a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement; and

b. Arises out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor is subject to the following provisions:

a. The limits of insurance provided to such premises owner, manager or lessor will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

b. The insurance provided to such premises owner, manager or lessor does not apply to:

(1) Any "bodily injury" or "property damage" that occurs, or "personal and advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

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

a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement; and

b. Is caused, in whole or in part, by your acts or omissions in the maintenance, operation or use of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

a. The limits of insurance provided to such equipment lessor will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

b. The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" that occurs, or "personal and advertising injury" caused by an offense that is committed, after the equipment lease expires.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint

venture or limited liability company that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Section II – Who Is An Insured.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
   a. Insureds;
   b. Claims made or "suits" brought; or
   c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
   a. Medical expenses under Coverage C;
   b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
   c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal injury" and "advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
   a. Damages under Coverage A; and
   b. Medical expenses under Coverage C;

   because of all "bodily injury" and "property damage" arising out of any one "occurrence".

   For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises. The Damage To Premises Rented To You Limit will be:
   a. The amount shown for the Damage To Premises Rented To You Limit in the Declarations of this Coverage Part; or
   b. $300,000 if no amount is shown for the Damage To Premises Rented To You Limit in the Declarations of this Coverage Part.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

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

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. **Bankruptcy**

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

2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit**
   a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
      (1) How, when and where the "occurrence" or offense took place;
      (2) The names and addresses of any injured persons and witnesses; and
      (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
   b. If a claim is made or "suit" is brought against any insured, you must:
      (1) Immediately record the specifics of the claim or "suit" and the date received; and
      (2) Notify us as soon as practicable.

      You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
   c. You and any other involved insured must:
      (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

4. Other Insurance

If valid and collectible other insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as described in Paragraphs **a.** and **b.** below.

As used anywhere in this Coverage Part, other insurance means insurance, or the funding of losses, that is provided by, through or on behalf of:

(i) Another insurance company;

(ii) Us or any of our affiliated insurance companies, except when the Non cumulation of Each Occurrence Limit provision of Paragraph **5.** of Section **III** – Limits Of Insurance or the Non cumulation of Personal and Advertising Injury Limit provision of Paragraph **4.** of Section **III** – Limits of Insurance applies because the Amendment – Non Cumulation Of Each Occurrence Limit Of Liability And Non Cumulation Of Personal And Advertising Injury Limit endorsement is included in this policy;

(iii) Any risk retention group; or

(iv) Any self-insurance method or program, in which case the insured will be deemed to be the provider of other insurance.

Other insurance does not include umbrella insurance, or excess insurance, that was bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

As used anywhere in this Coverage Part, other insurer means a provider of other insurance. As used in Paragraph **c.** below, insurer means a provider of insurance.

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below, except when Paragraph **d.** below applies.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

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

(ii) That is insurance for "premises damage";

(iii) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to any exclusion in this Coverage Part that applies to aircraft, "autos" or watercraft;

(iv) That is insurance available to a premises owner, manager or lessor that qualifies as an insured under Paragraph **4.** of Section **II** – Who Is An Insured, except when Paragraph **d.** below applies; or

(v) That is insurance available to an equipment lessor that qualifies as an insured under Paragraph **5.** of Section **II** – Who Is An Insured, except when Paragraph **d.** below applies.

(b) Any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured, or is any other insured that does not qualify as a named insured, under such other insurance.

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

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

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

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

c. **Method Of Sharing**

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

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

d. **Primary And Non-Contributory Insurance If Required By Written Contract**

If you specifically agree in a written contract or agreement that the insurance afforded to an insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

(1) The "bodily injury" or "property damage" for which coverage is sought occurs; and

(2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

5. **Premium Audit**

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. **Representations**

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

7. **Separation Of Insureds**

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

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. **Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. **When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. the obtaining by any person, entity, or affiliated group of persons or entities of the right to elect, appoint, or designate at least fifty percent (50%) of the directors of the **Named Insured**;

then coverage under this Policy will continue in full force and effect until termination of this Policy, but only with respect to **Claims** for **Wrongful Acts** that take place before such event. Coverage under this Policy will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** that take place after such event. This Policy may not be cancelled after the effective time of such event, and the entire premium for this Policy shall be deemed earned as of such time.

B. Termination of a Subsidiary

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to that **Subsidiary** and its **Insured Persons** shall continue until termination of this Policy, but only with respect to **Claims** for **Wrongful Acts** that take place prior to the date such organization ceased to be a **Subsidiary**.

