



**FULTON  
COUNTY**

**CONTRACT DOCUMENTS FOR**

**20ITB100620A-CJC**

**Small Water Meter Installation**

**For**

**Public Works**

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## CONTRACT AGREEMENT

Contractor: Wade Coots Company, Inc.

Contract No.: 20ITB100620A-CJC, Small Water Meter Installation

Address: 174 Duncan Circle  
City, State Hiram, GA 30141

Telephone: (770) 819-0601

Email: [mark.sutton@wadecootscompany.com](mailto:mark.sutton@wadecootscompany.com)

Contact: W. Greg Coots  
Vice President

This Agreement made and entered into effective the 1st day of January, 2021 by and between **FULTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia, hereinafter referred to as "**County**", and **WADE COOTS COMPANY, INC.**, hereinafter referred to as "**Contractor**", authorized to transact business in the State of Georgia.

### WITNESSETH

WHEREAS, County through its Public Works Department hereinafter referred to as the "**Department**", desires to retain a qualified and experienced Contractor to perform small water meter installation, hereinafter, referred to as the "**Project**".

WHEREAS, Contractor has represented to County that it is experienced and has qualified and local staff available to commit to the Project and County has relied upon such representations.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, County and Contractor agree as follows:

### ARTICLE 1. CONTRACT DOCUMENTS

County hereby engages Contractor, and Contractor hereby agrees, to perform the services hereinafter set forth in accordance with this Agreement, consisting of the following contract documents:

- I. Form of Agreement;
- II. Addenda;
- III. Exhibit A: General Conditions;
- IV. Exhibit B: Special Conditions
- V. Exhibit C: Scope of Work

- VI. Exhibit D: Compensation;
- VII. Exhibit E: Purchasing Forms;
- VIII. Exhibit F: Contract Compliance Forms;
- IX. Exhibit G: Insurance and Risk Management Form;

The foregoing documents constitute the entire Agreement of the parties pertaining to the Project hereof and is intended as a complete and exclusive statement of promises, representations, discussions and agreements oral or otherwise that have been made in connection therewith. No modifications or amendment to this Agreement shall be binding upon the parties unless the same is in writing, conforms to Fulton County Purchasing Code §102-420 governing change orders, is signed by the County's and the Contractor's duly authorized representatives, and entered upon the meeting minutes of the Fulton County Board of Commissioners.

If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: 1) the Agreement, 2) the Bid document, 3) any Addenda, 4) change orders, 5) the exhibits, and 6) portions of Contractor's proposal that was accepted by the County and made a part of the Contract Documents.

The Agreement was approved by the Fulton County Board of Commissioners on February 17, 2021, BOC#21-0137.

## **ARTICLE 2. SEVERABILITY**

If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect, and enforceable in accordance with its terms.

## **ARTICLE 3. DESCRIPTION OF PROJECT**

County and Contractor agree the Project is to perform small water installation. All exhibits referenced in this agreement are incorporated by reference and constitute an integral part of this Agreement as if they were contained herein.

## **ARTICLE 4. SCOPE OF WORK**

Unless modified in writing by both parties in the manner specified in the agreement, duties of Contractor shall not be construed to exceed those services specifically set forth herein. Contractor agrees to provide all services, products, and data and to perform all tasks described in Exhibit C, Scope of Work.

## **ARTICLE 5. SERVICES PROVIDED BY COUNTY**

Contractor shall gather from County all available non-privileged data and information pertinent to the performance of the services for the Project. Certain services as described in Exhibit C, Scope of Work, if required, will be performed and furnished by County in a timely manner so as not to unduly delay Contractor in the performance of said obligations. County shall have the final decision as to what data and information is pertinent.

County will appoint in writing a County authorized representative with respect to work to be performed under this Agreement until County gives written notice of the appointment of a successor. The County's authorized representative shall have complete authority to transmit instructions, receive information, and define County's policies, consistent with County rules and regulations. Contractor may rely upon written consents and approvals signed by the County's authorized representative that are consistent with County rules and regulations.

## **ARTICLE 6. MODIFICATIONS**

If during the course of performing the Project, County and Contractor agree that it is necessary to make changes in the Project as described herein and referenced exhibits, such changes will be incorporated by written amendments in the form of Change Orders to this Agreement. Any such Change Order and/or supplemental agreement shall not become effective or binding unless approved by the Board of Commissioners and entered on the minutes. Such modifications shall conform to the requirements of the Fulton County Purchasing Code, §102-420 which is incorporated by reference herein.

## **ARTICLE 7. SCHEDULE OF WORK**

Contractor shall not proceed to furnish such services and County shall not become obligated to pay for same until a written authorization to proceed (Notice to Proceed) has been sent to Contractor from County. The Contractor shall begin work under this Agreement no later than five (5) days after the effective date of notice to proceed.

## **ARTICLE 8. MULTI-YEAR CONTRACT TERM**

The period of this Agreement shall consist of a series of Terms as defined below. The County is obligated only to pay such compensation under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the County's then current fiscal year.

### **a. Commencement Term**

The "Commencement Term" of this Agreement shall begin on 1<sup>st</sup> day of January, 2021, the starting date, and shall end absolutely and without

further obligation on the part of the county on the 31<sup>st</sup> day of December 2021. The Commencement Term shall be subject to events of termination and the County's termination rights that are described elsewhere in this Agreement. Notwithstanding anything contained in this Agreement, the County's obligation to make payments provided under this Agreement shall be subject to the County's annual appropriations of funds for the goods, services, materials, property and/or supplies procured under this Agreement by the County's governing body and such obligation shall not constitute a pledge of the County's full faith and credit within the meaning of any constitutional debt limitation.

**b. Renewal Terms**

Unless the terms of this Agreement are fulfilled with no further obligation of the part of either party on or before the final date of the Commencement Term as stated above, or unless an event of termination as defined within this Agreement occurs during the Commencement Term, this Agreement may be renewed at the written option of the County upon the approval of the County Board of Commissioners for two (2) one-year ("Renewal Terms"). However, no Renewal Term of this Agreement shall be authorized nor shall any Renewal Term of this Agreement commence unless and until each Renewal Term has first been approved in writing by the County Board of Commissioners for the calendar year of such Renewal Term. If approved by the County Board of Commissioners, the First Renewal Term shall begin on the 1<sup>st</sup> day of January, 2022 and shall end no later than the 31<sup>st</sup> day of December, 2022. If approved by the County Board of Commissioners, the Second Renewal Term shall begin on the 1<sup>st</sup> day of January, 2023 and shall end no later than the 31<sup>st</sup> day of December, 2023. If the County chooses not to exercise any Renewal Term as provided in this Section, then the Term of this Agreement then in effect shall also be deemed the "Ending Term" with no further obligation on the party of either party.

**c. Term Subject to Events of Termination**

All "Terms" as defined within this Section are subject to the section of this Agreement which pertain to events of termination and the County's rights upon termination.

**d. Same Terms**

Unless mutually agreed upon in writing by the parties, or otherwise indicated herein, all provisions and conditions of any Renewal Term shall be exactly the same as those contained within in this Agreement.

**e. Statutory Compliance Regarding Purchase Contracts.**

The parties intend that this Agreement shall, and this Agreement shall operate in conformity with and not in contravention of the requirements of

O.C.G.A. § 36-60-13, as applicable, and in the event that this Agreement would conflict therewith, then this Agreement shall be interpreted and implemented in a manner consistent with such statute.

#### ARTICLE 9. **COMPENSATION**

Compensation for work performed by Contractor on Project shall be in accordance with the payment provisions and compensation schedule, attached as Exhibit D, Compensation.

The total contract amount for the Project shall not exceed \$300,000.00 (Three Hundred Thousand Dollars and No Cents) , which is full payment for a complete scope of work.

#### ARTICLE 10. **PERSONNEL AND EQUIPMENT**

Contractor shall designate in writing a person(s) to serve as its authorized representative(s) who shall have sole authority to represent Contractor on all manners pertaining to this contract.

Contractor represents that it has secured or will secure, at its' own expense, all equipment and personnel necessary to complete this Agreement, none of whom shall be employees of or have any contractual relationship with County. All of the services required hereunder will be performed by Contractor under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under law to perform such services.

