

**UPPER DUBLIN TOWNSHIP
NEW TOWNSHIP & POLICE BUILDING / PUBLIC WORKS ADDITION
CONSTRUCTION TESTING AND SPECIAL INSPECTION SERVICES
PROFESSIONAL SERVICES AGREEMENT**

This Agreement made this ____ day of _____2024, by and between the Upper Dublin Township located at 370 Commerce Drive, Fort Washington, PA 19034, hereinafter referred to as the "Owner," and Earth Engineering Incorporated, located at 149 Main Street, Emmaus, PA 18049, hereinafter referred to as the "Testing and Inspection Professional."

The Owner is proceeding with roughly 52,000 SF of a new Township and Police Building. The new construction will include a combination of concrete foundations with structural steel framing, slab-on-grade construction and masonry interior and exterior walls. The site work includes cut and fill, new utilities, parking lots and drives. The Township and Police Building is located at 801 Loch Alsh Avenue, Fort Washington, PA 19034. The Public Works Building is a high garage bay buildout with an adjacent above ground fueling station. The Public Works Building is located at 805 Loch Alsh Avenue, Fort Washington, PA 19034.

The Construction Manager for the Project is the firm of D'Huy Engineering, One East Broad Street, Suite 310, Bethlehem, PA 18018 (hereinafter, the "Construction Manager"). The Project Architect is GKO Architects, 300 Brookside Avenue, Building 18, Suite 150, Ambler, PA 19002 (hereinafter, the "Architect").

The Owner and the Testing and Inspection Professional agree as set forth below:

Article 1 - Scope of Services

1.1 The Owner designates the Testing and Inspection Professional as its consultant to perform the professional services identified in this Agreement (“Services”). Subject to the terms herein, the Testing and Inspection Professional's Services shall include the minimum scope described for the Project and any corresponding services for the role of the Testing and Inspection Professional hereunder required in accordance with the Project drawings and specifications, and shall continue until the completion of the Project, unless terminated as provided for in Article 8 below. As a testing and inspection agent, Testing and Inspection Professional cannot ensure or guarantee that projects are properly designed and/or constructed. The role of the Testing and Inspection Professional is to assist the Owner with the development of the Owner’s project requirements, and to subsequently verify that the design and construction are in accordance with those requirements.

1.2 The Testing and Inspection Professional accepts the relationship of trust and confidence established between the Testing and Inspection Professional and the Owner by this Agreement. Testing and Inspection Professional covenants with the Owner to furnish the Testing and Inspection Professional's knowledge, skill and professional judgment, consistent with and meeting or exceeding that ordinarily and customarily accepted within the industry, and to cooperate with the Project Engineer, the Construction Manager, other consultants and professionals, and the trade contractors in furthering the interest of the Owner.

1.3 Testing and Inspection Professional agrees to provide professional services in accordance with the Testing and Inspection Professional's proposal dated January 22, 2024 (the "Proposal"), attached hereto as "Attachment A", (which portions include the Scope of Work to be performed for the Services, reimbursable expense rate and hourly rates for any additional services. These specifically referenced aspects of the proposal are hereinafter referred to as the "**Proposal**" and all other aspects of the proposal shall not be considered part of this Agreement). The performance of such scope of Services shall be in compliance with the terms and conditions of this Agreement.

1.4 The Testing and Inspection Professional shall meet and satisfy the requirements set forth in the Specifications in performing the Services. All Services must be performed by an individual qualified and registered to perform such Services in connection with the Project, and licensed to do work in the state of Pennsylvania

1.5 Testing and Inspection Professional has fully reviewed the requirements and scope of the Project and has performed its own estimates and takeoffs of the extent of the Services that will be required by the Project. The Owner bears no responsibility for developing the Testing and Inspection Professional's fee.

1.6 Testing and Inspection Professional agrees to provide professional services on an hourly rate basis subject to a not-to-exceed maximum, as set forth in this Agreement and its attachments.

1.7 Testing and Inspection Professional agrees to provide any additional Testing and Inspection services, as mutually agreed, that are necessary for the Project at prices to be agreed upon by the Owner and the Testing and Inspection Professional by written amendment to this Agreement. Testing and Inspection Professional is not authorized to perform any such

additional Testing and Inspection or laboratory services without the expressed prior written approval of the Owner or its representatives.

1.8 Testing and Inspection Professional will not be permitted or required to coordinate or direct the contractors. All decisions with respect to the allocation of construction personnel, material, and equipment, construction logic and sequences, activity durations, and construction means, and methods are not the responsibility of the Testing and Inspection Professional.

1.9 Testing and Inspection Professional will, at the time that it receives direction to proceed, promptly designate the personnel who will participate in the furnishing of Services under this Agreement. All appointments and replacements made by the Testing and Inspection Professional of any such individuals are subject to the prior written approval of the Owner and Construction Manager, which approval shall not be withheld unreasonably.

1.10 Communications between the Testing and Inspection Professional and the Owner shall ordinarily occur through the Construction Manager, or in appropriate circumstances directly with the Owner, or through other consultants and individuals designated by the Construction Manager.

1.11 The Project consists of the completion of all work, contracts and tasks required to be performed to renovate, construct, finish, occupy, and use the Project, including the correction and completion of construction work reflected in punch lists and similar tabulations, the furnishing of "as-built" drawings, the issuance of final payments to the contractors, and all other activities required for project close-out.

1.12 The terminology "day" shall mean calendar day, unless otherwise specifically designated.

1.13 The phrase, “Term of this Agreement” shall mean the period of time that this Agreement is in effect.

Article 2 - Basic and Additional Services Offered

2.1 Basic Services shall include the following:

2.1.1 Testing and Inspection Professional shall perform the Services in accordance with this Agreement, during the period of time following the selection of the Testing and Inspection Professional prior to the execution of this Agreement and shall continue until the completion of the Project.

2.1.2 Testing and Inspection Professional agrees to submit all test results, reports, and data sheets as required with up to six (6) copies to be distributed as directed by the Construction Manager. Copies will be maintained on site by the Construction Manager during the construction of the Project and will be provided to the Owner upon final completion.

2.1.3 Testing and Inspection Professional agrees to advise the Construction Manager promptly of instances where the work of the construction contractors differs from that in the project drawings, specifications, and/or fails to comply with the design, program, and Construction Contract Documents.

2.1.4 Testing and Inspection Professional agrees to attend the periodic job conferences for contractors and other consultants on an as-needed basis at the request of the Construction Manager, and to perform those additional duties described in Testing and Inspection Professional’s Proposal.

2.2 Additional services may include the following:

2.2.1 Testing and Inspection Professional agrees to assist with claims avoidance and claims negotiation and resolution incidental to Testing and Inspection Professional's duties as an Additional Service.

Article 3 - Owner's Duties

3.1 The Owner shall provide all available information regarding the Owner's requirements for the Project, including but not limited to, Design Documents and Construction Contract Documents.

3.2 Testing and Inspection Professional will be furnished without charge two (2) copies of drawings and specifications reasonably necessary for the execution of the work subject to this Agreement.

3.3 The agreements, plans, specifications, and information required by the above paragraphs shall be furnished with reasonable promptness at the Owner's expense and Testing and Inspection Professional shall be entitled to rely upon the accuracy and completeness thereof. However, should Testing and Inspection Professional observe, note or discover any errors, omissions, or deficiencies through its activities under this Agreement during the course of the Project, Testing and Inspection Professional shall promptly notify the Construction Manager and report the observations to the Construction Manager.

3.4 The Owner shall provide itself or through its construction contractors property insurance for the Project and specifically will furnish adequate coverage for general liability, property and other casualty losses. Nothing herein requires that the Testing and Inspection Professional be identified as an additional insured under any such policy or policies.

Article 4 - Trade Contracts

4.1 All construction work on the Project shall be performed by construction contractors under trade contracts that are in compliance with applicable law. The Testing and Inspection Professional will perform no construction work.

4.2 Trade contracts will be between the Owner and other construction contractors.

Article 5 - Testing and Inspection Professional's Fee

5.1 In consideration of the performance of Services under this Agreement, the Owner agrees to pay Testing and Inspection Professional for hourly rates which include reimbursable expenses for the following not to exceed amount of one hundred ten thousand dollars and zero cents (\$110,000.00)

5.2 Testing and Inspection Professional agrees that it will impose no additional charges for the services of its employees or consultants, or for out-of-pocket costs or expenses of any kind incurred in connection with Services provided under this Agreement.

5.3 The rates and reimbursable expenses set forth in this Agreement and the Proposal hereto shall remain in effect for the Term of this Agreement, provided the Services contemplated hereunder are performed during the timeframe for the Project contemplated hereunder are performed during the timeframe for the Project specified or such other time as the parties may mutually agree.

5.4 Fees for the services of its personnel and payments for Services may be billed by Testing and Inspection Professional monthly, or with Owner's permission, less frequently. All invoices shall be appropriately and adequately documented. The Owner shall make payments to Testing and Inspection Professional within sixty (60) days after receipt of invoices.

5.4.1 Invoices for services shall include the name of the individual, his or her classification, the hours expended, the dates of the Services, and the applicable rates.

5.4.2 Invoices shall include for each test and other service descriptions of each unit-price service being billed, the number of units provided, and applicable rate.

5.5 Testing and Inspection Professional agrees that the total billed for its services, in complete performance of the services to be rendered by the Testing and Inspection Professional under this Agreement, shall be in accordance with the amount submitted in the Proposal and in any event, shall not exceed the amount of one hundred ten thousand dollars and zero cents. Testing and Inspection Professional agrees to allocate the time of its personnel and the expenses of their activities so as to assure that the total paid by Owner for the services described generally in this Agreement is within this amount. It is further agreed that all invoices shall be based on the unit prices listed in the Proposal submitted and the unit prices include all reimbursables.