C. In all events, this Policy shall not provide coverage for any **Subsidiary**, or its **Insured Persons** in their capacity as such, for **Wrongful Acts** taking place before such organization qualifies as a **Subsidiary** or after such **Subsidiary** ceases to be a **Subsidiary**.

X. CONDITIONS

A. Action Against the Insurer and Bankruptcy

No action shall lie against the Insurer unless, as a condition precedent thereto, the **Insured** shall have fully complied with all the terms of this Policy, nor until the amount of the liability of the **Insured** to pay shall have been fully and finally determined either by an award or final non-appealable judgment against the **Insured** after an actual hearing or trial or by written agreement of the **Insured**, the claimant, and the Insurer. Nothing contained in this Policy shall give any person, legal entity, or organization the right to join the Insurer as a party in any action against any **Insured** to determine the **Insured's** liability.

Bankruptcy or insolvency of any **Insured** or of the **Insured's** estate shall not relieve the Insurer of any of its obligations hereunder, nor deprive the Insurer of its rights and defenses under this Policy.

B. Subrogation

In the event of any payment under this Policy, the Insurer shall be subrogated to all of the **Insured's** rights of recovery therefor against any person, legal entity, organization, or other third party. The **Insured** shall execute and deliver instruments and papers and do whatever else is reasonably necessary to secure such rights and the **Insured** shall do nothing to prejudice such rights. If the Insurer recovers any amounts paid under this Policy, such amounts shall be applied first to any costs incurred by the Insurer in recovering such amounts, then to any amounts paid by the Insurer in excess of the applicable Limit of Liability, then to reinstate any amounts paid under the applicable Limit of Liability, then to reimbursement of any Self-Insured Retention or amounts in excess thereof paid by the **Insured**. The Insurer shall have no duty to seek a recovery of any amounts paid under this Policy.

Notwithstanding the foregoing, the Insurer specifically waives its rights of subrogation against any of the **Insured's** customers or clients, but only to the extent that the **Insured** agreed,

pursuant to a written agreement, to waive its rights of recovery against such customer or client prior to the occurrence of any **Wrongful Act** or **Pollution Condition**.

C. Representations and Severability of the Application

The **Insureds** represent and acknowledge that the statements, representations, and information contained in the **Application** are true and complete, are deemed to be incorporated into and a part of this Policy as if physically attached hereto, and that this Policy has been issued in reliance on the truth and completeness of such statements, representations, and information.

In the event the **Application** contains any untrue or incomplete statement or any omission, and such statement or omission either was made with the intent to deceive or materially affected either the acceptance of the risk or the hazard assumed by the Insurer, then this Policy shall not provide coverage for any **Claim** arising from the facts that were untrue or incomplete with respect to any **Insured Person** who had knowledge of the true facts, or any **Company** and its **Subsidiaries** if a principal, partner, officer, director, or organizational equivalent of such **Company** had knowledge of the true facts, whether or not such **Insured Person** or principal, partner, officer, director, or organizational equivalent of such **Company** knew the **Application** contained such untrue or incomplete statement or omission.

D. Other Insurance

This Policy shall be in excess of the amount of the applicable Self-Insured Retention of this Policy and excess of any other insurance or indemnification available to the **Insured**, whether such insurance or indemnification is collectible or uncollectible, and whether such insurance is stated to be primary, pro rata, contributory, excess, contingent, or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Policy.

E. Changes

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not affect a waiver or a change in any part of this Policy or estop the Insurer from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed, except by written endorsement issued by the Insurer and made a part of this Policy.

F. Assignment

Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed in writing hereon.

G. Policy Termination

1. Cancellation

   a. The **Named Insured** may cancel this Policy during the **Policy Period** by giving prior written notice to the Insurer stating when such cancellation shall take effect.

   b. The Insurer may cancel this Policy:

ENDORSEMENT

B. Definition E. **Claim Expenses** is amended by the addition of the following:

Claim Expenses shall not include the time or expense incurred by the **Insured** in assisting in the investigation or resolving of a **Claim** or in connection with **Cleanup Costs**, including, but not limited to, the cost of the **Insured's** in-house counsel, unless otherwise indicated.

C. Definition F. **Cleanup Costs** is replaced with the following:

Cleanup Costs means the reasonable costs incurred to investigate, test, sample, monitor, remove, remediate, dispose, treat, neutralize, or immobilize a **Pollution Condition** or **Biological Agent Condition** to the extent required by **Environmental Law** in the jurisdiction of such **Pollution Condition** or **Biological Agent Condition**.