Written notification shall be immediately provided to County upon change or severance of any of the authorized representative(s), listed key personnel or subcontractor performing services on this Project by Contractor. No changes or substitutions shall be permitted in Contractor's key personnel or subcontractor as set forth herein without the prior written approval of the County. Requests for changes in key personnel or subcontractors will not be unreasonably withheld by County.

## ARTICLE 11. **SUSPENSION OF WORK**

**Suspension Notice:** The County may by written notice to the Contractor, suspend at any time the performance of all or any portion of the services to be performed under this Agreement. Upon receipt of a suspension notice, the Contractor must, unless the notice requires otherwise:

- 1) Immediately discontinue suspended services on the date and to the extent specified in the notice;
- 2) Place no further orders or subcontracts for material, services or facilities with respect to suspended services, other than to the extent required in the notice; and
- 3) Take any other reasonable steps to minimize costs associated with the suspension.

**Notice to Resume:** Upon receipt of notice to resume suspended services, the Contractor will immediately resume performance under this Agreement as required in the notice.

## ARTICLE 12. **DISPUTES**

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the County. The representative shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The Contractor shall have 30 days from date the decision is sent to appeal the decision to the County Manager or his designee by mailing or otherwise furnishing to the County Manager or designee, copy of the written appeal. The decision of the County Manager or his designee for the determination of such appeal shall be final and conclusive. This condition shall not be pleaded in any suit involving a question of fact arising under this Agreement, unless the same is fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of an appeal. Pending any final decision of a dispute hereunder, Contractor shall proceed diligently with performance of the Agreement and in accordance with the decision of the County's designated representative.

## ARTICLE 13. **TERMINATION OF AGREEMENT FOR CAUSE**

- (1) Either County or Contractor may terminate work under this Agreement in the event the other party fails to perform in accordance with the provisions of the Agreement. Any party seeking to terminate this Agreement is required to give thirty (30) days prior written notice to the other party.

- (2) Notice of termination shall be delivered by certified mail with receipt for delivery returned to the sender.
- (3) **TIME IS OF THE ESSENCE** and if the Contractor refuses or fails to perform the work as specified in Exhibit C, Scope of Work and maintain the scheduled level of effort as proposed, or any separable part thereof, with such diligence as will insure completion of the work within the specified time period, or any extension or tolling there of, or fails to complete said work within such time. The County may exercise any remedy available under law or this Agreement. Failure to maintain the scheduled level of effort as proposed or deviation from the aforesaid proposal without prior approval of County shall constitute cause for termination
- (4) The County may, by written notice to Contractor, terminate Contractor's right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the work and perform the same to completion, by contract or otherwise, and Contractor shall be required to provide all copies of finished or unfinished documents prepared by Contractor under this Agreement.
- (5) Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents as reasonably determined by the County.
- (6) Whether or not the Contractor's right to proceed with the work has been terminated, the Contractor shall be liable for any damage to the County resulting from the Contractor's refusal or failure to complete the work within the specified time period, and said damages shall include, but not be limited to, any additional costs associated with the County obtaining the services of another Contractor to complete the project.

#### **ARTICLE 14. TERMINATION FOR CONVENIENCE OF COUNTY**

Notwithstanding any other provisions, the County may terminate this Agreement for its convenience at any time by a written notice to Contractor. If the Agreement is terminated for convenience by the County, as provided in this article, Contractor will be paid compensation for those services actually performed. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by Contractor which shall itemize each task element and briefly state what work has been completed and what work remains to be done.

If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the government.

## ARTICLE 15. **WAIVER OF BREACH**

The waiver by either party of a breach or violation of any provision of this Agreement, shall not operate or be construed to be, a waiver of any subsequent breach or violation of the same or other provision thereof.

## ARTICLE 16. **INDEPENDENT CONTRACTOR**

Contractor shall perform the services under this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with such relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute Contractor or any of its agents or employees to be the agent, employee or representative of County.

## ARTICLE 17. **RESPONSIBILITY OF CONTRACTOR**

Contractor represents that it has, or will secure at its own expenses, all personnel appropriate to perform all work to be completed under this Agreement;

All the services required hereunder will be performed by Contractor or under the direct supervision of Contractor. All personnel engaged in the Project by Contractor shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services.

None of the work or services covered by this Agreement shall be transferred, assigned, or subcontracted by Contractor without the prior written consent of the County.

## ARTICLE 18. **INDEMNIFICATION**

**18.1 Non-Professional Services Indemnification.** Consultant/Contractor hereby agrees to indemnify and hold harmless Fulton County, its Commissioners and their respective officers, members, employees, and agents (each, hereinafter referred to as an "Indemnified Person") from and against any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this Agreement or any act or omission on the part of the Consultant/Contractor, its agents, employees or others working at the direction of Consultant/Contractor or on its behalf, or due to any breach of this Agreement by the Consultant/Contractor or due to the application or violation of any pertinent Federal, State or local law, rule or regulation. This indemnification is binding upon to the successors and assigns of Consultant/Contractor. This indemnification does not extend to the sole negligence of the Indemnified Persons nor beyond the scope of this Agreement and the work undertaken thereunder. This indemnification survives the termination of this Agreement and shall also survive the dissolution or to the

extent allowed by law, the bankruptcy of Consultant/Contractor.

Consultant/Contractor obligation to indemnify and hold harmless, as set forth hereinabove, shall also include, but is not limited to, any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or other actual or alleged unfair competition disparagement of product or service, or other tort or any type whatsoever, or any actual or alleged violation of trade regulations.

Consultant/Contractor further agrees to indemnify and hold harmless Fulton County, its Commissioners, officers, employees, subcontractors, successors, assigns and agents from and against any and all claims or liability for compensation under the Worker's Compensation Act, Disability Benefits Act, or any other employee benefits act arising out of injuries sustained by any employees of Consultant/Contractor. These indemnities shall not be limited by reason of the listing of any insurance coverage.

**18.2 Notice of Claim.** If an Indemnified Person receives written notice of any claim or circumstance which could give rise to indemnified losses, the receiving party shall promptly give written notice to Consultant/Contractor, and shall use best efforts to deliver such written notice within ten (10) Business Days. The notice must include a copy of such written notice of claim, or, if the Indemnified Person did not receive a written notice of claim, a description of the indemnification event in reasonable detail and the basis on which indemnification may be due. Such notice will not stop or prevent an Indemnified Person from later asserting a different basis for indemnification. If an Indemnified Person does not provide this notice within the ten (10) Business Day period, it does not waive any right to indemnification except to the extent that Consultant/Contractor is prejudiced, suffers loss, or incurs additional expense solely because of the delay.

**18.3 Defense.** Consultant/Contractor, at Consultant/Contractor's own expense, shall defend each such action, suit, or proceeding or cause the same to be resisted and defended by counsel designated by the Indemnified Person and reasonably approved by Consultant/Contractor (provided that in all instances the County Attorney of Fulton County Georgia shall be acceptable, and, for the avoidance of doubt, is the only counsel authorized to represent the County). If any such action, suit or proceedings should result in final judgment against the Indemnified Person, Consultant/Contractor shall promptly satisfy and discharge such judgment or cause such judgment to be promptly satisfied and discharged. Within ten (10) Business Days after receiving written notice of the indemnification request, Consultant/Contractor shall acknowledge in writing delivered to the Indemnified Person (with a copy to the County Attorney) that Consultant/Contractor is defending the claim as required hereunder.

## **18.4 Separate Counsel.**

**18.4.1 Mandatory Separate Counsel.** In the event that there is any potential conflict of interest that could reasonably arise in the representation of any Indemnified Person and Consultant/Contractor in the defense of any action, suit or proceeding pursuant to Section 18.3 above or in the event that state or local law requires the use of specific counsel, (i) such Indemnified Person may elect in its sole and absolute discretion whether to waive such conflict of interest, and (ii) unless such Indemnified Person (and, as applicable, Consultant/Contractor) elects to waive such conflict of interest, or in any event if required by state or local law, then the counsel designated by the Indemnified Person shall solely represent such Indemnified Person and, if applicable, Consultant/Contractor shall retain its own separate counsel, each at Consultant/Contractor's sole cost and expense.