5.6 The Owner reserves the right to propose to the Testing and Inspection Professional that it provide Additional Services in connection with the Project. Any addition, change or modification to this Agreement shall be of no force or effect until a written modification is prepared and signed by the Owner and the Testing and Inspection Professional.

5.7 Additional Services shall be billed in accordance with a written amendment to this Agreement authorizing the Additional Services (in advance) and stating the amount of compensation therefor. Rates set forth in this Agreement and the Proposal shall remain in effect for the term of this Agreement provided the Additional Services contemplated are performed during the timeframe for the Project contemplated or such other time as the parties may mutually agree. In the event of changes to the scope of Services, or a delay in the provision of the Services

(through no fault of the Testing and Inspection Professional), the parties shall negotiate new not-to-exceed amounts.

5.7.1 All invoices for services shall include a description of the Services provided and the tests made and a statement certifying (1) that the service or the test was or was not required by reason of the prior failure of Work to comply and further certifying (2) that the work was or was not required by reason of the request of a contractor.

5.8 The cost of the premiums for all insurance which the Testing and Inspection Professional is required to maintain by this Agreement is to be paid by Testing and Inspection Professional and shall not be included by Testing and Inspection Professional in its invoices as a cost.

Article 6 - Changes in the Project

6.1 The Owner, without invalidating this Agreement, may order changes in the contracts for construction and the Work on the Project within the general scope of the Owner's building and design development program consisting of additions, deletions, changes in the site and other revisions, all of which shall remain within the scope of the Basic Services performed under this Agreement. Testing and Inspection Professional's fees and rates of payment shall not be affected by any such change in the Work.

Article 7 - Insurance and Indemnification

7.1 (A) Testing and Inspection Professional shall procure and maintain Commercial General Liability insurance that will protect the Testing and Inspection Professional and all its subconsultants and subcontractors from claims for death, injury or property damage which may arise from Services and activities performed under this Agreement. Such insurance shall be provided via standard Insurance Services Office occurrence form CG 00 01 01 96 (or its

equivalent) issued by insurers authorized to do business in the Commonwealth of Pennsylvania.

The limits of this policy shall be at least:

- (1) \$1,000,000 Each Occurrence
- (2) \$2,000,000 General Aggregate
- (3) \$1,000,000 Personal & Advertising Injury
- (4) \$1,000,000 Products/Completed Operations Aggregate

This insurance to be purchased by Testing and Inspection Professional shall include the following:

- (1) Premises Operations
- (2) Products and Completed Operations
- (3) Contractual Liability
- (4) Personal Injury Liability
- (5) “Waiver of Transfer Rights of Recovery Against Others” (Insurance Services Office endorsement #CG2404), naming Owner, Project Engineer, Construction Manager and consultants on its schedule.
- (6) “Amendment - Aggregate limits of Insurance (Per Project)” (Insurance Services Office endorsement #CG2503) or equivalent, naming “Upper Dublin Township New Township & Police Building / Public Works Addition” on its schedule.
- (7) “Additional Insured - Designated Person or Organization” (Insurance Services Office endorsement #CG2026) or equivalent, naming Owner, Project Engineer, Construction Manager and consultants.
- (8) “Additional Insured - Engineers, Architects or Surveyors Not Engaged by the

Named Insured” ((Insurance Services Office endorsement #CG2032) or equivalent naming Construction Manager, Architect and their subconsultants).

(9) Professional liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

7.1 (B) Testing and Inspection Professional shall maintain commercial Automobile Liability insurance for owned, hired, and non-owned vehicles with a limit of liability of \$1,000,000 per occurrence.

7.1 (C) Testing and Inspection Professional shall procure and maintain Workers Compensation insurance, including employer’s liability and any other insurance as required by law in the Commonwealth of Pennsylvania. The limits for Employers Liability coverage shall be at least \$1,000,000 for each category: Bodily Injury Each Accident; Disease Each Person; Disease Policy Limit.

7.1 (D) Testing and Inspection Professional shall maintain Commercial Umbrella Liability insurance on an occurrence form that provides excess coverage over its Commercial General Liability (including Products & Completed Operations Liability), Auto Liability, and Employers Liability coverages. The per occurrence limit of protection on this policy shall be \$5,000,000. This insurance shall include the following:

- (1) No exclusion barring suits between insureds.
- (2) Language specifying that this insurance shall follow the underlying Commercial General Liability policy with respect to “Additional Insureds”.

7.1 (E) Except as may otherwise be specified herein, all insurance shall be effective from the date of execution of this Agreement until final payment.

7.1 (F) Insurance companies providing policies or bonds described in this section must have an A.M. Best Co. rating of A- or higher.

7.1 (G) Testing and Inspection Professional shall provide Owner with Certificates of Insurance evidencing the coverages described in this section. Such certificates shall be provided contemporaneously with the execution of this Agreement and appended hereto as Attachment B. Notice of cancellation of any insurance policies required herein shall be subject to ACORD 25 Certificate of Liability standards, and will be delivered to the Owner as applicable, in accordance with policy provisions.

7.1 (H) Testing and Inspection Professional waives any and all rights of recovery against Owner, Architect, Construction Manager and consultants, the Commonwealth of Pennsylvania and any of their representatives, officials, consultants, officers, directors, employees and agents.

7.1 (I) There will be no separate or additional payment for insurance expenses, and the cost for insurance described in this document shall be Testing and Inspection Professional's sole responsibility.

7.2 (A) Testing and Inspection Professional agrees to indemnify, defend and hold harmless the Owner, Architect, Construction Manager, consultants, the Commonwealth of Pennsylvania, each of the above's named officers, officials, representatives, agents and employees, from and against all claims, damages, losses and expenses including but not limited to attorneys' fees arising out of the negligence or recklessness of Testing and Inspection Professional or its employees, and/or Testing and Inspection Professional's breach of this agreement. Such obligation shall not be constructed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person.

7.2 (B) With respect to any claim resulting from injury or loss to an employee of Testing and Inspection Professional, the Testing and Inspection Professional agrees to indemnify and hold harmless Construction Manager, Architect and Owner from the entire amount of such claim, including liability for injury or loss caused by the negligent acts or omissions of Testing and Inspection Professional which results in harm to such employee.

7.3 Testing and Inspection Professional hereby certifies that it has accepted the applicable provisions of the Workers' Compensation and Occupational Disease Acts, as amended and supplemented, for the officers and employees of Testing and Inspection Professional and that it has insured its liability thereunder in accordance with the terms of said Acts, as evidenced by the original certificate of insurance it has provided to Owner.

Article 8 - Termination

8.1 If the Owner fails to make payment for more than sixty (60) days following the rendering by Testing and Inspection Professional of a properly documented and supported invoice for fees due and owing, Testing and Inspection Professional may, upon thirty (30) days' written notice to the Owner and the Construction Manager, terminate this Agreement and recover from the Owner payment of the fees earned to date. If the Testing and Inspection Professional submits one or more invoices to the Owner which the Owner reasonably disputes in good faith after review of said invoices, and to the extent such disputes are not resolved, then the Testing and Inspection Professional shall not be entitled to terminate this Agreement as a result of the Owner's failure to make payment for more than sixty (60) days upon receipt of the disputed invoice or invoices.

8.2 Notwithstanding any contrary provision in this Agreement, this Agreement may be terminated for the convenience of the Owner upon seven (7) days' written

notice to the Testing and Inspection Professional. Furthermore, this Agreement may be terminated for the convenience of the Testing and Inspection Professional upon sixty (60) days' written notice to the Owner. If this Agreement is terminated under this Section, Testing and Inspection Professional shall be entitled to payment for satisfactory services rendered under the Agreement up to the time of termination, based on the unit costs, hourly rates, and Services rendered.

8.3 If, through any cause, the Testing and Inspection Professional shall fail to fulfill on a timely basis and in a proper manner its obligations under this Agreement, the Owner may give Testing and Inspection Professional three (3) days to correct the deficiency. If Testing and Inspection Professional fails to correct the deficiency to the satisfaction of the Owner, the Owner may terminate this Agreement by giving written notice to the Testing and Inspection Professional, setting forth the reasons for and the effective date of such termination. If the Owner elects to terminate this Agreement under this Section, Testing and Inspection Professional shall be entitled to payment for satisfactory Services rendered under the Agreement up to the time of termination, based on the unit costs, hourly rate, and Services rendered.

Article 9 - Additional Terms

9.1 Neither the Owner nor the Testing and Inspection Professional shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds. Notwithstanding the foregoing, either party may assign the Agreement to an Affiliate (including an Affiliate of its ultimate parent corporation) without the consent of the other party. For purposes of this Agreement, "**Affiliate**" shall mean a company which controls, is controlled by, or is under common control with the assigning party.

9.2 This Agreement shall be governed by the laws of the Commonwealth of

Pennsylvania where the Project is located and the venue of any dispute arising hereunder shall be in the Court of Common Pleas of Montgomery County, Pennsylvania.

9.3 This Agreement represents the entire understanding between the Owner and the Testing and Inspection Professional, and supersedes all prior negotiations, representations, or agreements, except otherwise provided herein.

9.4 Testing and Inspection Professional shall fully obey and comply with all laws, ordinances, and regulations which are or shall become applicable to the Project and the Services performed under this Agreement.