Cleanup Costs shall also include actions undertaken to repair, replace, or restore tangible property to substantially the same condition such tangible property was in prior to being damaged during work performed in the course of incurring **Cleanup Costs**.

D. Definition N. **Insured** is amended by the addition of the following:

Solely with respect to the Covered Operations Liability Insuring Agreement, **Insured** also means an **Additional Insured**, but only for **Covered Operations** performed by an **Insured** other than an **Additional Insured**.

Solely with respect to coverage for **Pollution Condition**, the term **Insured** shall also mean the **Named Insured's** client, but only with respect to any **Claim** for a **Design Professionals Wrongful Act** of the **Named Insured**, provided that the **Named Insured** performs or performed **Design Professional Services** for such client and an **Insured Contract** was in effect that required such client to be insured under the **Named Insured's** professional liability insurance policy. Coverage available to such **Named Insured's** client under this Policy shall not be broader in scope than the insurance required pursuant to the **Insured Contract** and only if required pursuant to such **Insured Contract** shall be provided on a primary and non-contributory basis, excess of only any applicable self-insured retention.

Solely for purposes of this Definition, **Insured** shall not include any employee of the **Named Insured** solely while acting in his or her professional capacity on the behalf of the **Named Insured**.

In no event will coverage be provided under this Policy for any actual or alleged act, error, or omission of the **Named Insured's** client.

E. Definition S. **Loss** is replaced with the following:

Solely with respect to the Covered Operations Liability Insuring Agreement and the Non-Owned Disposal Sites Liability Insuring Agreement, **Loss** means only **Pollution Loss** and **Claim Expenses**.

Solely with respect to the Public Relation Event Expenses Insuring Agreement, **Loss** means only **Public Relation Event Expenses**.

3. When we have the duty to defend, we may, at our discretion, investigate and settle any claim or "suit". In all other cases, we may, at our discretion, participate in the investigation, defense and settlement of any claim or "suit" for damages to which this insurance may apply. If we exercise such right to participate, all expenses we incur in doing so will not reduce the applicable limits of insurance.
4. Our duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements, or defense expenses if such expenses are within the limits of insurance of this policy.
5. We will pay, with respect to a claim we investigate or settle, or "suit" against an insured we defend:
   a. All expenses we incur.
   b. The cost of:
      (1) Bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies; or
      (2) Appeal bonds and bonds to release attachments;

      but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
   c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of such claim or "suit", including actual loss of earnings up to $1,000 a day because of time off from work.
   d. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
   e. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
   f. All interest that accrues on the full amount of any judgment after entry of the judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable limit of insurance. If we do not pay part of the judgment for any reason other than it is more than the applicable limit of insurance, we will not pay any interest that accrues on that portion of the judgment.

   With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY**, these payments will not reduce the applicable limits of insurance, but only if the applicable "underlying insurance" provides for such payments in addition to its limits of insurance. With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE B – UMBRELLA LIABILITY**, these payments will not reduce the applicable limits of insurance.

SECTION II – WHO IS AN INSURED

A. COVERAGE A – EXCESS FOLLOW-FORM LIABILITY

With respect to Coverage A, the following persons and organizations qualify as insureds:

1. The Named Insured shown in the Declarations; and
2. Any other person or organization qualifying as an insured in the "underlying insurance". If you have agreed to provide insurance for that person or organization in a written contract or agreement:
   a. The limits of insurance afforded to such person or organization will be:
      (1) The amount by which the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement exceed the total limits of insurance of all applicable "underlying insurance"; or
      (2) The limits of insurance of this policy;

      whichever is less; and
   b. Coverage under this policy does not apply to such person or organization if the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement are wholly within the total limits of insurance of all available applicable "underlying insurance".

B. COVERAGE B – UMBRELLA LIABILITY

With respect to Coverage B:

1. The Named Insured shown in the Declarations is an insured.
2. If you are:
   a. An individual, your spouse is also an insured, but only with respect to the conduct of a business of which you are the sole owner.

b. A partnership or joint venture, your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.

c. A limited liability company, your members are also insureds, but only with respect to the conduct of your business. Your managers are also insureds, but only with respect to their duties as your managers.

d. An organization other than a partnership, joint venture or limited liability company, your "officers" and directors are also insureds, but only with respect to their duties as your "officers" or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

e. A trust, your trustees are also insureds, but only with respect to their duties as trustees.