**18.4.2 Voluntary Separate Counsel.** Notwithstanding Consultant/Contractor's obligation to defend a claim, the Indemnified Person may retain separate counsel to participate in (but not control or impair) the defense and to participate in (but not control or impair) any settlement negotiations, provided that for so long as Consultant/Contractor has complied with all of Consultant/Contractor's obligations with respect to such claim, the cost of such separate counsel shall be at the sole cost and expense of such Indemnified Person (provided that if Consultant/Contractor has not complied with all of Consultant/Contractor's obligations with respect to such claim, Consultant/Contractor shall be obligated to pay the cost and expense of such separate counsel). Consultant/Contractor may settle the claim without the consent or agreement of the Indemnified Person, unless the settlement (i) would result in injunctive relief or other equitable remedies or otherwise require the Indemnified Person to comply with restrictions or limitations that adversely affect or materially impair the reputation and standing of the Indemnified Person, (ii) would require the Indemnified Person to pay amounts that Consultant/Contractor or its insurer does not fund in full, (iii) would not result in the Indemnified Person's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement, or (iv) directly involves the County (in which case the County of Fulton County, Georgia shall be the only counsel authorized to represent the County with respect to any such settlement).

**18.5 Survival.** The provisions of this Article will survive any expiration or earlier termination of this Agreement and any closing, settlement or other similar event which occurs under this Agreement.

## **ARTICLE 19. COVENANT AGAINST CONTINGENT FEES**

Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide

employees maintained by Contractor for the purpose of securing business and that Contractor has not received any non-County fee related to this Agreement without the prior written consent of County. For breach or violation of this warranty, County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Contract Price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

## ARTICLE 20. **INSURANCE**

Contractor agrees to obtain and maintain during the entire term of this Agreement, all of the insurance required as specified in the Agreement documents, Exhibit G, Insurance and Risk Management Forms, with the County as an additional insured and shall furnish the County a Certificate of Insurance showing the required coverage. The cancellation of any policy of insurance required by this Agreement shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Georgia Code.

## ARTICLE 21. **PROHIBITED INTEREST**

### Section 21.01 **Conflict of interest:**

Contractor agrees that it presently has no interest and shall acquire no interest direct or indirect that would conflict in any manner or degree with the performance of its service hereunder. Contractor further agrees that, in the performance of the Agreement, no person having any such interest shall be employed.

### Section 21.02 **Interest of Public Officials:**

No member, officer or employee of County during his tenure shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

## ARTICLE 22. **SUBCONTRACTING**

Contractor shall not subcontract any part of the work covered by this Agreement or permit subcontracted work to be further subcontracted without prior written approval of County.

## ARTICLE 23. **ASSIGNABILITY**

Contractor shall not assign or subcontract this Agreement or any portion thereof without the prior expressed written consent of County. Any attempted assignment or subcontracting by Contractor without the prior expressed written consent of County shall at County's sole option terminate this Agreement without any notice to Contractor of such termination. Contractor binds itself, its successors, assigns, and legal representatives of such other party in respect to all covenants, agreements and obligations contained herein.

## **ARTICLE 24. ANTI-KICKBACK CLAUSE**

Salaries of engineers, surveyors, draftsmen, clerical and technicians performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law. Contractor hereby promises to comply with all applicable "Anti-Kickback" Laws, and shall insert appropriate provisions in all subcontracts covering work under this Agreement.

## **ARTICLE 25. AUDITS AND INSPECTORS**

At any time during normal business hours and as often as County may deem necessary, Contractor shall make available to County and/or representatives of the County for examination all of its records with respect to all matters covered by this Agreement.

It shall also permit County and/or representative of the County to audit, examine and make copies, excerpts or transcripts from such records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Contractor's records of personnel, conditions of employment, and financial statements (hereinafter "Information") constitute trade secrets and are considered confidential and proprietary by Contractor. To the extent County audits or examines such Information related to this Agreement, County shall not disclose or otherwise make available to third parties any such Information without Contractor's prior written consent unless required to do so by a court order. Nothing in this Agreement shall be construed as granting County any right to make copies, excerpts or transcripts of such information outside the area covered by this Agreement without the prior written consent of Contractor. Contractor shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project and used in support of its proposal and shall make such material available at all reasonable times during the period of the Agreement and for eight years from the date of final payment under the Agreement, for inspection by County or any reviewing agencies and copies thereof shall be furnished upon request and at no additional cost to County. Contractor agrees that the provisions of this Article shall be included in any Agreements it may make with any subcontractor, assignee or transferee.

## **ARTICLE 26. ACCOUNTING SYSTEM**

Contractor shall have an accounting system, which is established, and maintaining in accordance with generally accepted accounting principles. Contractor must account for cost in a manner consistent with generally accepted accounting procedures, as approved by Fulton County.

## ARTICLE 27. **VERBAL AGREEMENT**

No verbal agreement or conversation with any officer, agent or employee of County either before, during or after the execution of this Agreement, shall affect or modify any of the terms of obligations herein contained, nor shall such verbal agreement or conversation entitle Contractor to any additional payment whatsoever under the terms of this Agreement. All changes to this shall be in writing and the form of a change order in supplemental agreement, approved by the County, and entered on the Minutes of the Board of Commissioners.

## ARTICLE 28. **NOTICES**

All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

Notice to County, shall be addressed as follows:

Deputy Director of Public Works  
141 Pryor Street, SW, Suite 6001  
Atlanta, Georgia 30303  
Telephone: (404)-612-7530  
Email: [nick.ammons@fultoncountyga.gov](mailto:nick.ammons@fultoncountyga.gov)  
Attention: Nick Ammons

### **With a copy to:**

Department of Purchasing & Contract Compliance  
Director  
130 Peachtree Street, S.W., Suite 1168  
Atlanta, Georgia 30303  
Telephone: (404) 612-5800  
Email: [felicia.strong-whitaker@fultoncountyga.gov](mailto:felicia.strong-whitaker@fultoncountyga.gov)  
Attention: Felicia Strong-Whitaker

Notices to Contractor shall be addressed as follows:

W. Greg Coots  
174 Duncan Circle  
Hiram, GA 30141  
Telephone: (770) 819-0601  
Email: [mark.sutton@wadecootscompany.com](mailto:mark.sutton@wadecootscompany.com)  
Attention: W. Greg Coots

## ARTICLE 29. **JURISDICTION**

This Agreement will be executed and implemented in Fulton County. Further, this Agreement shall be administered and interpreted under the laws of the State of

Georgia. Jurisdiction of litigation arising from this Agreement shall be in the Fulton County Superior Courts. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

Whenever reference is made in the Agreement to standards or codes in accordance with which work is to be performed, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly stated.

#### **ARTICLE 30. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Agreement, Contractor agrees as follows:

Section 30.01 Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin;

Section 30.02 Contractor will, in all solicitations or advertisements for employees placed by, or on behalf of, Contractor state that all qualified applicants, will receive consideration for employment without regard to race, creed, color, sex or national origin;

Section 30.03 Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Agreement so that such provision will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

#### **ARTICLE 31. FORCE MAJEURE**

Neither County nor Contractor shall be deemed in violation of this Agreement if either is prevented from performing its obligations hereunder for any reason beyond its control, including but not limited to acts of God, civil or military authority, act of public enemy, accidents, fires, explosions, earthquakes, floods or catastrophic failures of public transportation, provided however, that nothing herein shall relieve or be construed to relieve Contractor from performing its obligations hereunder in the event of riots, rebellions or legal strikes.

#### **ARTICLE 32. OPEN RECORDS ACT**

The Georgia Open Records Act, O.C.G.A. Section 50-18-70 *et seq.*, applies to this Agreement. The Contractor acknowledges that any documents or computerized data provided to the County by the Contractor may be subject to release to the public. The Contractor also acknowledges that documents and computerized data created or held by the Contractor in relation to the Agreement may be subject to release to the public, to include documents turned over to the

County. The Contractor shall cooperate with and provide assistance to the County in rapidly responding to Open Records Act requests. The Contractor shall notify the County of any Open Records Act requests no later than 24 hours following receipt of any such requests by the Contractor. The Contractor shall promptly comply with the instructions or requests of the County in relation to responding to Open Records Act requests.

### **ARTICLE 33. INVOICING AND PAYMENT**

Contractor shall submit monthly invoices for work performed during the previous calendar month, in a form acceptable to the County and accompanied by all support documentation requested by the County, for payment and for services that were completed during the preceding phase. The County shall review for approval of said invoices. The County shall have the right not to pay any invoice or part thereof if not properly supported, or if the costs requested or a part thereof, as determined by the County, are reasonably in excess of the actual stage of completion.