9.5 Testing and Inspection Professional shall maintain and preserve all data, records, and documents pertaining to the Project for a period extending until five (5) years after the date of final payment of fees to Testing and Inspection Professional and, during that period, shall produce the aforementioned information upon request to the Owner and within a reasonable period of time.

9.6 Testing and Inspection Professional agrees that it neither has nor will acquire any public or private interest, direct or indirect, which conflicts in any manner with the performance or obligations under this Agreement.

9.7 The Services rendered by the Testing and Inspection Professional or its agents under this Agreement are not rendered as an employee of the Owner and the amounts paid do not constitute compensation or wages paid to an employee. Testing and Inspection Professional is not an agent of the Owner, but rather is an independent contractor and the Owner assumes no liability or responsibility for the actions of the Testing and Inspection Professional under this Agreement.

9.8 Pennsylvania Human Relations Act 222:

Human Relations Act: The Testing & Inspection professional shall comply with the provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (P.L. 744) (43 P.S. Section 951, et seq.) of the Commonwealth of Pennsylvania prohibit discrimination because of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, by employers, employment agencies, labor organizations, contractors and others. The Professional shall agree to comply with the provisions of this Act as amended that is made part of this specification. Your attention is directed to the language of the Commonwealth's Non-Discrimination Clause in 16 PA Code 49.101.

9.9 The Testing & Inspection Professional and all consultants shall comply with the following Non-Discrimination / Sexual Harassment requirements:

9.9.1 In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Contract Documents, the Testing & Inspection Professional, contractor, subcontractor, or any person acting on behalf of the Testing & Inspection Professional shall not discriminate in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

9.9.2 The Testing & Inspection Professional, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate by reason of race, gender, creed color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any of its employees.

(A) In provisions of services under the contract or subcontract agreement.

(B) In violation of the PHRA applicable federal laws against any

contractor, subcontractor or supplier qualified to perform the work to which the contract relates.

9.9.3 The Testing & Inspection Professional, contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision or refrain from participating in labor activities protected under the *Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.

9.9.4 The Testing & Inspection Professional and any subcontractors shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. The Testing & Inspection Professional shall not discriminate in violation of the PHRA and applicable federal laws against any contractor, subcontractor or supplier who is qualified to perform the work to which the Agreement relates. Posting the Nondiscrimination/Sexual Harassment Clause conspicuously in easily accessible and well-lighted places customarily frequented by employees and at or near where Services are performed shall satisfy this requirement for employees with an established work site.

9.9.5 The Testing & Inspection Professional, contractor and subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Testing & Inspection Professional and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S.

Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Testing & Inspection Professional or any subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the granting agency and the Bureau of Small Business Opportunities (BSBO), for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Testing & Inspection Professional or any subcontractor does not possess documents or records reflection the necessary information requested, it shall furnish such information on reporting forms supplied by the Owner or the BSBO.

9.9.6 The Testing & Inspection Professional shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

9.9.7 The Testing & Inspection Professional’s obligations pursuant to these provisions are ongoing from and after the effective date of this Agreement through the termination date thereof. Accordingly, the Testing & Inspection Professional and subcontractors shall have an obligation to inform the Owner if, at any time during the term of this Agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.

9.9.8 The Owner, Commonwealth of Pennsylvania and its agencies may cancel or terminate this Agreement for a violation of the terms and conditions of this

Nondiscrimination/Sexual Harassment Clause. In addition, the Commonwealth and its agencies may proceed with debarment or suspension and may place the Testing & Inspection Professional and/or subcontractor in the Contractor Responsibility File.

9.10 Americans with Disabilities Act: During the term of this Agreement, the Testing and Inspection Professional agrees as follows:

9.10.1 Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities ACT, 28 C.F.R. § 35.101 et seq., the Professional understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Testing and Inspection Professional agrees to comply with the General Prohibitions Against Discrimination, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Owner through contracts.

9.10.2 The Testing and Inspection Professional shall be responsible for and agrees to indemnify and hold harmless the Owner from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Owner as a result of the Professional's failure to comply with provisions of Paragraph 9.10.1 above.

9.11 Health and Safety: The Professional shall comply with the provisions of the Occupational Safety and Health Administration, Federal Act 91-596 of December 29, 1970, and with any other safety and health regulations applicable to the township in which the Work is performed.

9.12 Identification: The Testing and Inspection Professional shall perform

state Act 34, performed prior to being permitted on Owner's property without an Owner representative escort. Background checks shall be in accordance with Act 34 of 1994. All employees working at the Project site must submit Act 34 clearance. The clearance must be presented to Owner prior to each employee, agent, or subcontractor coming on Owner's property. All such clearances shall be dated no earlier than one year prior to the date of presentation to Owner. Owner shall retain a copy of all such clearances in its file. Notwithstanding any other provision, violation of this provision shall constitute grounds for immediate termination by Owner. Owner specifically reserves the right to reject any person Owner deems unfit to be permitted on township grounds. Upon written notice from Owner, Professional shall have all such persons removed from the project.

The Owner reserves the right to require all construction employees to be visually identified by the use of badges. In the event this security measure is implemented, the Owner will issue badges to all authorized employees in conjunction with the Testing and Inspection Professional and record their issuance with names, addresses, etc. Termination of employment of the employees will require the respective badges to be returned to the Owner for record keeping purposes. All employees must wear the badges on the job site. Employees without badges will not be permitted on the premises.

9.13 CONTRACT DOCUMENTS: Testing and Inspection Professional agrees that the portions of the Attachments hereto that have been specifically incorporated by references are incorporated herein and form a part of this Agreement as though set forth herein at length. In the event of conflicts in the provision of such documents, the conflicts shall be resolved in favor of the document having priority as follows:

9.13.1 This Agreement; and

9.13.2 The Proposal

9.14 The following attachments are part of this Agreement:

9.14.1 “Attachment A”: Proposal

9.14.2 “Attachment B”: Insurance Certificate

[NO FURTHER TEXT ON THIS PAGE; SIGNATURES FOLLOW]

This Agreement executed as of the day and year first written above.

**OWNER:
UPPER DUBLIN TOWNSHIP**

By: _____

Name: _____

Title: _____

**TESTING AND INSPECTION PROFESSIONAL:
EARTH ENGINEERING INCORPORATED**

By: _____

Name: _____

Title: _____

Attachment A

Testing and Inspection Professional Proposal



**EARTH
ENGINEERING
INCORPORATED**
Geotechnical Engineers & Geologists

January 22, 2024
EEI Proposal No.: LV7469

Mr. Jonathan Bleemer
Upper Dublin Township
370 Commerce Drive
Fort Washington, Pennsylvania 19034
TEL #: 215.643.1600, X3222

✉ JBleemer@UpperDublin.Net

c/o

Mr. Zachary Zazo, PMP, CDT, LEED AP
Senior Project Manager
D'HUY Engineering
One East Broad Street
Bethlehem, Pennsylvania 18018
TEL #: 610.865.3000

✉ ZSZ@DHUY.com

Re: **Consulting & Inspection Services
Upper Dublin Township Public Works
Upper Dublin Municipal Building
Upper Dublin, Pennsylvania**

Dear Mr. Bleemer:

Earth Engineering Incorporated (EEI) is pleased to submit this proposal for performing consulting and inspection services.

Earth Engineering Incorporated is a full service geotechnical and environmental engineering consulting firm specializing in subsurface investigations, environmental site assessments, consulting, geostructural design, and construction inspection and testing services. EEI is composed of a proven staff of qualified engineers, geologists and scientists experienced in meeting the needs of our clients on a timely, results oriented, and cost-effective basis. Issues such as cost-effective design alternatives are evaluated along with site development issues. This approach has enabled EEI to contribute to the successful development of a wide range of projects.

The services outlined in this proposal include the following:

- ◆ Geotechnical consulting
- ◆ Subgrade preparation
- ◆ Proof-rolling and compaction control
- ◆ Foundations
- ◆ Concrete and reinforcing steel
- ◆ Masonry
- ◆ Structural steel
- ◆ Asphalt
- ◆ Fireproofing

For each day on site, EEI will prepare a typewritten *Daily Field Report* documenting the inspections performed. Prior to the beginning of EEI's involvement at the site, it will be necessary that the project Site Plan(s) and/or a Structural Plan(s) and specifications be provided. Relevant information obtained from these plans will be incorporated into the *Daily Field Reports*.

Geotechnical Consulting

Earth Engineering Incorporated will provide qualified professionals to evaluate specific conditions encountered during construction and to provide professional recommendations, if required. This consulting is conducted under the supervision of a Professional Engineer/ Professional Geologist registered in the state in which the work is performed and qualified in the field of geotechnical and foundation engineering. *This service will be provided only at the request of the client, should the need arise.* This service is offered to allow for swift remediation of problem conditions, therefore increasing productivity of construction operations.

Subgrade Preparation

EEI will monitor the proof-rolling operations of slab and pavement subgrades. Areas exhibiting instabilities will be delineated and recommendations for remediation and stabilization will be provided. The compaction of the subgrade will be monitored in accordance with the project drawings and specifications. The results of the subgrade preparation inspections will be included in the typed daily field reports.

Compaction Control

Earth Engineering Incorporated will provide qualified personnel to test the compaction of backfill material in accordance with contract drawings and specifications. The details of this service are outlined below.