3. Each of the following is also an insured:

a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1)(a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph **(1)(a)** or **(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a)**, **(b)**, **(c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers" other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

(2) "Property damage" to property:

(a) Owned, occupied or used by; or

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees" or "volunteer workers", any of your partners or members (if you are a partnership or joint venture), or any of your members (if you are a limited liability company).

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

c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

4. Any organization, other than a partnership, joint venture or limited liability company, of which you are the sole owner, or in which you

maintain an ownership interest of more than 50%, on the first day of the policy period is an insured and will qualify as a Named Insured. No such organization is an insured or will qualify as a Named Insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such organization.

5. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, is an insured and will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
   a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
   b. Coverage for such organization does not apply to:
      (1) "Bodily injury" or "property damage" that occurred; or
      (2) "Personal injury" or "advertising injury" arising out of an offense committed;

      before you acquired or formed the organization.

No person or organization is an insured or will qualify as a Named Insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Paragraph B. of **SECTION II – WHO IS AN INSURED**.

C. **COVERAGE C – CRISIS MANAGEMENT SERVICE EXPENSES**

With respect to Coverage **C**, the following persons and organizations are insureds and will qualify as Named Insureds:

1. The Named Insured shown in the Declarations.
2. Any organization, other than a partnership, joint venture or limited liability company, of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, on the first day of the policy period. No such organization is an insured or will qualify as a Named Insured for "crisis management service expenses" arising out of a "crisis management event" that first commences after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such organization.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, if there is no other similar insurance available to that organization. However:
   a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
   b. Coverage for such organization does not apply to "crisis management service expenses" arising out of a "crisis management event" that occurred before you acquired or formed the organization, even if an "executive officer" only first becomes aware of an "event" or "occurrence" that leads to such "crisis management event" after the date you acquired or formed the organization.

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

SECTION III – LIMITS OF INSURANCE

A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay for the amounts described below to which this insurance applies regardless of the number of:
   1. Insureds;
   2. Claims made or "suits" brought;
   3. Number of vehicles involved;
   4. Persons or organizations making claims or bringing "suits"; or
   5. Coverages provided under this insurance.

   As indicated in Paragraph **D.1.** of **SECTION I – COVERAGES**, for any "suit" for which we have the right and duty to defend the insured under Coverage **A**, defense expenses will be within the limits of insurance of this policy when such expenses are within the limits of insurance of the applicable "underlying insurance".

B. The General Aggregate Limit is the most we will pay for the sum of all:
   1. Damages; and
   2. Defense expenses if such expenses are within the limits of insurance of this policy;

   except:

d. That Extended Reporting Period endorsement is issued by us and made a part of this policy.

3. Any Extended Reporting Period endorsement for this insurance will not reinstate or increase the Limits of Insurance or extend the policy period.

4. Except with respect to any provisions to the contrary contained in Paragraphs 1., 2. or 3. above, all provisions of any option to purchase an "extended reporting period" granted to you in the "underlying insurance" apply to this insurance.

J. INSPECTIONS AND SURVEYS

1. We have the right but are not obligated to:

   a. Make inspections and surveys at any time;

   b. Give you reports on the conditions we find; and

   c. Recommend changes.

2. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions:

   a. Are safe or healthful; or

   b. Comply with laws, regulations, codes or standards.

K. LEGAL ACTION AGAINST US

1. No person or organization has a right under this insurance:

   a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

   b. To sue us on this insurance unless all of its terms have been fully complied with.

2. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured. We will not be liable for damages that:

   a. Are not payable under the terms of this insurance; or

   b. Are in excess of the applicable limit of insurance.

   An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

L. MAINTENANCE OF UNDERLYING INSURANCE

1. The insurance afforded by each policy of "underlying insurance" will be maintained for the full policy period of this Excess Follow-Form And Umbrella Liability Insurance. This provision does not apply to the reduction or exhaustion of the aggregate limit or limits of such "underlying insurance" solely by payments as permitted in Paragraphs **4.a.(1)**, **(2)** and **(3)** of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY** of **SECTION I – COVERAGES**. As such policies expire, you will renew them at limits and with coverage at least equal to the expiring limits of insurance. If you fail to comply with the above requirements, Coverage A is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had you complied with the above requirements.

2. The first Named Insured shown in the Declarations must give us written notice of any change in the "underlying insurance" as respects:

   a. Coverage;

   b. Limits of insurance;

   c. Termination of any coverage; or

   d. Exhaustion of aggregate limits.