**Time of Payment:** Invoices for payment shall be submitted to County by the first (1st) calendar day of the month to facilitate processing for payment in that same month. Invoices received after the first (1st) calendar day of the month may not be paid until the last day of the following month. The County shall make payments to Contractor by U.S. mail approximately thirty (30) days after receipt of a proper invoice. Parties hereto expressly agree that the above contract term shall supersede the rates of interest, payment periods, and contract and subcontract terms provided for under the Georgia Prompt Pay Act, O.C.G.A. 13-11-1 et seq., pursuant to 13-11-7(b), and the rates of interest, payment periods, and contract and subcontract terms provided for under the Prompt Pay Act shall have no application to this Agreement; parties further agree that the County shall not be liable for any interest or penalty arising from late payments.

**Submittal of Invoices:** Invoices shall be submitted as follows:

**Via Mail:**

Fulton County Government  
141 Pryor Street, SW  
Suite 7001  
Atlanta, Georgia 30303  
Attn: Finance Department – Accounts Payable

OR

**Via Email:**

Email: [Accounts.Payable@fultoncountyga.gov](mailto:Accounts.Payable@fultoncountyga.gov)

At minimum, original invoices must reference all of the following information:

- 1) Vendor Information
  - a. Vendor Name
  - b. Vendor Address
  - c. Vendor Code
  - d. Vendor Contact Information
  - e. Remittance Address
- 2) Invoice Details
  - a. Invoice Date
  - b. Invoice Number (uniquely numbered, no duplicates)
  - c. Purchase Order Reference Number
  - d. Date(s) of Services Performed
  - e. Itemization of Services Provided/Commodity Units
- 3) Fulton County Department Information (needed for invoice approval)
  - a. Department Name
  - b. Department Representative Name

Contractor's cumulative invoices shall not exceed the total not-to-exceed fee established for this Agreement.

**County's Right to Withhold Payments:** The County may withhold payments for services that involve disputed costs, involve disputed audits, or are otherwise performed in an inadequate fashion. Payments withheld by the County will be released and paid to the Contractor when the services are subsequently performed adequately and on a timely basis, the causes for disputes are reconciled or any other remedies or actions stipulated by the County are satisfied. The County shall promptly pay any undisputed items contained in such invoices.

**Payment of Sub-contractors/Suppliers:** The Contractor must certify in writing that all sub-contractors of the Contractor and suppliers have been promptly paid for work and materials and previous progress payments received. In the event the prime Contractor is unable to pay sub-contractors or suppliers until it has received a progress payment from Fulton County, the prime Contractor shall pay all sub-contractors or supplier funds due from said progress payments within forty-eight (48) hours of receipt of payment from Fulton County an in no event later than fifteen days as provided for by State Law.

**Acceptance of Payments by Contractor; Release.** The acceptance by the Contractor of any payment for services under this Agreement will, in each instance, operate as, and be a release to the County from, all claim and liability to the Contractor for work performed or furnished for or relating to the service for which payment was accepted, unless the Contractor within five (5) days of its receipt of a payment, advises the County in writing of a specific claim it contends is not released by that payment.

## ARTICLE 34. **TAXES**

The Contractor shall pay all sales, retail, occupational, service, excise, old age benefit and unemployment compensation taxes, consumer, use and other similar taxes, as well as any other taxes or duties on the materials, equipment, and labor for the work provided by the Contractor which are legally enacted by any municipal, county, state or federal authority, department or agency at the time bids are received, whether or not yet effective. The Contractor shall maintain records pertaining to such taxes as well as payment thereof and shall make the same available to the County at all reasonable times for inspection and copying. The Contractor shall apply for any and all tax exemptions which may be applicable and shall timely request from the County such documents and information as may be necessary to obtain such tax exemptions. The County shall have no liability to the Contractor for payment of any tax from which it is exempt.

## ARTICLE 35. **PERMITS, LICENSES AND BONDS**

All permits and licenses necessary for the work shall be secured and paid for by the Contractor. If any permit, license or certificate expires or is revoked, terminated, or suspended as a result of any action on the part of the Contractor, the Contractor shall not be entitled to additional compensation or time.

## ARTICLE 36. **NON-APPROPRIATION**

This Agreement states the total obligation of the County to the Contractor for the calendar year of execution. Notwithstanding anything contained in this Agreement, the obligation of the County to make payments provided under this Agreement shall be subject to annual appropriations of funds thereof by the governing body of the County and such obligation shall not constitute a pledge of the full faith and credit of the County within the meaning of any constitutional debt limitation. The Director of Finance shall deliver written notice to the Contractor in the event the County does not intend to budget funds for the succeeding Contract year.

Notwithstanding anything contained in this Agreement, if sufficient funds have not been appropriated to support continuation of this Agreement for an additional calendar year or an additional term of the Agreement, this Agreement shall terminate absolutely and without further obligation on the part of the County at the close of the calendar year of its execution and at the close of each succeeding calendar year of which it may be renewed, unless a shorter termination period is provided or the County suspends performance pending the appropriation of funds.

## ARTICLE 37. **WAGE CLAUSE**

Contractor shall agree that in the performance of this Agreement the Contractor will comply with all lawful agreements, if any, which the Contractor had made with any association, union, or other entity, with respect to wages, salaries, and working conditions, so as not to cause inconvenience, picketing, or work stoppage.

**IN WITNESS THEREOF**, the Parties hereto have caused this Contract to be executed by their duly authorized representatives as attested and witnessed and their corporate seals to be hereunto affixed as of the day and year date first above written.

OWNER:

**FULTON COUNTY, GEORGIA**

CONTRACTOR:

**WADE COOTS COMPANY, INC.**

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Robert L. Pitts, Chairman  
Fulton County Board of Commissioners

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W. Greg Coots  
Vice President

ATTEST:

ATTEST:

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Tonya R. Grier  
Clerk to the Commission

---

Secretary/  
Assistant Secretary

(Affix County Seal)

(Affix Corporate Seal)

APPROVED AS TO FORM:

ATTEST:

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Office of the County Attorney

---

Notary Public

APPROVED AS TO CONTENT:

County: \_\_\_\_\_

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David Clark, Director  
Public Works

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

(Affix Notary Seal)

ITEM#: _____ RCS: _____ <b>RECESS MEETING</b>	ITEM#: _____ RM: _____ <b>REGULAR MEETING</b>
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# **ADDENDA**

## Questions & Answers - 1

**Solicitation** 20ITB100620A-CJC - Small Water Meter Installation  
**Buying Organization** Fulton County Government

No	Question/Answer	Question Date
Q1	<b>Question: Contractors License</b> Is a Georgia contractors license required?  <b>Answer:</b> Yes, a Georgia Utility Contractor's License is required.	10/09/2020

## **EXHIBIT A**

## **GENERAL CONDITIONS**

## GENERAL CONDITIONS

1. Bids may be withdrawn upon receipt of a written request prior to the stated due date and time. If a firm seeks to withdraw a bid after the due date and time, the firm must present a notarized statement indicating that an error was made, with an explanation of how it occurred. The withdrawal request must be accompanied by documentation supporting the claim. Prior to approving or disapproving the request, an opinion will be obtained from Fulton County's Legal Counsel indicating whether the firm is bound by its bid submittal.

Bids for projects that are solicited pursuant to the Georgia Local Government Public Works Construction Law (O.C.G.A. § 36-91-1 et seq.) may be withdrawn as follows:

The County must advise Bidders in the invitation to bid of the number of days that Bidders will be required to honor their bids. If an Bidder is not selected within 60 days of opening the bids, any Bidder that is determined by the governmental entity to be unlikely of being selected for contract award will be released from the bid.

2. Fulton County shall be the sole judge of the quality and the applicability of all bids. Design, features, overall quality, local facilities, terms and other pertinent considerations will be taken into account in determining acceptability.
3. The successful Bidder must assume full responsibility for delivery of all goods and services proposed.
4. The successful Bidder must assume full responsibility for replacement of all defective or damaged goods and/or performance of contracted services within thirty (30) days' notice by the County of such defect, damage or deficiency.
5. The successful Bidder must assume full responsibility for providing warranty service on all goods, materials, or equipment provided to the County with warranty coverage. Should a vendor be other than the manufacturer, the vendor and not the County is responsible for contacting the manufacturer. The Bidder is solely responsible for arranging for the service to be performed.
6. The successful Bidder shall be responsible for the proper training and certification of personnel used in the performance of the services proposed.
7. The successful Bidder shall not assign, transfer, convey, sublet, or otherwise dispose of any contract resulting from the invitation to bid or of

any of its rights, title or interest therein without prior written consent of the Fulton County Board of Commissioners.