- ◆ Evaluate the structural fill materials through visual inspection or laboratory testing, if required for suitability and compliance with specifications.
- ◆ Laboratory testing to determine the moisture-density relationship of the structural fill material for subsequent use in compaction control.
- ◆ Inspect and document the fill and compaction procedures and perform in-place density tests to verify specified percent compaction. The in-place density testing will be conducted with state-of-the-art nuclear testing gauges with the information entered into a computer-generated table for printed presentation. The results will be reviewed internally prior to distribution.
- ◆ Laboratory soils testing and field compaction testing will be performed in accordance with the specifications supplied to EEI.



Foundations

Footing bottoms will be inspected by qualified personnel for suitable bearing and construction practices as outlined in the project specifications. Typed daily footing bottom inspection reports will be prepared by EEI, reviewed, and provided to the client. These footing bottom reports will include the following:

- ◆ The suitability of the subgrade encountered at the footing bottom elevation prior to pouring.
- ◆ Confirmation of soil type and correlation to bearing capacity as per project drawings and specifications.
- ◆ Presence and methods of control of groundwater, if encountered.

EEI staff is highly experienced in field consulting and inspections, and, therefore, will provide remediation solutions to daily earthwork related problems should the need arise. These recommendations will provide increased efficiency in the earthwork and foundation installation operations.

Concrete and Reinforcing Steel

EEI will provide qualified personnel to inspect and document the placement of concrete during construction. This service will include:

- ◆ Inspect and document type, size, and spacing of reinforcing steel, to confirm compliance with project specifications.
- ◆ Inspect form work in accordance with specifications and accepted construction procedures.
- ◆ Documentation of temperature and slump of the concrete, as well as preparation of compressive strength test cylinders using ASTM and ACI guidelines.
- ◆ Coordinate the sample pick-up and subsequent testing on the 7th and 28th day after sample preparation for compressive strength by a subcontracted local testing laboratory. The results from this testing will be presented by EEI in final printed reports documenting the concrete construction.

EEI will work in cooperation with the contractor to ensure that quality samples are prepared and properly stored. According to ACI standards, *“To facilitate testing and inspection, the contractor shall: Furnish any necessary labor to assist the designated testing agency in obtaining and handling samples at the project or other sources of materials. Advise the designated testing agency sufficiently in advance of operations to allow for completion of quality tests and for the assignment of personnel. Provide and maintain for the sole use of the testing agency adequate facilities for safe storage and proper curing of concrete test specimens on the project site for the first 24 hours as required by ASTM C31.”* EEI cannot be responsible for test specimens prepared or additional testing which may be required if appropriate cooperation and facilities are not provided by the concrete or general contractor.



Masonry

EEI will provide qualified personnel to inspect and document the masonry construction concurrently with the inspection services outlined above. This service will include:

- ◆ Documentation of masonry mortar and/or grout preparation
- ◆ EEI will prepare cube an/or prism specimens as required for subsequent compressive strength testing
- ◆ Coordinate the sample pick up and subsequent testing for compressive strength by a subcontracted local testing laboratory. The results from the testing will be presented by EEI in final printed reports documenting the masonry construction.

Structural Steel

EEI will provide qualified personnel to inspect and document the various phases of Structural Steel Construction. EEI will manage and coordinate the inspection services outlined below with our in-house personnel and/or with an independent inspection firm. EEI will be responsible for the coordination of the performance of these inspections as well as technical review. The services to be provided include the following:

- ◆ Field inspection of all phases of steel erection in accordance with specifications, drawings, and accepted standard practices.
- ◆ Inspect bolted connections and document tightening procedure.
- ◆ Inspect welding operations for location, fit up procedures, use of proper electrodes, and quality and size of welds by visual and/or appropriate non-destructive test methods, if required.
- ◆ Inspect the installation of metal deck for compliance with specifications and approved contract drawings.
- ◆ Inspect and document shear stud installation.
- ◆ Review mill test reports of structural steel.
- ◆ Review welder qualifications (shop and field).

Upon completion and approval of the work, a certification can be provided that the structural steel construction inspected on the project was accomplished in accordance with AWS requirements and the contract documents.



Asphalt

EEI will provide qualified personnel to inspect and document the type and thickness of the various asphalt components as they are being placed. In-place density testing will be conducted with a portable nuclear density gauge provided that the material's Marshall Value is supplied by the producer. The percent Marshall and density results will be displayed in a computer-generated table included with the daily field report.

It is emphasized that the testing is intended to provide only relative compaction values of the material. Unless specifically agreed upon by both parties, passing compaction results obtained from the portable gauge do not necessarily mean that the asphalt core samples will meet density requirements. There are inherent variations between the density results from the nuclear density gauge and laboratory tested core samples. Therefore, EEI cannot and will not be held responsible for the performance of the compacted asphalt or as the means to provide data as a method of release of payment. The actual density of the compacted asphalt materials is conducted by obtaining cores with subsequent asphalt density testing of the core samples. If requested, EEI can conduct the coring operation to measure the actual thickness and density of the cores after the paving operation is completed.

Fireproofing

EEI will provide qualified personnel to visually inspect the condition of surfaces of structural steel to receive fireproofing. This service will include the following:

- ◆ Observe the contractor's method of mixing and application.
- ◆ Perform thickness testing, density testing, and adhesion tests in accordance with applicable codes and project specifications.



UNIT RATES

Proof-rolling and Compaction Control	
Geologist/Scientist	\$ 68.00/hr.
Foundation Inspection	
Engineer/Geologist/Scientist	\$ 68.00/hr.
Concrete and Reinforcing Steel	
Field Inspector	\$ 68.00/hr.
Masonry Inspection	
Field Inspector	\$ 68.00/hr.
Structural Steel Inspection	
Engineer/Inspector	\$ 120.00/hr.
Fireproofing Inspection	
Engineer/Inspector	\$ 120.00/hr.
Floor Flatness Testing	
Engineer/Geologist/Scientist	\$ 120.00/hr.
Asphalt Testing	
Field Inspector	\$ 68.00/hr.
Laboratory Testing	
Moisture-Density Relationship (ASTM D698 or D1557).....	\$ 250.00/test
Classification Testing (ASTM D2487).....	\$ 250.00/test
Direct Shear Testing (ASTM D3080).....	\$ 775.00/test
Expenses	
Concrete/Mortar Testing	\$ 18.00/specimen
Grout Testing	\$ 45.00/specimen
Concrete Sample Retrieval	\$ 90.00/pour day
Soils Compaction Testing Equipment.....	\$ 35.00/day
Mileage	\$ 0.70/mile

The above referenced hourly rates will include travel time (portal to portal), site time performing field services, and preparation of *Daily Field Reports*. Night work (6:00PM – 6:00AM) and/or Sunday work will be billed at \$135.00 per hour for standard inspections and \$175.00 ~ \$250.00 per hour for specialized inspections. Travel time and mileage will be invoiced from EEI's Lehigh Valley office.

EEI operates with no requirements for full or half day scheduling. To offer this service, a notification period of 24 hours is required prior to the start of our inspection services. EEI does not charge for review of the inspection reports. EEI will also provide copies of the reports directly to other project members as directed by the client.



The Client will be notified prior to the beginning of the field investigation and will be updated on work progress and any unexpected conditions encountered. EEI will remain available to discuss the findings of the report after it is submitted to the client. If requested, the time for supplemental reports, evaluations, or meetings will be billed at the following hourly rates.

ADDITIONAL SERVICES PROVIDED ONLY AT THE REQUEST OF THE CLIENT

Principal Professional Engineer	\$ 250.00/hr.
Senior Professional Engineer.....	\$ 225.00/hr.
Professional Engineer.....	\$ 175.00/hr.
Engineer II	\$ 95.00/hr.
Engineer I	\$ 90.00/hr.
Professional Geologist	\$ 175.00/hr.
Senior Geologist/Scientist.....	\$ 110.00/hr.
Geologist/Scientist	\$ 95.00/hr.
Administration Costs.	\$ 68.00/hr.

Administration costs include time for administering items such as payment applications, lien waivers, third party credit vendors, and maintenance of vendor portal websites.

The above hourly rates and Lump Sum Proposal are valid for a period of twelve (12) months after the date of this proposal. After twelve (12) months, hourly rates, laboratory testing rates and expenses are subject to change.

EEI will require a certificate of insurance to satisfy requirements from EEI's insurance carrier.



This proposal is based on an agreement to payment upon receipt of the Earth Engineering Incorporated invoice. EEI will be due interest of 1½ percent per month for all unpaid balances beyond 30 days of the invoice date.

EEI will require a certificate of insurance to satisfy requirements from EEI's insurance carrier.

Earth Engineering Incorporated appreciates the opportunity to prepare and submit this proposal. If you have any questions regarding this proposal, please call.

EARTH ENGINEERING INCORPORATED



Michael J. Carmosky, S.E.O.
Assistant Director ~ Lehigh Valley Division



Paul J. Creneti, P.G.
Director ~ Lehigh Valley Division

Please indicate the acceptance of the foregoing terms and conditions by affixing your signature in the space provided and returning the original to our office.