3. If you are unable to recover from any "underlying insurer" because you fail to comply with any term or condition of the "underlying insurance", Coverage A is not invalidated. However, we will pay for any loss only to the extent that we would have paid had you complied with that term or condition in that "underlying insurance".

M. OTHER INSURANCE

This insurance is excess over any valid and collectible "other insurance" whether such "other insurance" is stated to be primary, contributing, excess, contingent or otherwise. This provision does not apply to a policy bought specifically to apply as excess of this insurance.

However, if you specifically agree in a written contract or agreement that the insurance provided to any person or organization that qualifies as an insured under this insurance must apply on a primary basis, or a primary and non-contributory basis, then insurance provided under Coverage A is subject to the following provisions:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO COVERAGE PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

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

A. BLANKET ADDITIONAL INSURED
B. EMPLOYEE HIRED AUTO
C. EMPLOYEES AS INSURED
D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS
E. TRAILERS – INCREASED LOAD CAPACITY
F. HIRED AUTO PHYSICAL DAMAGE
G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT
H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT
I. WAIVER OF DEDUCTIBLE – GLASS
J. PERSONAL PROPERTY
K. AIRBAGS
L. AUTO LOAN LEASE GAP
M. BLANKET WAIVER OF SUBROGATION

A. BLANKET ADDITIONAL INSURED

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

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

B. EMPLOYEE HIRED AUTO

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

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

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

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

   (1) Any covered "auto" you lease, hire, rent or borrow; and

   (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

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

C. EMPLOYEES AS INSURED

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

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

D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

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

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

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

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

E. TRAILERS – INCREASED LOAD CAPACITY

The following replaces Paragraph **C.1.** of **SECTION I – COVERED AUTOS**:

1. "Trailers" with a load capacity of 3,000 pounds or less designed primarily for travel on public roads.

F. HIRED AUTO PHYSICAL DAMAGE

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

Hired Auto Physical Damage Coverage

If hired "autos" are covered "autos" for Covered Autos Liability Coverage but not covered "autos" for Physical Damage Coverage, and this policy also provides Physical Damage Coverage for an owned "auto", then the Physical Damage Coverage is extended to "autos" that you hire, rent or borrow subject to the following:

(1) The most we will pay for "loss" to any one "auto" that you hire, rent or borrow is the lesser of:

(a) $50,000;

(b) The actual cash value of the damaged or stolen property as of the time of the "loss"; or

(c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

(2) An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".

(3) If a repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.

(4) A deductible equal to the highest Physical Damage deductible applicable to any owned covered "auto".

(5) This Coverage Extension does not apply to:

(a) Any "auto" that is hired, rented or borrowed with a driver; or

(b) Any "auto" that is hired, rented or borrowed from your "employee".

G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

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

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

H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT

Paragraph **C.1.b.** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted.

I. WAIVER OF DEDUCTIBLE – GLASS

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

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

J. PERSONAL PROPERTY

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

Personal Property Coverage

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

(1) Owned by an "insured"; and

(2) In or on your covered "auto".

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

No deductibles apply to Personal Property coverage.

K. **AIRBAGS**

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

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

a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;

b. The airbags are not covered under any warranty; and

c. The airbags were not intentionally inflated.

We will pay up to a maximum of $1,000 for any one "loss".

L. **AUTO LOAN LEASE GAP**

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

Auto Loan Lease Gap Coverage for Private Passenger Type Vehicles

In the event of a total "loss" to a covered "auto" of the private passenger type shown in the Schedule or Declarations for which Physical Damage Coverage is provided, we will pay any unpaid amount due on the lease or loan for such covered "auto" less the following:

(1) The amount paid under the Physical Damage Coverage Section of the policy for that "auto"; and

(2) Any:

(a) Overdue lease or loan payments at the time of the "loss";

(b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;

(c) Security deposits not returned by the lessor;

(d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

(e) Carry-over balances from previous loans or leases.