8. In case of default by the successful Bidder, Fulton County may procure the articles or services from another source and hold the successful Vendor responsible for any resultant excess cost.
9. All bids submitted to Fulton County are subject to the Georgia "Open Records Act", Official Code of Georgia, Annotated (O.C.G.A.) § 50-18-70 et seq.
10. All bids submitted to Fulton County involving Utility Contracting are subject to the Georgia law governing licensing of Utility Contractors, O.C.G.A. §43-14-8.2(h).

## **EXHIBIT B**

## **SPECIAL CONDITIONS**

### **Contractor Qualifications:**

Contractor is required to have 3 years prior experience replacing and installing small water meters, mandatory. Contractors interested in bidding shall provide references demonstrating previous experience installing new meters and replacing existing meters at a minimum of 1,000 meters per year for 3 years within the past 7 years. References shall be verifiable and unambiguous. It shall be the responding contractor's responsibility to provide accurate names, addresses, phone numbers and any other pertinent information for evaluation. Bids submitted without the required experience or bids submitted with information that is not verifiable, shall not be considered for award. All respondents must submit three (3) verifiable references.

**General** Where the contractor is directed to install or replace meters or services or perform work after normal work hours or on weekends or holidays payment for the work shall be made at 150 percent of bid price.

Contractor shall be responsible for obtaining all state and local permits as part of the work. Cost for such items shall be included in the unit price bid for the work.

### **Payment Instructions for Items listed in Section 3 "Scope of Work and Technical Specifications"**

#### **Installation of New Service for Small Meters $\frac{3}{4}$ " to 2" (Items 1, 2, 3 & 4)**

Payment will be on the basis of the unit price bid for a complete service including service line, meter box and meter.

Unit price includes up to 15' feet of copper tubing for meter installation for short side service and 45' for long side service. Additional length of service line installation shall be priced at the unit price bid per foot of additional service line installation for any amount greater than 15 feet for short side and 45 feet for long side (bid items 20 through 27).

#### **Replacement of service line between meter and main $\frac{3}{4}$ " to 2" (Items 9 through 16)**

Unit price bid includes up to 15' feet of copper tubing for meter installation for short side service and 45' for long side service. Additional length of service line installation shall be paid for at the unit price per foot of additional service line installation for any amount greater than 15 feet for short side and 45 feet for long side (bid items 20 through 27).

### **Replacement of meter box for 3/4" to 2" meters (Items 17 & 18)**

Payment under this item shall be for only the additional work required for replacement of the meter box. Meter replacement and other work shall be paid for under a separate item.

### **Additional work as directed by Fulton County (Items 19 thru 34)**

#### **Additional service line (Items 19 thru 26)**

The unit price bid for new or replacement service includes up to 15' feet of copper tubing for meter installation for short side service and 45' for long side service. Additional length of service line installation shall be paid for at the unit price per foot of additional service line installation for any amount greater than 15 feet for short side and 45 feet for long side.

#### **Concrete Curbs/Gutters Driveways, Sidewalks, and Street Pavement Replacement in Conjunction with Meter Installation/Replacement (Items 28 thru 32)**

Payment for these items shall be on the basis of the unit price bid and shall include mobilization, removal and disposal of old concrete or asphalt, construction of forms, if required and the replacement and finishing of the new concrete or asphalt. Payment of sidewalk and concrete pavement replacement and street cut repair will be on the basis of square footage. Payment for curb and gutter replacement will be on the basis of linear feet.

Unit prices shall include the cost of the concrete per the appropriate specification, as well as delivery charges. The unit price shall include the furnishing of mobilization all labor, materials, tools, disposal and equipment necessary to complete the work as specified or as shown.

The unit price for removing and replacing asphalt pavement shall include cutting, removing and disposing of existing pavement and replacing and compaction of base, sub-base, asphalt, concrete and all related items specified or as directed by the County.

#### **Labor and Equipment in Conjunction with Meter Installation or Replacement (Items 33 & 34)**

Payment shall be on the basis of unit price per hour as listed in the bid based upon the number of hours Contractor is on site plus one hour for mobilization demobilization. Payment includes mobilization, all labor and equipment.

## **EXHIBIT C**

## **SCOPE OF WORK**

## SCOPE OF WORK

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The Contractor shall

Performed under this scope of work is estimated to consist of furnishing all labor, materials, (including copper tubing), tools, equipment and incidentals and completing all Work required in order to perform the following:

- New water meter installation, approximately 250,  $\frac{3}{4}$ "-2" meters annually
- Water meter replacements, approximately 750  $\frac{3}{4}$ " -2" meters annually
- Service lines installation as necessary

### **A. Installation of New Service for Small Meters $\frac{3}{4}$ " to 2" (Items 1, 2, 3 & 4)**

Work under this section shall consist of the installation of new services including  $\frac{3}{4}$ " to 2" meters, service lines, valves, fittings and meter boxes. Installation of  $\frac{3}{4}$ " and 1" services shall be direct tapped and 1  $\frac{1}{2}$ " and 2" services shall be saddle tapped. These work items shall include mobilization, all labor and equipment necessary to install service line, tap, valves, fittings, meter box and meter. The site shall be returned to its' original condition with placement of sod as required. The contractor shall remove excess soil and debris from the site. Fulton County will provide meter and meter box.

Materials to be furnished by the contractor shall be the following or equal as approved by the County:

CORP STOPS	Equal To
3/4"	Ford F600-3
1"	Ford F600-4
1 1/2"	Ford FB 1700-6
2"	Ford FB 1700-7

CURB STOPS	Equal To
3/4"	Ford B21-333
1"	Ford B21-444
1 1/2"	Ford B81-666
2"	Ford B81-777

TAPING SADDLE	Equal To
1 1/2"	Ford 202B IP6
2"	Ford 202B IP7

METER SETTER	Equal To
1 1/2"	A.Y. McDonald 720R600WWFF 666X402
2"	A.Y. McDonald 720R700WWFF 777X15.62

Contractor shall provide all copper tube, necessary fittings, appurtenances, labor and equipment required for installation of the new service. The contractor is responsible for all leaks for a period of 180 calendar days after completion of the work. The contractor will repair leaks and related damage at no additional cost. Tubing and all materials furnished by Contractor shall comply with the most current standards of the American Water Works Association, where applicable.

**B. Replacement of Existing Small Meters 3/4" to 2" (Items 5, 6, 7, & 8)**

This work includes mobilization, all labor and equipment necessary to replace the existing meter. Meter box replacement if required shall be performed under a separate item. If site disturbance is required, the site shall be returned to its' original condition with placement of sod as required. The contractor shall remove excess soil and debris from the site. Fulton County will provide meter. Contractor shall provide all necessary pipe, fittings and appurtenances required for replacement of the water meter. The replaced meter shall be returned to Fulton County at 11575 Maxwell Road. The contractor is responsible for all leaks for a period of 180 calendar days after completion of the work. The contractor will repair leaks and related damage at no additional cost.

**C. Replacement of service line between meter and main 3/4" to 2" (Items 9 through 16)**

This work includes mobilization, all labor and equipment necessary to replace service line including direct tapping main for 3/4" and 1" service lines, and saddle tap for 1 1/2" and 2" service lines, terminating existing service, connecting meter, and underground bore for long side services. The site shall be returned to its' original condition with placement of sod as required. The contractor shall remove excess soil and debris from the site. Curb stops, corporation stops and 1 1/2" and 2" meter setters and all materials furnished shall be as specified in paragraph A above. Contractor shall provide all necessary fittings, copper tube, brass saddle tap material and other necessary appurtenances required for replacement of service line. The contractor is responsible for all leaks for a period of 180 calendar days after completion of the work. The contractor will repair leaks and related damage at no additional cost.