EEI CONTRACT AMOUNT: Time and Materials

ACCEPTED BY: _____
(Sign Name Here)

(Print Name & Title Here)

DATE: _____

Accounts Payable Information (if different than addressee):

Purchase Order Number (if applicable): _____

Remit Invoices to: _____

Address: _____

Phone Number: _____

Email: _____

Please check the preferred:



Mail Invoice



Email Invoice



Attachment B

Testing and Inspection Professional
Certificate(s) of Insurance

BLANKET ADDITIONAL INSURED AND LIABILITY EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM
BUSINESSOWNERS COMMON POLICY CONDITIONS

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I. BLANKET ADDITIONAL INSURED PROVISIONS

A. ADDITIONAL INSURED – BLANKET VENDORS

Who Is An Insured is amended to include as an additional insured any person or organization (referred to below as vendor) with whom you agreed under a **"written contract"** to provide insurance, but only with respect to **"bodily injury"** or **"property damage"** arising out of **"your products"** which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:
 - a. **"Bodily injury"** or **"property damage"** for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - b. Any express warranty unauthorized by you;
 - c. Any physical or chemical change in the product made intentionally by the vendor;
 - d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- h. **"Bodily injury" or "property damage"** arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
- (1) The exceptions contained in Subparagraphs d. or f.; or
 - (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
 3. This provision 2. does not apply to any vendor included as an insured by an endorsement issued by us and made a part of this Policy.
 4. This provision 2. does not apply if **"bodily injury" or "property damage"** included within the **"products-completed operations hazard"** is excluded either by the provisions of the Policy or by endorsement.

B. MISCELLANEOUS ADDITIONAL INSURED

1. **Who Is An Insured** is amended to include as an insured any person or organization (called additional insured) described in paragraphs 3.a. through 3.j. below whom you are required to add as an additional insured on this policy under a **"written contract."**
2. However, subject always to the terms and conditions of this policy, including the limits of insurance, we will not provide the additional insured with:
 - a. A higher limit of insurance than required by such **"written contract;"**
 - b. Coverage broader than required by such **"written contract"** and in no event greater than that described by the applicable paragraph a. through k. below; or
 - c. Coverage for **"bodily injury" or "property damage"** included within the **"products-completed operations hazard."** But this paragraph c. does not apply to the extent coverage for such liability is provided by paragraph 3.j. below.

Any coverage granted by this endorsement shall apply only to the extent permitted by law.

3. Only the following persons or organizations can qualify as additional insureds under this endorsement:

a. **Controlling Interest**

Any persons or organizations with a controlling interest in you but only with respect to their liability arising out of:

- (1) such person or organization's financial control of you; or
- (2) Premises such person or organization owns, maintains or controls while you lease or occupy these premises;

provided that the coverage granted to such additional insureds does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

b. **Co-owner of Insured Premises**

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability for **"bodily injury," "property damage" or "personal and advertising injury"** as co-owner of such premises.

c. **Grantor of Franchise**

Any person or organization that has granted a franchise to you, but only with respect to such person or organization's liability for **"bodily injury," "property damage," or "personal and advertising injury"** as grantor of a franchise to you.

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d. Lessor of Equipment

Any person or organization from whom you lease equipment, but only with respect to liability for "**bodily injury**," "**property damage**" or "**personal and advertising injury**" caused in whole or in part by your maintenance, operation or use of such equipment, provided that the "**occurrence**" giving rise to such "**bodily injury**" or "**property damage**" or the offense giving rise to such "**personal and advertising injury**" takes place prior to the termination of such lease.

e. Lessor of Land

Any person or organization from whom you lease land, but only with respect to liability for "**bodily injury**," "**property damage**" or "**personal and advertising injury**" arising out of the ownership, maintenance or use of that specific part of the land leased to you, provided that the "**occurrence**" giving rise to such "**bodily injury**" or "**property damage**" or the offense giving rise to such "**personal and advertising injury**," takes place prior to the termination of such lease. The insurance hereby afforded to the additional insured does not apply to structural alterations, new construction or demolition operations performed by, on behalf of or for such additional insured.

f. Lessor of Premises

An owner or lessor of premises leased to you, or such owner or lessor's real estate manager, but only with respect to liability for "**bodily injury**," "**property damage**" or "**personal and advertising injury**" arising out of the ownership, maintenance or use of such part of the premises leased to you, and provided that the "**occurrence**" giving rise to such "**bodily injury**" or "**property damage**" or the offense giving rise to such "**personal and advertising injury**," takes place prior to the termination of such lease. The insurance hereby afforded to the additional insured does not apply to structural alterations, new construction or demolition operations performed by, on behalf of or for such additional insured.

g. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee, or receiver's liability for "**bodily injury**," "**property damage**" or "**personal and advertising injury**" arising out of the ownership, maintenance, or use of a premises by you. This insurance does not apply to structural alterations, new construction or demolition operations performed by, on behalf of or for such additional insured.

h. State or Political Subdivisions

A state or government agency or subdivision or political subdivision that has issued a permit or authorization, but only with respect to such government agency or subdivision or political subdivision's liability for "**bodily injury**," "**property damage**" or "**personal and advertising injury**" arising out of:

(1) The following hazards in connection with premises you own, rent, or control and to which this insurance applies:

- (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- (b) The construction, erection, or removal of elevators; or
- (c) The ownership, maintenance or use of any elevators covered by this insurance; or

(2) The permitted or authorized operations performed by you or on your behalf. But the coverage granted by this paragraph does not apply to:

- (a) "**Bodily injury**," "**property damage**" or "**personal and advertising injury**" arising out of operations performed for the state or government agency or subdivision or political subdivision; or
- (b) "**Bodily injury**" or "**property damage**" included within the "**products-completed operations hazard**."

With respect to this provision's requirement that additional insured status must be requested under a "**written contract**," we will treat as a "**written contract**" any governmental permit that requires you to add the governmental entity as an additional insured.

i. Trade Show Event Lessor

With respect to your participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom you are required to include as an additional insured, but only with respect to such person or organization's liability for "**bodily injury**," "**property damage**," or "**personal and advertising injury**" caused by:

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

in the performance of your ongoing operations at the trade show premises during the trade show event.

j. Other Person or Organization

Any person or organization who is not an additional insured under paragraphs a. through i. above. Such additional insured is an insured solely for "**bodily injury**," "**property damage**" or "**personal and advertising injury**" for which such additional insured is liable because of your acts or omissions.

The coverage granted by this paragraph does not apply to any person or organization:

- (1) For "**bodily injury**," "**property damage**," or "**personal and advertising injury**" arising out of the rendering or failure to render any professional services;
- (2) For "**bodily injury**" or "**property damage**" included in the "**products-completed operations hazard**." But this provision (2) does not apply to such "**bodily injury**" or "**property damage**" if:
 - (a) It is entirely due to your negligence and specifically results from your work for the additional insured which is the subject to the "**written contract**"; and
 - (b) The "**written contract**" requires you to make the person or organization an additional insured for such "**bodily injury**" or "**property damage**"; or
- (3) Who is afforded additional insured coverage under another endorsement attached to this policy.

C. ADDITIONAL PROVISIONS PERTINENT TO ADDITIONAL INSURED COVERAGE

1. With respect only to additional insured coverage provided under paragraphs A. and B. above:

- a. The **BUSINESSOWNERS COMMON POLICY CONDITIONS** are amended to add the following to the Condition entitled **Other Insurance**:

This insurance is excess of all other insurance available to an additional insured whether primary, excess, contingent or on any other basis. However, if a "**written contract**" requires that this insurance be either primary or primary and noncontributing, then this insurance will be primary and non-contributory relative solely to insurance on which the additional insured is a named insured.

- b. Under **Liability and Medical Expense Definitions**, the following definition is added:

"**Written contract**" means a written contract or agreement that requires you to make a person or organization an additional insured on this policy, provided the contract or agreement:

- (1) Is currently in effect or becomes effective during the term of this policy; and
- (2) Was executed prior to:

- (a) The "**bodily injury**" or "**property damage**;" or
 - (b) The offense that caused the "**personal and advertising injury**";
- for which the additional insured seeks coverage.

2. With respect to any additional insured added by this endorsement or by any other endorsement attached to this Coverage Part, the section entitled **Who Is An Insured** is amended to make the following natural persons insureds.

If the additional insured is:

- a. An individual, then his or her spouse is an insured;

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- b. A partnership or joint venture, then its partners, members and their spouses are insureds;
- c. A limited liability company, then its members and managers are insureds;
- d. An organization other than a partnership, joint venture or limited liability company, then its executive officers, directors and shareholders are insureds; or
- e. Any type of entity, then its employees are insureds;

but only with respect to locations and operations covered by the additional insured endorsement's provisions, and only with respect to their respective roles within their organizations. Furthermore, employees of additional insureds are not insureds with respect to liability arising out of:

- (1) "**Bodily injury**" or "**personal and advertising injury**" to any fellow employee or to any natural person listed in paragraphs a. through d. above;
- (2) "**Property damage**" to property owned, occupied or used by their employer or by any fellow employee; or
- (3) Providing or failing to provide professional health care services.

II. LIABILITY EXTENSION COVERAGES

It is understood and agreed that this endorsement amends the **Businessowners Liability Coverage Form**. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement to such provision do not apply.

A. Bodily injury – Expanded Definition

Under **Liability and Medical Expenses Definitions**, the definition of "**Bodily injury**" is deleted and replaced by the following:

"**Bodily injury**" means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at any time which results as a consequence of the physical injury, sickness or disease.

B. Broad Knowledge of Occurrence

Under **Businessowners Liability Conditions**, the Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended to add the following:

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

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

This paragraph applies separately to you and any additional insured.

C. Estates, Legal Representatives and Spouses

The estates, heirs, legal representatives and spouses of any natural person insured shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives and spouses only for claims arising solely out of their capacity as such and, in the case of a spouse, where such claim seeks damages from marital common property, jointly held property, or property transferred from such natural person insured to such spouse. No coverage is provided for any act, error or omission of an estate, heir, legal representative or spouse outside the scope of such person's capacity as such, provided however that the spouse of a natural person Named Insured and the spouses of members or partners of joint venture or partnership Named Insureds are insureds with respect to such spouses' acts, errors or omissions in the conduct of the Named Insured's business.