M. **BLANKET WAIVER OF SUBROGATION**

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

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

PROVISIONS

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

   This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

   Regardless of the provisions of paragraph a. and paragraph **d.** of this part **5. Other Insurance,** this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR ARCHITECTS, ENGINEERS AND SURVEYORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

A. Non-Owned Watercraft – 75 Feet Long Or Less
B. Who Is An Insured – Unnamed Subsidiaries
C. Who Is An Insured – Retired Partners, Members, Directors And Employees
D. Who Is An Insured – Employees And Volunteer Workers – Bodily Injury To Co-Employees, Co-Volunteer Workers And Retired Partners, Members, Directors And Employees
E. Who Is An Insured – Newly Acquired Or Formed Limited Liability Companies
F. Blanket Additional Insured – Controlling Interest
G. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers
H. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Premises
I. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations
J. Incidental Medical Malpractice
K. Medical Payments – Increased Limit
L. Amendment Of Excess Insurance Condition – Professional Liability
M. Blanket Waiver Of Subrogation – When Required By Written Contract Or Agreement
N. Contractual Liability – Railroads

PROVISIONS

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

1. The following replaces Paragraph (2) of Exclusion **g., Aircraft, Auto Or Watercraft**, in Paragraph **2.** of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

   (2) A watercraft you do not own that is:

   (a) 75 feet long or less; and

   (b) Not being used to carry any person or property for a charge;

2. The following replaces Paragraph **2.e.** of **SECTION II – WHO IS AN INSURED**:

   e. Any person or organization that, with your express or implied consent, either uses or is responsible for the use of a watercraft that you do not own that is:

   (1) 75 feet long or less; and

   (2) Not being used to carry any person or property for a charge;

B. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

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

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

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

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

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

a. Before you maintained an ownership interest of more than 50% in such subsidiary; or

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

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

a. A limited liability company;

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

c. A trust;

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

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

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

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

(1) "Bodily injury":

(a) To you, to your current partners or members (if you are a partnership or joint venture), to your current members (if you are a limited liability company) or to your current directors;

(b) To the spouse, child, parent, brother or sister of that current partner, member or director as a consequence of Paragraph **(1)(a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph **(1)(a)** or **(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a)**, **(b)**, **(c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your retired partners, members, directors or "employees", other than a doctor. Any such retired partners, members, directors or "employees" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

(2) "Personal injury":

(a) To you, to your current or retired partners or members (if you are a partnership or joint venture), to your current or retired members (if you are a limited liability company), to your other current or retired directors or "employees" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that current or retired partner, member, director, "employee" or "volunteer worker" as a consequence of Paragraph **(2)(a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph **(2)(a)** or **(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

(3) "Property damage" to property:

(a) Owned, occupied or used by; or

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

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

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

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

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

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

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

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
   a. Coverage under this provision is afforded only:
      (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or
      (2) Until the end of the policy period, when that date is later than 180 da ys after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it;
   b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
   c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

   For the purposes of Paragraph **1.** of Section II – Who Is An Insured, each such organization will be deemed to be designated in the Declarations as:
   a. A limited liability company;
   b. An organization other than a partnership, joint venture or limited liability company; or
   c. A trust;

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

F. **BLANKET ADDITIONAL INSURED – CONTROLLING INTEREST**

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

   Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:
   a. Such financial control; or
   b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

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

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

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

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

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

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

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

subsequent to the signing of that contract or agreement; and

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

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

a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

b. The insurance provided to such person or organization does not apply to:

(1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or

(2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

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

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

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

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

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

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

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

a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or

b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

J. INCIDENTAL MEDICAL MALPRACTICE

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

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

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

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a)**, **(b)**, **(c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide:

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

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

(b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

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

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

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

   Sale Of Pharmaceuticals

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

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

   "Incidental medical services" means:

   a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or

   b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

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

   This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph **2.a.(1)** of Section II – Who Is An Insured.

K. MEDICAL PAYMENTS – INCREASED LIMIT

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

7. Subject to Paragraph **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:

   a. $10,000; or

   b. The amount shown in the Declarations of this Coverage Part for Medical Expense Limit.

L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY

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

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

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

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

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

a. "Bodily injury" or "property damage" that occurs; or

b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the signing of that contract or agreement.