**D. Replacement of meter box for 3/4" to 2" meters (Items 17 & 18)**

This work includes mobilization, all labor and equipment necessary to replace and the meter box only...Replacement of a meter box if required by the County shall be performed in conjunction with replacement of a meter. County shall provide meter boxes to be used, however they may not be identical to existing units. An electronic marker pill shall be placed/buried within 2" of 3/4" & 1" meter boxes 6 " deep, Fulton County will

provide the marker pill The site shall be returned to its' original condition with placement of sod as required. The contractor shall remove excess soil and debris from the site.

**E. Additional work as directed by Fulton County (Items 19 thru 34)**

**Additional service line (Items 19 thru 26)**

New or replacement water service will be installed from the water main to the water meter.

**Direct Connect water meter installation (Item 27)**

Direct connect meter installation exists where no meter coupling exists between the water meter and the customers service line. Customer water service piping material varies in type and may include PVC, Polybutelane, galvanized, copper etc. directly connected to the water meter. When conditions of direct connect exists, a new meter coupling between the customer's service line and water meter shall be installed by contractor. This applies to  $\frac{3}{4}$ " and 1" water meters only, (1  $\frac{1}{2}$  & 2" meters require meter setters and no additional work effort is required.) The unit price bid for this item shall include the additional cost for installation of meter coupling during meter replacement. Meter coupling will be provided by Contractor. All materials and equipment required to make the connection, with the exception of the meter furnished by the County, shall be at Contractor's expense.

**Concrete Curbs/Gutters Driveways, Sidewalks, and Street Pavement Replacement in Conjunction with Meter Installation/Replacement (Items 28 thru 32)**

Removal and replacement of sidewalk, driveways, curbs and gutters and other concrete and pavement removal and replacement shall be performed as required for proper installation of services and meter boxes.

Concrete used for replacement shall be Class A, Type III Portland Cement high early strength concrete. Furnishing concrete shall include forming as well as providing and removing forms. No additional payment will be made for removing and replacing damaged adjacent area of driveway caused by the Contractor.

The unit price for removing and replacing concrete pavement shall include cutting, removing and disposing existing pavement and replacing and compaction of base, sub-base, concrete and all related items specified or as directed by the County.

This applies to areas where standard utility cut replacement is not required. Replacement of parking lot shall also be covered under this item. Where pavement replacement is required in roadways, pavement replacement shall be performed in accordance with local jurisdiction standards and requirements. The site shall be returned to its' original condition with placement of sod as required. . The contractor shall remove excess soil and debris from the site. The contractor is responsible for all work for a period of 180 calendar days after completion of the work.

**Labor and Equipment in Conjunction with Meter Installation or Replacement (Items 33 &34)**

Contractor shall provide mobilization, all labor and equipment.

# **EXHIBIT D**

# **COMPENSATION**

## **COMPENSATION**

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The County agrees to compensate the Consultant as follows:

County agrees to compensate Contractor for all services performed under this Agreement in an amount not to exceed \$300,000.00 (Three Hundred Thousand Dollars and No Cents) , which is full payment for a complete scope of work. The detailed costs are provided in the attached Bid Form.

## SECTION 2

### BID FORM

Submitted To: Fulton County Government

Submitted By: WADE COOTS COMPANY, INC.

For: **20ITB100620A-CJC, Small Water Meter Installation**

Submitted on NOV. 10, 2020

The undersigned, as Bidder, hereby declares that the only person or persons interested in the Bid as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this Bid or in the Contract to be entered into; that this Bid is made without connection with any other person, company or parties making a Bid; and that it is in all respects fair and in good faith without collusion or fraud.

The Bidder further declares that he has examined the site of the work and informed himself fully in regard to all conditions pertaining to the place where the work is to be done; that he has examined the Drawings and Specifications for the work and contractual documents relative thereto, and has read all instructions to Bidders and General Conditions furnished prior to the openings of bids; that he has satisfied himself relative to the work to be performed.

The Bidder proposes and agrees, if this Bid is accepted, to contract with the Board of Commissioners of Fulton County, Atlanta, Georgia, in the form of contact specified, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary, and to complete the construction of the work in full and complete accordance with the shown, noted, and reasonably intended requirements of the Specifications and Contract Documents to the full and entire satisfaction of the Board of Commissioners of Fulton County, Atlanta, Georgia, with a definite understanding that no money will be allowed for extra work except as set forth in the attached General Conditions and Contract Documents for the following prices.

THE BASE BID IS THE AMOUNT UPON WHICH THE BIDDER WILL BE FORMALLY EVALUATED AND WHICH WILL BE USED TO DETERMINE THE LOWEST RESPONSIBLE BIDDER.

The base bid may not be withdrawn or modified for a period of sixty (60) days following the receipt of bids.

**BASE BID AMOUNT** (Do not include any Bid Alternates)

ONE- MILLION, NINE- HUNDRED & TWENTY-THREE THOUSAND, EIGHT-  
\$ HUNDRED & FIFTY- DOLLARS & 0/100

(Dollar Amount in Numbers)

# 1,923,850.00

(Dollar Amount in Words)

The Bidder agrees hereby to commence work under this Contract, with adequate personnel and equipment, on a date to be specified in a written "Notice to Proceed" from the County.

The Bidder declares that he understands that the quantities shown for the unit prices items are subject to either increase or decrease, and that should the quantities of any of the items of work be increased, the Bidder proposes to do the additional work at the unit prices stated herein; and should the quantities be decreased, the Bidder also understands that payment will be made on the basis of actual quantities at the unit price bid and will make no claim for anticipated profits for any decrease in quantities; and that actual quantities will be determined upon completion of work, at which time adjustments will be made to the contract amount by direct increase or decrease.

### BASE BID AMOUNT

Item#	Item Description – See Section 3 "Scope of Work And Specification"	Unit	Quantity	Unit Cost	Total
1.	Installation of new $\frac{3}{4}$ " service	Each	100	\$2050.00	\$205,000.00
2.	Installation of new 1" service	Each	50	\$2600.00	\$130,000.00
3.	Installation of new $1\frac{1}{2}$ " service	Each	25	\$5,000.00	\$125,000.00
4.	Installation of new 2" service	Each	25	\$6,600.00	\$165,000.00
5.	Replacement of $\frac{3}{4}$ " meter	Each	1,000	\$115.00	\$115,000.00
6.	Replacement of 1" meter	Each	20	\$140.00	\$2800.00
7.	Replacement of $1\frac{1}{2}$ " meter	Each	20	\$560.00	\$11,200.00
8.	Replacement of 2" meter	Each	20	\$600.00	\$12,000.00
9.	Replacement of $\frac{3}{4}$ " short side service	Each	20	\$160.00	\$32,000.00
10.	Replacement of $\frac{3}{4}$ " long side service	Each	30	\$2350.00	\$70,500.00
11.	Replacement of 1" short side service	Each	20	\$1780.00	\$35,600.00
12.	Replacement of 1" long side service	Each	30	\$2720.00	\$81,600.00
13.	Replacement of $1\frac{1}{2}$ " short side service	Each	20	\$3275.00	\$65,500.00
14.	Replacement of $1\frac{1}{2}$ " long side service	Each	30	\$3400.00	\$102,000.00
15.	Replacement of 2" short side service	Each	20	\$3500.00	\$70,000.00
16.	Replacement of 2" long side service	Each	30	\$4000.00	\$120,000.00
17.	Replacement of meter box for $\frac{3}{4}$ " or 1" meter	Each	250	\$375.00	\$93,750.00
18.	Replacement of meter box for $1\frac{1}{2}$ " or 2" meter	Each	50	\$750.00	\$37,500.00