D. Fellow Employee First Aid Coverage

In the section entitled **Who Is An Insured**, paragraph **2.a.1.** is amended to add the following:

The limitations described in subparagraphs **2.a.1.(a), (b) and (c)** do not apply to your **"employees"** for **"bodily injury"** that results from providing cardiopulmonary resuscitation or other first aid services to a co-**"employee"** or **"volunteer worker"** that becomes necessary while your **"employee"** is performing duties in the conduct of your business. Your **"employees"** are hereby insureds for such services. But the insured status conferred by this provision does not apply to **"employees"** whose duties in your business are to provide professional health care services or health examinations.

E. Legal Liability – Damage To Premises

1. Under **B. Exclusions, 1. Applicable to Business Liability Coverage**, Exclusion **k. Damage To Property**, is replaced by the following:

k. Damage To Property

"Property damage" to:

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

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

Paragraphs **1, 3, and 4**, of this exclusion do not apply to **"property damage"** (other than damage by fire or explosion) to premises:

- (1) rented to you;
- (2) temporarily occupied by you with the permission of the owner, or
- (3) to the contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to Damage To Premises Rented To You as described in Section D – Liability and Medical Expenses Limits of Insurance.

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

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

2. Under **B. Exclusions, 1. Applicable to Business Liability Coverage**, the following paragraph is added, and replaces the similar paragraph, if any, beneath paragraph **(14)** of the exclusion entitled **Personal and Advertising Injury**:

Exclusions **c, d, e, f, g, h, i, k, l, m, n, and o**, do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner or to the contents of premises rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to this coverage as described in **Section D. Liability And Medical Expenses Limits Of Insurance.**



3. The first Paragraph under item 5. **Damage To Premises Rented To You Limit** of the section entitled **Liability And Medical Expenses Limits Of Insurance** is replaced by the following:

The most we will pay under Business Liability for damages because of "**property damage**" to any one premises, while rented to you or temporarily occupied by you with the permission of the owner, including contents of such premises rented to you for a period of 7 or fewer consecutive days, is the Damage to Premises Rented to You Limit. The Damage to Premises Rented to You Limit is the greater of:

- a. \$1,000,000; or
- b. The Damage to Premises Rented to You Limit shown in the Declarations.

F. Personal and Advertising Injury – Discrimination or Humiliation

1. Under **Liability and Medical Expenses Definitions**, the definition of "**personal and advertising injury**" is amended to add the following:

h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:

(1) Not done intentionally by or at the direction of:

(a) The insured; or

(b) Any "**executive officer**," director, stockholder, partner, member or manager (if you are a limited liability company) of the insured; and

(2) Not directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person or person by any insured.

2. Under **B. Exclusions, 1. Applicable to Business Liability Coverage**, the exclusion entitled **Personal and Advertising Injury** is amended to add the following additional exclusions:

(15) Discrimination Relating to Room, Dwelling or Premises

Caused by discrimination directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured.

(16) Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any insured.

(17) Fines or Penalties

Fines or penalties levied or imposed by a governmental entity because of discrimination.

3. This provision (**Personal and Advertising Injury – Discrimination or Humiliation**) does not apply if **Personal and Advertising Injury** Liability is excluded either by the provisions of the Policy or by endorsement.

G. Personal and Advertising Injury - Broadened Eviction

Under **Liability and Medical Expenses Definitions**, the definition of "**Personal and advertising injury**" is amended to delete Paragraph c. and replace it with the following:

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room dwelling or premises that a person or organization occupies committed by or on behalf of its owner, landlord or lessor.

H. Waiver of Subrogation – Blanket

We waive any right of recovery we may have against:

- a. Any person or organization with whom you have a written contract that requires such a waiver.

All other terms and conditions of the Policy remain unchanged.

IMPORTANT: THIS ENDORSEMENT CONTAINS DUTIES THAT APPLY TO THE ADDITIONAL INSURED IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT. SEE PARAGRAPH C., OF THIS ENDORSEMENT FOR THESE DUTIES.

**BLANKET ADDITIONAL INSURED ENDORSEMENT
WITH PRODUCTS-COMPLETED OPERATIONS COVERAGE AND
BLANKET WAIVER OF SUBROGATION**

Architects, Engineers and Surveyors

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM
BUSINESSOWNERS COMMON POLICY CONDITIONS

A. Who Is An Insured is amended to include as an insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement; but the written contract or written agreement must be:

1. Currently in effect or becoming effective during the term of this policy; and
2. Executed prior to the:
 - a. **"Bodily injury"** or **"property damage"**; or
 - b. Offense that caused the **"personal and advertising injury"**;
for which the additional insured seeks coverage

B. The insurance provided to the additional insured is limited as follows:

1. The person or organization is an additional insured only with respect to liability for **"bodily injury," "property damage"** or **"personal and advertising injury"** caused in whole or in part by:
 - a. Your acts or omissions; or
 - b. The acts or omissions of those acting on your behalf,
in the performance of your ongoing operations specified in the written contract or written agreement; or
 - c. **"Your work"** that is specified in the written contract or written agreement, but only for **"bodily injury"** or **"property damage"** included in the **"products-completed operations hazard,"** and only if:
 - (1) The written contract or written agreement requires you to provide the additional insured such coverage; and
 - (2) This Coverage Part provides such coverage.
2. The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations of this policy, whichever is less. These Limits of Insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations.
3. The insurance provided to the additional insured does not apply to **"bodily injury," "property damage"** or **"personal and advertising injury"** arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:
 - a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project of which you serve as construction manager; or
 - b. Inspection, supervision, quality control, engineering or architectural services done by you on a project of which you serve as construction manager.
4. The insurance provided to the additional insured does not apply to **"bodily injury," "property damage"** or **"personal and advertising injury"** arising out of construction or demolition work while you are acting as a construction or demolition contractor.

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- C. Under **Businessowners Liability Conditions**, the condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended to add the following:

An additional insured under this endorsement will as soon as practicable:

1. Give written notice of an occurrence or an offense to us which may result in a claim or "suit" under this insurance;
2. Tender the defense and indemnity of any claim or "suit" to us for a loss we cover under this Coverage Part;
3. Except as provided for in paragraph **D.2.** below:
 - a. Tender the defense and indemnity of any claim or "suit" to any other insurer which also has insurance for a loss we cover under this Coverage Part; and
 - b. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a claim or "suit" from the additional insured.

- D. With respect only to the insurance provided by this endorsement, the condition entitled **Other Insurance** of the **BUSINESSOWNERS COMMON POLICY CONDITIONS** is amended to delete paragraphs **2.** and **3.** and replace them with the following:

2. This insurance is excess over any other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, But if required by the written contract or written agreement, this insurance will be primary and noncontributory relative to insurance on which the additional insured is a Named Insured.
3. When this insurance is excess, we will have no duty under **Business Liability** insurance to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured against that "suit" If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured's rights against all those other insurers.

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

- (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.

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.

E. Additional Insured – Extended Coverage

When an additional insured is added by this or any other endorsement attached to this Coverage Part, the section entitled **Who Is An Insured** is amended to make the following natural persons insureds:

If the additional insured is:

1. An individual, then his or her spouse is an insured;
2. A partnership or joint venture, then its partners, members and their spouses are insureds;
3. A limited liability company, then its members and managers are insureds;
4. An organization other than a partnership, joint venture or limited liability company, then its executive officers, directors and shareholders are insureds; or
5. Any type of entity, then its employees are insureds;

but only with respect to locations and operations covered by the additional insured endorsement's provisions, and only with respect to their respective roles within their organizations. Furthermore, employees of additional insureds are not insureds with respect to liability arising out of:

- (1) "**Bodily injury**" or "**personal and advertising injury**" to any fellow employee or to any natural person listed in paragraphs **1.** through **4.** above;

- (2) **"Property damage"** to property owned, occupied or used by their employer or by any fellow employee; or
- (3) Providing or failing to provide professional health care services.

F. The condition entitled **Transfer of Rights of Recovery Against Others to Us** of the **BUSINESSOWNERS COMMON POLICY CONDITIONS** is amended to deleted paragraph **2.** and replace it with the following:

- 2. We waive any right of recovery we may have against any person or organization with whom you have agreed to waive such right of recovery in a written contract or agreement because of payments we make for injury or damage arising out of your ongoing operations or **"your work"** done under a contract with that person or organization and included within the **"products-completed operations hazard."**

All other terms and conditions of the Policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY-
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COMMON POLICY CONDITIONS

The following is added to Paragraph H. **Other Insurance** and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

All other terms and conditions of the Policy remain unchanged.

**COMMERCIAL UMBRELLA PLUS
COVERAGE PART**

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

Throughout this policy the words "you" and "your" refer to the Named Insured identified under **SECTION II – WHO IS AN INSURED** of this policy.

The word "insured" means any person or organization qualifying as such under **SECTION II – WHO IS AN INSURED**.

The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V – DEFINITIONS**.

SECTION I – COVERAGES

1. Insuring Agreement

We will pay on behalf of the insured those sums in excess of "scheduled underlying insurance," "unscheduled underlying insurance" or the "retained limit" that the insured becomes legally obligated to pay as "ultimate net loss" because of "bodily injury," "property damage" or "personal and advertising injury" to which this insurance applies.

a. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "incident" anywhere in the world;
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) With respect to "bodily injury" or "property damage" that continues, changes or resumes so as to occur during more than one policy period, both of the following conditions are met:
 - (i) Prior to the policy period, no "authorized insured" knew that the "bodily injury" or "property damage" had occurred, in whole or in part; and
 - (ii) During the policy period, an "authorized insured" first knew that the "bodily injury" or "property damage" had occurred, in whole or in part.