N. CONTRACTUAL LIABILITY – RAILROADS

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:

   c. Any easement or license agreement;

2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

POLICY NUMBER: P-630-6K894484-TIA-22

COMMERCIAL GENERAL LIABILITY
ISSUE DATE: 04-13-22

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL AGGREGATE LIMIT AND DESIGNATED PROJECT AND LOCATION AGGREGATE LIMITS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE – LIMITS OF INSURANCE AND DESIGNATED PROJECTS AND LOCATIONS

LIMITS OF INSURANCE

Total Aggregate Limit (Other Than Products-Completed Operations)	$ 25,000,000
Designated Project Aggregate Limit (Other Than Products-Completed Operations)	$ 2,000,00
Designated Location Aggregate Limit (Other Than Products-Completed Operations)	$ 2,000,00
General Aggregate Limit (Other Than Products-Completed Operations)	$ 2,000,00

Designated Projects: "EACH "PROJECT" FOR WHICH YOU HAVE AGREED IN A WRITTEN CONTRACT THAT IS IN EFFECT DURING THIS POLICY PERIOD, TO PROVIDE A SEPARATE GENERAL AGGREGATE LIMIT, PROVIDED THAT THE CONTRACT IS SIGNED BY YOU BEFORE THE "BODILY INJURY" OR "PROPERTY DAMAGE" OCCURS."

Designated Locations: EACH PREMISES OWNED BY OR RENTED TO YOU

PROVISIONS

1. The General Aggregate Limit (Other Than Products-Completed Operations) shown in the Declarations is replaced by the Limits of Insurance shown in the Schedule – Limits Of Insurance And Designated Projects And Locations.

2. The following replaces Paragraph 1. of **SECTION III – LIMITS OF INSURANCE**:

   1. The Limits of Insurance shown in the Declarations or the Schedule – Limits Of Insurance And Designated Projects And Locations, whichever apply, and the rules below fix the most we will pay regardless of the number of:

      a. Insureds;

      b. Claims made or "suits" brought;

      c. Persons or organizations making claims or bringing "suits"; or

      d. "Projects" or "locations".

3. The following replaces Paragraph 2. of **SECTION III – LIMITS OF INSURANCE**:

   2. a. The Total Aggregate Limit shown in the Schedule – Limits Of Insurance And Designated Projects And Locations is the most we will pay for the sum of all amounts under the Designated Project Aggregate Limit, all amounts under the Designated Location Aggregate Limit and all amounts under the General Aggregate Limit. This includes:

(1) Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";

(2) Damages under Coverage **B**; and

(3) Medical expenses under Coverage **C**.

b. Subject to the Total Aggregate Limit described in Paragraph **2.a.** above, the Designated Project Aggregate Limit shown in the Schedule – Limits Of Insurance And Designated Projects And Locations applies and is further subject to all of the following provisions:

(1) The Designated Project Aggregate Limit is the most we will pay for the sum of:

(a) Damages under Coverage **A** because of "bodily injury" and "property damage" caused by "occurrences"; and

(b) Medical expenses under Coverage **C** for "bodily injury" caused by accidents;

that can be attributed only to operations at a single "project".

(2) The Designated Project Aggregate Limit applies separately to each "project".

(3) The Designated Project Aggregate Limit does not apply to damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard". Instead, the Products-Completed Operations Aggregate Limit described in Paragraph **3.** below applies to such damages.

(4) The Designated Project Aggregate Limit does not apply to damages under Coverage **B**. Instead, the General Aggregate Limit described in Paragraph **2.d.** below applies to such damages.

(5) Any payments made for damages or medical expenses to which the Designated Project Aggregate Limit applies will reduce:

(a) The Total Aggregate Limit; and

(b) The Designated Project Aggregate Limit for the applicable "project".

Such payments will not reduce the General Aggregate Limit described in Paragraph **2.d.** below, the Designated Project Aggregate Limit for any other "project" or the Designated Location Aggregate Limit.

c. Subject to the Total Aggregate Limit described in Paragraph **2.a.** above, the Designated Location Aggregate Limit shown in the Schedule – Limits Of Insurance And Designated Projects And Locations applies and is further subject to all of the following provisions:

(1) The Designated Location Aggregate Limit is the most we will pay for the sum of:

(a) Damages under Coverage **A** because of "bodily injury" and "property damage" caused by "occurrences"; and

(b) Medical expenses under Coverage **C** for "bodily injury" caused by accidents;

that can be attributed only to operations at a single "location".

(2) The Designated Location Aggregate Limit applies separately to each "location".

(3) The Designated Location Aggregate Limit does not apply to damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard". Instead, the Products-Completed Operations Aggregate Limit described in Paragraph **3.** below applies to such damages.

(4) The Designated Location Aggregate Limit does not apply to damages under Coverage **B**. Instead, the General Aggregate Limit described in Paragraph **2.d.** below applies to such damages.

(5) Any payments made for damages or medical expenses to which the Designated Location Aggregate Limit applies will reduce:

(a) The Total Aggregate Limit; and

(b) The Designated Location Aggregate Limit for the applicable "location".