19.	Additional 3/4" copper service in excess of 15' for short side	LF	100	\$ 38.00	\$1380.00
20.	Additional 3/4" copper service in excess of 45' for long side	LF	100	\$ 43.00	\$4,300.00
21.	Additional 1" copper service in excess of 15' for short side	LF	250	\$ 40.00	\$10,000.00
22.	Additional 1" copper service in excess of 45' for long side	LF	500	\$ 45.00	\$22,500.00
23.	Additional 1 1/2" copper service in excess of 15' for short side	LF	50	\$ 56.00	\$2800.00
24.	Additional 1 1/2" copper service in excess of 45' for long side	LF	100	\$ 65.00	\$6,500.00
25.	Additional 2" copper service in excess of 15' for short side	LF	50	\$ 60.00	\$3,000.00
26.	Additional 2" copper service in excess of 45' for long side	LF	100	\$ 75.00	\$7,500.00
27.	Direct Connect meter replacement (3/4" & 1")	Each	200	\$ 250.00	\$50,000.00
28.	Remove & replace concrete curb and gutter	LF	200	\$ 93.00	\$18,600.00
29.	Remove & replace concrete driveway	Sq. Ft.	300	\$ 45.00	\$13,500.00
30.	Remove and replace concrete sidewalk	Sq. Ft.	500	\$ 45.00	\$22,500.00
31.	Repair paving per Fulton County standard	Sq. Ft.	500	\$ 45.00	\$22,500.00
32.	Pavement milling and replacement paving	Sq. Ft.	2,000	\$ 45.00	\$90,000.00
33.	Three man crew & equipment for specifically auth work not covered by other items	Hour	200	\$ 500.00	\$100,000.00
34.	Three man crew & equipment for specifically auth work on weekend or holiday, not covered by other items	Hour	100	\$ 700.00	\$70,000.00
<b>TOTAL COST (Lines 1-34)</b>					<b>\$ 1,923,850.00</b>

Due to the historical price volatility of brass products, this contract will allow for price changes. Specifically, a review may be conducted jointly between the successful vendor and the County to determine the current market trend for brass products. Price adjustments will be based upon the Producer Price Index (Commodities) for WPU10250239 Copper and copper-base alloy pipe and tube, as published by the United States Bureau of Labor Statistics. Prices may be adjusted only upon written verification of manufacturer price changes. Producer Price detailed statistics including current percentage changes can be accessed at [www.bls.gov/ppi.com](http://www.bls.gov/ppi.com).

\_\_\_\_\_  
Dollars

(\$\_\_\_\_\_) according to the conditions of "Instructions to Bidders" and provisions thereof.

The undersigned acknowledges receipt of the following addenda (list by the number and date appearing on each addendum) and thereby affirms that its Bid considers and incorporates any modifications to the originally issued Bidding Documents included therein.

ADDENDUM # 1 DATED 16-9-20

ADDENDUM # \_\_\_\_\_ DATED \_\_\_\_\_

ADDENDUM # \_\_\_\_\_ DATED \_\_\_\_\_

ADDENDUM # \_\_\_\_\_ DATED \_\_\_\_\_

BIDDER: WADE COOTS COMPANY, INC.

Signed by: W. GREG COOTS  
[Type or Print Name]

Title: VICE-PRESIDENT

Business Address: 174 DUNCAN CIRCLE  
HIRAM, GA 30141

Business Phone: 770-819-0601

# **EXHIBIT E**

# **PURCHASING FORMS**

FORM A: NON-COLLUSION AFFIDAVIT OF BIDDER/OFFEROR

STATE OF GEORGIA

COUNTY OF FULTON

I, W. GREG COOTS certify that pursuant to Fulton County Code Section 102-397, this bid or proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same work, labor or service to be done or the supplies, materials or equipment to be furnished and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences and civil damages awards. I agree to abide by all conditions of this bid or proposal and certify that I am authorized to sign this bid or proposal for the bidder.

Affiant further states that pursuant to O.C.G.A. Section 36-91-21 (d) and (e), WADE COOTS COMPANY, INC. has not, by itself or with others, directly or indirectly, prevented or attempted to prevent competition in such bidding or proposals by any means whatsoever. Affiant further states that (s)he has not prevented or endeavored to prevent anyone from making a bid or offer on the project by any means whatever, nor has Affiant caused or induced another to withdraw a bid or offer for the work.

Affiant further states that the said offer of \$ 1,923,850.00 is bona fide, and that no one has gone to any supplier and attempted to get such person or company to furnish the materials to the bidder only, or if furnished to any other bidder, that the material shall be at a higher price.

WADE COOTS COMPANY, INC.  
(COMPANY NAME)

W. G. Coots  
(PRESIDENT/VICE PRESIDENT)

Sworn to and subscribed before me this 10<sup>th</sup> day of NOVEMBER, 2020

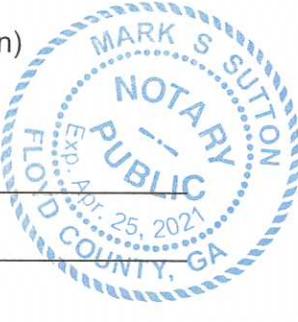
Margaret A. Coots  
(SECRETARY/ASSISTANT SECRETARY)

(Affix corporate seal here, if a corporation)

Notary Public:

County:

Commission Expires:



**NOTE:**

**IF THE OFFEROR IS A PARTNERSHIP, ALL OF THE PARTNERS AND ANY OFFICER, AGENT, OR OTHER PERSON WHO MAY HAVE REPRESENTED OR ACTED FOR THEM IN BIDDING FOR OR PROCURING THE CONTRACT SHALL ALSO MAKE THIS OATH.**

**IF THE OFFEROR IS A CORPORATION, ALL OFFICERS, AGENTS, OR OTHER PERSONS WHO MAY HAVE ACTED FOR OR REPRESENTED THE CORPORATION IN BIDDING FOR OR PROCURING THE CONTRACT SHALL MAKE THE OATH.**

## FORM B: FULTON COUNTY CERTIFICATE OF ACCEPTANCE OF BID/PROPOSAL REQUIREMENTS

This is to certify that on this day, offeror acknowledges that he/she has read this solicitation document, pages # SECTION #1 to # SECTION #7 inclusive, including any addenda # to #\_\_\_\_\_ exhibit(s) #\_\_\_\_\_ to #\_\_\_\_\_, attachment(s) #\_\_\_\_\_ to #\_\_\_\_\_, and/or appendices #\_\_\_\_\_ to #,\_\_\_\_\_ in its entirety, and agrees that no pages or parts of the document have been omitted, that he/she understands, accepts and agrees to fully comply with the requirements therein, and that the undersigned is authorized by the offeror to submit the proposal herein and to legally obligate the offeror thereto.

This is also to certify that the offeror has reviewed the form Fulton County contract included in the solicitation documents and agrees to be bound by its terms, or that the offeror certifies that it is submitting any proposed modification to the contract terms with its proposal. The offeror further certifies that the failure to submit proposed modifications with the proposal waives the offeror's right to submit proposed modifications later. The offeror also acknowledges that the indemnification and insurance provisions of Fulton County's contract included in the solicitation documents are non-negotiable and that proposed modifications to said terms may be reason to declare the offeror's proposal as non-responsive.

Company: WADE COOTS COMPANY, INC.

Signature: 

Name: W. GREG COOTS

Title: VICE-PRESIDENT

Date: 11-10-20

(Corporate Seal)

**FORM C1: CONTRACTOR'S GEORGIA UTILITY LICENSE CERTIFICATION**

Contractor's Name: WADE COOTS COMPANY, INC.

Utility Contractor's Name: W. GREG COOTS

Expiration Date of License: 4-30-21

I certify that the above information is true and correct and that the classification noted is applicable to the Bid for this Project.

Signed: 

Date: 11-10-20

**(ATTACH COPY OF LICENSE)**

SEE ATTACHED



Above is your wall certificate license. A pocket-sized license card is below.

Please make note of the expiration date on your license. It is your responsibility to renew your license before it expires. Please notify the Board if you have a change of address.

Wall certificates suitable for framing are available at cost, see board fee schedule. To order a wall certificate, please order from the web site – [www.sos.state.ga.us/plb](http://www.sos.state.ga.us/plb).

Please refer to Board Rules for any continuing education requirements your profession may require.

Georgia State Board of Professional Licensing  
237 Coliseum Drive  
Macon GA 31217  
Phone: (478) 207-2440  
Toll Free: (844) 753-7825  
[www.sos.state.ga.us/plb](http://www.sos.state.ga.us/plb)

Wade Coots Company, Inc.  
174 Duncan Circle  
Hiram GA 30141



**FORM C2: CONTRACTOR'S GEORGIA GENERAL CONTRACTOR'S LICENSE  
CERTIFICATION**

Contractor's Name: WADE COOTS COMPANY, INC.

General Contractor's License Number: OCC-20-17050

Expiration Date of License: 12-31-20

I certify that the above information is true and correct and that the classification noted is applicable to the Bid for this Project.