For purposes of this Paragraph (1) a.(3) only, if (a) "bodily injury" or "property damage" that occurs during this policy period does not continue, change or resume after the

termination of this policy period; and (b) no "authorized insured" first knows of this "bodily injury" or "property damage" until after the termination of this policy period, then such first knowledge will be deemed to be during this policy period.

- b. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any "authorized insured" includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any "authorized insured":
 - (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand, claim or "suit" for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. This insurance applies to "personal and advertising injury" caused by an "incident" committed anywhere in the world during the policy period.

If we are prevented by law, statute or otherwise from paying on behalf of the insured, then we will indemnify the insured for those sums that the insured is legally obligated to pay as "ultimate net loss" because of "bodily injury," "property damage" or "personal and advertising injury" to which this insurance applies.

2. Exclusions

This Insurance does not apply to:

a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property. This exclusion does not apply to Employers Liability claims for "bodily injury" covered by "scheduled underlying insurance."

b. Contractual Liability

"Bodily injury," "property damage" or "personal and advertising injury" for which the insured is obligated to pay damages by reason of the

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

- e. A corporation or organization, other than partnerships, joint ventures or limited liability companies, that you form, acquire or gain control of during the policy period, but only with respect to "bodily injury," "property damage" or "personal and advertising injury" taking place after you form, acquire or gain control of such corporation or organization.

2. Insured means the Named Insured and:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your employees, other than your executive officers and directors (if you are an organization other than a partnership, joint venture or limited liability company) or your members (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" is an insured for:

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

- (a) To you; to your partners or members (if you are a partnership or joint venture) to your members (if you are a limited liability company) or to a co-employee while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-employee or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by;
- (b) Rented to, in the care, custody or control or, 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. A person or organization for whom you are required, by virtue of a written contract entered into prior to the "bodily injury," "property damage" or "personal and advertising injury" occurring or being committed, to provide the insurance that is afforded by this policy. This insurance applies only with respect to operations by you or on your behalf or to facilities you own or use, but only to the extent of the limits of insurance required by such contract, not to exceed the limits of insurance in this policy.

- c. Any other persons or organizations included as an insured under the provisions of the "scheduled underlying insurance" shown in the Declarations of this policy and then only for the same coverage, except for limits of insurance, afforded under such "scheduled underlying insurance."

However, if a blanket additional insured endorsement is attached to the general liability "scheduled underlying insurance" pursuant to a written or oral contract or agreement between you and another person or organization (called additional insured), this insurance is excess over such insurance provided to the additional insured subject to the following conditions:

- (1) If the limits specified in the written contract or agreement are less than the limits provided by the "scheduled underlying insurance," then no coverage is provided to the additional insured under this policy.
- (2) If the limits specified in the written contract or agreement are greater than the limits provided by the "scheduled underlying insurance," then this insurance is excess over the insurance provided by the "scheduled underlying insurance." The limits of insurance for the additional insured are the lesser of:
 - (i) The limits specified in the written contract; or
 - (ii) The limits of the "scheduled underlying insurance" plus the limits of this policy.

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

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY-
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COMMON POLICY CONDITIONS

The following is added to Paragraph H. **Other Insurance** and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

All other terms and conditions of the Policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

We will waive any right of recovery we may have against the person or organization shown in the schedule below because of payments we make for injury or damage arising out of your work, done under a contract with that person or organization. The waiver applies only to that person or organization shown in the schedule below:

Name of Person or Organization:

ANY PERSON OR ORGANIZATION ON WHOSE BEHALF YOU ARE REQUIRED TO OBTAIN (SEE ENDT)

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

ElitePac®
Commercial Automobile Extension

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Business Auto Coverage Form apply unless modified by the endorsement.

AMENDMENTS TO SECTION II - LIABILITY COVERAGE

- A. If this policy provides Auto Liability coverage for Owned Autos, the following extensions are applicable accordingly:

NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following is added to **SECTION II, A.1. - Who Is An Insured:**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no similar insurance available to that organization. However:

1. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
2. Coverage does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization.

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.

EXPENSES FOR BAIL BONDS AND LOSS OF EARNINGS

Paragraphs (2) and (4) of **SECTION II, A.2.a. - Supplementary Payments** are deleted in their entirety and replaced with the following:

- (2) Up to the Limit of Insurance shown on the ElitePac Schedule for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" covered under this policy. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request. This includes actual loss of earnings because of time off from work, which we will pay up to the Limit of Insurance shown on the ElitePac Schedule.

EMPLOYEE INDEMNIFICATION AND EMPLOYER'S LIABILITY AMENDMENT

The following is added to **SECTION II, B.4. - Exclusions:**

This exclusion does not apply to a "volunteer worker" who is not entitled to workers compensation, disability or unemployment compensation benefits.

FELLOW EMPLOYEE COVERAGE

The **Fellow Employee** Exclusion, **SECTION II, B.5. -** is deleted in its entirety.

CARE, CUSTODY OR CONTROL AMENDMENT

The following is added to **SECTION II, B.6. - Exclusions:**

This exclusion does not apply to property owned by anyone other than an "insured", subject to the following:

1. The most we will pay under this exception for any one "accident" is the Limit of Insurance stated in the ElitePac Schedule; and
2. A per "accident" deductible as stated in the ElitePac Schedule applies to this exception.

- B. If this policy provides Auto Liability coverage for Owned Autos or Non-Owned Autos, the following extension is applicable accordingly:

LIMITED LIABILITY COMPANIES

The following is added to **SECTION II, A.1. - Who Is An Insured:**

If you are a limited liability company, your members and managers are "insureds" while using a covered "auto" you don't own, hire or borrow during the course of their duties for you.

BLANKET ADDITIONAL INSUREDS - As Required By Contract

The following is added to **SECTION II, A.1. - Who Is An Insured:**

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Any person or organization whom you have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional "insured" on your policy. Such person or organization is an additional "insured" only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by your ownership, maintenance or use of a covered "auto". This coverage shall be primary and non-contributory with respect to the additional "insured". This provision only applies if:

1. It is required in the written contract, written agreement or written permit identified in this section;
2. It is permitted by law; and
3. The written contract or written agreement has been executed (executed means signed by a named insured) or written permit issued prior to the "bodily injury" or "property damage".

C. If this policy provides Auto Liability coverage for Non-Owned Autos, the following extension is applicable accordingly:

EMPLOYEES AS INSURED

If this policy provides Auto Liability coverage for Non-Owned Autos, the following is added to **SECTION II, A.1. - Who Is An Insured:**

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.

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

AMENDMENTS TO SECTION III - PHYSICAL DAMAGE COVERAGE

If this policy provides Comprehensive, Specified Causes of Loss or Collision coverage, the following extensions are applicable for those "autos" for which Comprehensive, Specified Causes of Loss or Collision coverage is purchased:

TOWING AND LABOR

SECTION III, A.2. - Towing is deleted in its entirety and replaced with the following:

We will pay all reasonable towing and labor costs up to the maximum Limit of Insurance shown on the ElitePac Schedule per tow each time a covered "Private Passenger Auto", "Social Service Van or Bus" or "Light Truck" is disabled and up to the maximum Limit of Insurance per tow each time a covered "Medium Truck", "Heavy Truck" or "Extra Heavy Truck" is disabled.

For labor charges to be eligible for reimbursement the labor must be performed at the place of disablement.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

GLASS BREAKAGE DEDUCTIBLE

The following is added to **SECTION III, A.3. - Glass Breakage - Hitting A Bird Or Animal - Falling Objects or Missiles:**

If damaged glass is repaired rather than replaced, no deductible will apply for such repair. This extension does not apply to Emergency Services Organizations and Governmental Entities.

ADDITIONAL TRANSPORTATION EXPENSES SECTION III, A.4.a. - Transportation Expenses is deleted in its entirety and replaced with the following:

We will pay up to the maximum Limit of Insurance shown on the ElitePac Schedule for temporary transportation expenses that you incur because of any "loss" to a covered "auto", but only if the covered "auto" carries the coverages and meets the requirements described in **1.** or **2.** below:

1. We will pay temporary transportation expenses for total theft of a covered "auto". We will only pay for such expenses incurred during the period beginning 24 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".
2. For "loss" other than total theft of a covered "auto" under Comprehensive or Specified Causes of Loss Coverage, or for any "loss" under Collision Coverage to a covered "auto", we will only pay for those temporary transportation expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the number of days reasonably required to repair or replace the covered "auto" or 30 days.

Paragraph **2.** of this extension does not apply while there are spare or reserve "autos" available to you for your operations.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

HIRED AUTO PHYSICAL DAMAGE COVERAGE

The following is added to **SECTION III, A.4. - Coverage Extensions:**

Physical Damage coverage is hereby extended to apply to Physical Damage "loss" to "autos" leased, hired, rented or borrowed without a driver. We will provide coverage equal to the broadest coverage available to any covered "auto" shown in the Declarations. But, the most we will pay for "loss" to each "auto" under this coverage extension is the lesser of:

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1. The Limit of Insurance stated in the ElitePac Schedule; or
2. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
3. The actual cost of repairing or replacing the damaged or stolen property with other property of like kind and quality. A part is of like kind and quality when it is of equal or better condition than the pre-accident part. We will use the original equipment from the manufacturer when:
 - (a) The operational safety of the vehicle might otherwise be impaired;
 - (b) Reasonable and diligent efforts to locate the appropriate rebuilt, aftermarket or used part have been unsuccessful; or
 - (c) A new original equipment part of like kind and quality is available and will result in the lowest overall repair cost.