Such payments will not reduce the General Aggregate Limit described in Paragraph **2.d.** below, the Designated Project Aggregate Limit or the Designated Location Aggregate Limit for any other "location".

d. Subject to the Total Aggregate Limit described in Paragraph **2.a.** above, the General Aggregate Limit shown in the Schedule – Limits Of Insurance And Designated Projects And Locations applies and is further subject to all of the following provisions:

(1) The General Aggregate Limit is the most we will pay for the sum of:

(a) Damages under Coverage **A** because of "bodily injury" and "property damage" caused by "occurrences", and medical expenses under Coverage **C** for "bodily injury" caused by accidents, that cannot be attributed only to operations at a single "project" or a single "location"; and

(b) Damages under Coverage **B**.

(2) The General Aggregate Limit does not apply to damages for "bodily injury" or "property damage" included in the "products-completed operations hazard". Instead, the Products-Completed Operations Aggregate Limit described in Paragraph **3.** below applies to such damages.

(3) Any payments made for damages or medical expenses to which the General Aggregate Limit applies will reduce:

(a) The Total Aggregate Limit; and

(b) The General Aggregate Limit.

Such payments will not reduce the Designated Project Aggregate Limit for any "project" or the Designated Location Aggregate Limit for any "location".

4. The following replaces Paragraph **3.** of **SECTION III – LIMITS OF INSURANCE**:

3. The Products-Completed Operations Aggregate Limit shown in the Declarations is the most we will pay under Coverage **A** for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard". Any payments made for such damages will not reduce the Total Aggregate Limit, the General Aggregate Limit, the Designated Project Aggregate Limit for any "project" or the Designated Location Aggregate Limit for any "location".

5. The following is added to the **DEFINITIONS** Section, but only for purposes of the Designated Location and Designated Project shown in the Schedule – Limits Of Insurance And Designated Projects And Locations:

"Location" means any designated location shown in the Schedule – Limits Of Insurance And Designated Projects And Locations that is owned by or rented to you. For the purposes of determining the applicable aggregate limit of insurance, each "location" that includes a premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or waterway, or by a right-of-way of a railroad, will be considered a single "location".

"Project" means any designated project shown in the Schedule – Limits Of Insurance And Designated Projects And Locations that is away from premises owned by or rented to you and at which you are performing operations pursuant to a contract or agreement. For the purposes of determining the applicable aggregate limit of insurance, each "project" that includes a premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or waterway, or by a right-of-way of a railroad, will be considered a single "project".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – AUTOMATIC STATUS IF REQUIRED BY WRITTEN CONTRACT (CONTRACTORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

Any person or organization that:

a. You agree in a written contract or agreement to include as an additional insured on this Coverage Part; and

b. Has not been added as an additional insured for the same project by attachment of an endorsement under this Coverage Part which includes such person or organization in the endorsement's schedule;

is an insured, but:

a. Only with respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and

b. Only as described in Paragraph **(1)**, **(2)** or **(3)** below, whichever applies:

(1) If the written contract or agreement specifically requires you to provide additional insured coverage to that person or organization by the use of:

(a) The Additional Insured – Owners, Lessees or Contractors – (Form B) endorsement CG 20 10 11 85; or

(b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 10 01, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 10 01;

the person or organization is an additional insured only if the injury or damage arises out of "your work" to which the written contract or agreement applies;

(2) If the written contract or agreement specifically requires you to provide additional insured coverage to that person or organization by the use of:

(a) The Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization endorsement CG 20 10 07 04 or CG 20 10 04 13, the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 07 04 or CG 20 37 04 13, or both of such endorsements with either of those edition dates; or

(b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37, without an edition date of such endorsement specified;

the person or organization is an additional insured only if the injury or damage is caused, in whole or in part, by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies; or

(3) If neither Paragraph **(1)** nor **(2)** above applies:

(a) The person or organization is an additional insured only if, and to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies; and

(b) Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether

this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.

b. The insurance provided to such additional insured does not apply to:

(1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

(a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and

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

(2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

c. The additional insured must comply with the following duties:

(1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

(a) How, when and where the "occurrence" or offense took place;

(b) The names and addresses of any injured persons and witnesses; and

(c) The nature and location of any injury or damage arising out of the "occurrence" or offense.

(2) If a claim is made or "suit" is brought against the additional insured:

(a) Immediately record the specifics of the claim or "suit" and the date received; and

(b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.

(3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.

(4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.