For each leased, hired, rented or borrowed "auto" our obligation to pay "losses" will be reduced by a deductible equal to the highest deductible applicable to any owned "auto" for that coverage. No deductible will be applied to "losses" caused by fire or lightning.

SECTION IV, B.5. Other Insurance Condition, Paragraph 5.b. is deleted in its entirety and replaced by the following:

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 or agreement in that "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".

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

HIRED AUTO LOSS OF USE COVERAGE

The following is added to **SECTION III, A.4. - Coverage Extensions:**

We will pay expenses for which you are legally responsible to pay up to the Limit of Insurance shown on the ElitePac Schedule per "accident" for loss of use of a leased, hired, rented or borrowed "auto" if it results from an "accident".

This coverage extension does not apply to Emergency Services Organizations, Governmental Entities, and Schools.

AUTO LOAN/LEASE GAP COVERAGE (Not Applicable in New York)

The following is added to **SECTION III, A.4. - Coverage Extensions:**

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

1. The amount paid under the Physical Damage Coverage Section of the policy; and
2. Any:
 - a. Overdue lease/loan payments at the time of "loss";
 - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear, high mileage or similar charges;
 - c. Security deposits not refunded by the lessor or financial institution;
 - d. Costs for extended warranties, credit life, health, accident, or disability insurance purchased with the loan or lease; and
 - e. Carry-over balances from previous leases or loans.

You are responsible for the deductible applicable to the "loss" for the covered "auto".

PERSONAL EFFECTS

The following is added to **SECTION III, A.4. - Coverage Extensions:**

If this policy provides Comprehensive Coverage for a covered "auto" you own and that covered "auto" is stolen, we will pay up to the Limit of Insurance shown on the ElitePac Schedule, without application of a deductible, for lost personal effects that were in the covered "auto" at the time of theft. Personal effects do not include jewelry, tools, money, or securities. This coverage is excess over any other collectible insurance.

AIRBAG COVERAGE

The following is added to **SECTION III, B.3.a. - Exclusions:**

Mechanical breakdown does not include the accidental discharge of an airbag.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

EXPANDED AUDIO, VISUAL, AND DATA ELECTRONIC EQUIPMENT COVERAGE

SECTION III, B.4. - Exclusions

This exclusion does not apply to the following:

1. Global positioning systems;
2. "Telematic devices"; or
3. Electronic equipment that reproduces, receives or transmits visual or data signals and accessories used with such equipment, provided such equipment is:



- a. Permanently installed in or upon the covered "auto" at the time of the "loss";
- b. Removable from a housing unit that is permanently installed in the covered "auto" at the time of the "loss";
- c. Designed to be solely operated by use of power from the "auto's" electrical system; or
- d. Designed to be used solely in or upon the covered "auto".

For each covered "loss" to such equipment, a deductible of \$50 shall apply, unless the deductible otherwise applicable to such equipment is less than \$50, at which point the lower deductible, if any, will apply.

COMPREHENSIVE DEDUCTIBLE - LOCATION TRACKING DEVICE

The following is added to **SECTION III, D. - Deductible:**

Any Comprehensive Coverage Deductible shown in the Declarations will be reduced by 50% for any "loss" caused by theft if the covered "auto" is equipped with a location tracking device and that device was the sole method used to recover the "auto".

PHYSICAL DAMAGE LIMIT OF INSURANCE

SECTION III, C. - Limit Of Insurance is deleted in its entirety and replaced with the following:

The most we will pay for a "loss" in any one "accident" is the lesser of:

1. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
2. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

AMENDMENTS TO SECTION IV - BUSINESS AUTO CONDITIONS

DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The following is added to **SECTION IV, A.2.a. - Duties In The Event Of Accident, Claim, Suit Or Loss:**

The notice requirements for reporting "accident" claim, "suit" or "loss" information to us, including provisions related to the subsequent investigation of such "accident", claim, "suit" or "loss" do not apply until the "accident", claim, "suit" or "loss" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;

3. An executive officer or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company;
5. Your elected or appointed officials, trustees, board members or your insurance manager, if you are an organization other than a partnership, joint venture or limited liability company.

But, this section does not amend the provisions relating to notification of police or protection or examination of the property that was subject to the "loss".

WAIVER OF SUBROGATION

SECTION IV, A.5. - Transfer Of Rights Of Recovery Against Others To Us is deleted in its entirety and replaced with the following:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" resulting from the ownership, maintenance or use of a covered "auto" but only when you have assumed liability for such "bodily injury" or "property damage" in an "insured contract". In all other circumstances, if a person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us.

MULTIPLE DEDUCTIBLES

The following is added to **SECTION IV, A. - Loss Conditions:**

If a "loss" from one event involves two or more covered "autos" and coverage under Comprehensive or Specified Causes of Loss applies, only the highest applicable deductible will be applied.

CONCEALMENT, MISREPRESENTATION OR FRAUD

The following is added to **SECTION IV, B.2. - Concealment, Misrepresentation Or Fraud:**

If you should unintentionally fail to disclose any existing hazards in your representations to us prior to the inception date of the policy or during the policy period in connection with any newly discovered hazards, we will not deny coverage under this Coverage Form based upon such failure.

POLICY PERIOD, COVERAGE TERRITORY

SECTION IV, B.7. - Policy Period, Coverage Territory is deleted in its entirety and replaced with the following:

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the "Coverage Territory".

We also cover "loss" to or "accidents" involving a covered "auto" while being transported between any of these places.

TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US - DEDUCTIBLES

The following is added to **SECTION IV, B.8. - Two Or More Coverage Forms Or Policies Issued By Us:**

If a "loss" covered under this Coverage Form also involves a "loss" to other property resulting from the same "accident" that is covered under this policy or another policy issued by us or any member company of ours, only the highest applicable deductible will be applied.

AMENDMENTS TO SECTION V - DEFINITIONS

BODILY INJURY INCLUDING MENTAL ANGUISH (Not Applicable in New York)

The definition of bodily injury is deleted in its entirety and replaced by the following:

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

ADDITIONS TO SECTION V - DEFINITIONS

COVERAGE TERRITORY

"Coverage Territory" means:

1. The United States of America (including its territories and possessions), Canada and Puerto Rico; and
2. Anywhere in the world, except for any country or jurisdiction that is subject to trade or other economic sanction or embargo by the United States of America, if a covered "auto" is leased, hired, rented, or borrowed without a driver for a period of 30 days or less, and the insured's responsibility to pay "damages" is determined in a "suit" on the merits in and under the substantive law of the United States of America (including its territories and possessions), Puerto Rico, or Canada, or in a settlement we agree to.

If we are prevented by law, or otherwise, from defending the "insured" in a "suit" brought in a location described in Paragraph 2. above, the insured will conduct a defense of that "suit". We will reimburse the "insured" for the reasonable and necessary expenses incurred for the defense of any such "suit" seeking damages to which this insurance applies, and that we would have paid had we been able to exercise our right and duty to defend.

EXTRA HEAVY TRUCK

"Extra Heavy Truck" means a truck with a gross vehicle weight rating of 45,001 pounds or more.

HEAVY TRUCK

"Heavy Truck" means a truck with a gross vehicle weight rating of 20,001 pounds to 45,000 pounds.

LIGHT TRUCK

"Light Truck" means a truck with a gross vehicle weight rating of 10,000 pounds or less.

MEDIUM TRUCK

"Medium Truck" means a truck with a gross vehicle weight rating of 10,001 pounds to 20,000 pounds.

PRIVATE PASSENGER AUTO

"Private Passenger Auto" means a four-wheel "auto" of the private passenger or station wagon type. A pickup, panel truck or van not used for business is included within the definition of a "private passenger auto".

SOCIAL SERVICE VAN OR BUS

"Social Service Van or Bus" means a van or bus used by a government entity, civic, charitable or social service organization to provide transportation to clients incidental to the social services sponsored by the organization, including special trips and outings.

TELEMATIC DEVICE

"Telematic Device" includes devices designed for the collection and dissemination of data for the purpose of monitoring vehicle and/or driver performance. This includes Global Positioning System technology, wireless safety communications and automatic driving assistance systems, all integrated with computers and mobile communications technology in automotive navigation systems.

VOLUNTEER WORKER

"Volunteer worker" means a person who performs business duties for you, for no financial or other compensation.

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**PRIMARY AND NONCONTRIBUTORY —
OTHER INSURANCE CONDITION**

COMMERCIAL AUTO
CA 04 49 11 16

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance - Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:
- This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:
1. Such "insured" is a Named Insured under such other insurance; and
 2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".
- B.** The following is added to the **Other Insurance** Condition in the Auto Dealers Coverage Form and supersedes any provision to the contrary:
- This Coverage Form's Covered Autos Liability Coverage and General Liability Coverages are primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:
1. Such "insured" is a Named Insured under such other insurance; and
 2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

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WC 00 03 13
WAIVER OF OUR RIGHT TO
RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 4/1/2023 at 12:01 A.M., standard time, forms a part of

(DATE)

Policy No. WC 9144848

Endorsement No.

Premium (if any) \$

of the Selective Way Insurance Company

(NAME OF INSURANCE COMPANY)

issued to Earth Engineering, Inc.

Authorized Representative

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

Schedule

Any party for whom you have agreed via written contract to waive subrogation prior to any loss.

This waiver is not applicable in any jurisdiction where prohibited by statute or regulation.