Signed: 

Date: 11-10-20

(ATTACH COPY OF LICENSE)

SEE ATTACHES.

# City of Hiram

## Occupational Tax Certificate

**2020**

Date Issued: 03/09/2020

Certificate Number: OCC20-17050

Expiration Date: 12/31/2020

Issued to:

**WADE COOTS COMPANY INC**

**Water and Sewer Line and Related Structures Construction**

Type of Business:

**174 DUNCAN CIR**

Location:

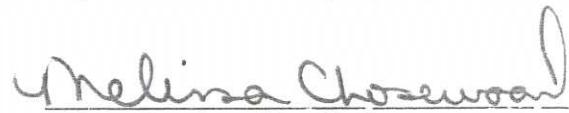
**WADE COOTS COMPANY INC**

Mailing Address:

PO BOX 549  
POWDER SPRINGS, GA 30127

In consideration of which is granted a Certificate in this City for the period ending December 31 2020.

Witness by hand and seal for the City, day and year above written

  
Melissa Chosewood  
City Clerk

*DISPLAY IN A CONSPICUOUS PLACE. MAY BE REVOKED FOR CAUSE.  
NON-TRANSFERABLE*

# City of Hiram

## Occupational Tax Certificate

### Receipt for Certificate

**2020**

Date Issued: 03/09/2020

Certificate Number: OCC20-17050

Expiration Date: 12/31/2020

### FEE INFORMATION

CLASS 1	\$2,250.00
---------	------------

<b>TOTAL PAID</b>	<b>\$2,250.00</b>
-------------------	-------------------

**FORM C3: GEORGIA PROFESSIONAL LICENSE CERTIFICATION**

**NOTE: Please complete this form for the work your firm will perform on this project.**

Contractor's Name: \_\_\_\_\_

Performing work as: Prime Contractor \_\_\_\_\_ Sub-Contractor \_\_\_\_\_

Professional License Type: \_\_\_\_\_

Professional License Number: \_\_\_\_\_

Expiration Date of License: \_\_\_\_\_

I certify that the above information is true and correct and that the classification noted is applicable to the Bid for this Project.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**(ATTACH COPY OF LICENSE)**

*N/A*

## FORM D: CERTIFICATION REGARDING DEBARMENT

- (1) The Offeror certifies that neither it or its subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from doing business with any government agency. Any such exclusion may cause prohibition of your firm from participating in any procurement by the Fulton County Government.
- (2) If the Offeror is unable to certify to any of the statements in this certification, such Offeror or subcontractor shall attach an explanation to this bid or proposal.

### **INSTRUCTIONS FOR CERTIFICATION**

By signing and submitting this certification, the Offeror is providing the certification set out below:

- (1) The certification in this clause is a material representation of fact upon which reliance will be placed. If it is later determined that the prospective vendor knowingly rendered a false certification, the Purchasing Agent may pursue all available remedies, including suspension and/or debarment, for withdrawal of award or termination of a contract.
- (2) The prospective Offeror shall provide immediate written notice to the Purchasing Agent if at any time the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (3) Offeror shall be under a continuing duty to immediately inform the Purchasing Agent in writing of any changes, if as a result of such changes, the Offeror certification regarding debarment is affected.

### **DEBARMENT ORDINANCE**

The following Section 102-449 of Fulton County Code of Laws establishes the procedure for the debarment of contractors.

#### **(a) Authority to suspend.**

After reasonable notice to the entity involved and reasonable opportunity for that entity to be heard, the Purchasing Agent, after consultation with user department, the County Manager and the County Attorney shall have the authority to suspend an entity for cause from consideration for award of county contracts. As used in this section, the term entity means any business entity, individual, firm, contractor, subcontractor or business corporation, partnership, limited liability corporation, firm, contractor, subcontractor or business structured; provided, further, that any such entity shall also be subject to suspension under this section if any of its constituents, members, subcontractors at any tier of such entity's and the entity, or any constituent or member, knew or should have known of the commission of the act. The suspension shall be for a period not to exceed three (3) years unless cause is based on a felony conviction for an offense related or associated with fraudulent contracting or misappropriation of funds wherein the suspension shall not exceed seven (7) years.

#### **(b) Causes for Suspension. The causes for suspension include:**

- (1) Conviction for commission of a criminal offense as an incident to obtain or attempting to obtain a public or private contract or subcontract, or in performance of such contract or subcontract;

- (2) Conviction of state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a county contractor.
- (3) Conviction of state or federal anti-trust statutes arising out of the solicitation and submission of bids and proposals;
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension action:
  - a. Failure to perform in accordance with the specifications within a time limit provided in a county contract;
  - b. A recent record of failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension;
  - c. Material representation of the composition of the ownership or workforce or business entity certified to the county as a minority business enterprise; or
  - d. Falsification of any documents.
- (5) For violation of the ethical standards set forth in Fulton County Code Chapter 9, Code of Ethics.
- (6) Knowing misrepresentation to the county, of the use which a majority owned contractor intends to make a minority business enterprise (a business entity at least 51 percent of which is owned and controlled by minority persons, as defined in Fulton County Code Section 102-431) as a subcontractor or a joint venture partner, in performing work under contract with the County.

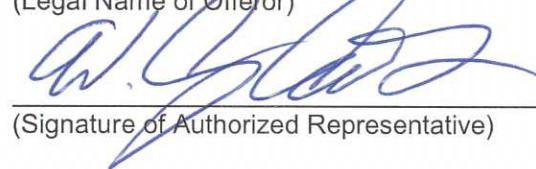
Failure to fully and truthfully provide the information required, may result in the disqualification of your bid/proposal from consideration or termination of the Contract, once awarded. This document must be completed and included as a part of the bid/proposal package along with other required documents.

[SIGNATURES ON NEXT PAGE]

Under penalty of perjury, I declare that I have examined this certification and all attachments hereto, if applicable, to the best of my knowledge and belief, and all statements contained hereto are true, correct, and complete.

On this 10<sup>th</sup> day of NOV, 2020

WADE COOTS COMPANY, INC. 11-10-20  
(Legal Name of Offeror) (Date)

11-10-20  
(Signature of Authorized Representative) (Date)

VICE-PRESIDENT  
(Title)

## **FORM E: DISCLOSURE FORM AND QUESTIONNAIRE**

1. Please provide the names and business addresses of each of the Offeror's firm's officers and directors.

For the purposes of this form, the term "Offeror" means an entity that responds to a solicitation for a County contract by either submitting a proposal in response to a Request for Proposal or a Request for Qualification or a Bid in response to an Invitation to Bid. Describe accurately, fully and completely, their respective relationships with said Offeror, including their ownership interests and their anticipated role in the management and operations of said Offeror.

2. Please describe the general development of said Offeror's business during the past five (5) years, or such shorter period of time that said Offeror has been in business.
3. Please state whether any employee, agent or representative of said Offeror who is or will be directly involved in the subject project has or has ever: (i) directly or indirectly had a business relationship with Fulton County; (ii) directly or indirectly received revenues from Fulton County; or (iii) directly or indirectly receives revenues from the result of conducting business on Fulton County property or pursuant to any contract with Fulton County. Please describe in detail any such relationship.

★ SEE ATTACHED



November 10, 2020

Bid: 20ITB100620A-JC (Small Water Meter Installation)

Re: Response to Proposer's Disclosure Form and Questionnaire

The following responses correlate respectively to the numerically listed questions solicited in the specifications attached hereto.:

**General Questions**

1. Wade Coots Company, Inc. officers and directors:

W. Wade Coots President  
W. Greg Coots Vice President  
Margaret Coots Secretary

There are no "Affiliates" for this Project.

2. The Wade Coots Company, Inc. is a local underground utility Contractor that has been in business for over 27 years and has grown from 8 employees to over 25 employees. The Company owns and operates it's own equipment necessary to do the majority of the Work for this Contract. Wade Coots Company, Inc. specializes in Annual Contracts and holds multiple Annuals in Cobb, Fulton, and Marietta.
3. All business that has been done on previous Fulton County Contracts has been completed as Wade Coots Company, Inc. No individuals or employees have or had a separate business relationship with the County outside of Wade Coots Company, Inc.

W. Wade Coots  
President

**LITIGATION DISCLOSURE:**

Failure to fully and truthfully disclose the information required, may result in the disqualification of your bid or proposal from consideration or termination of the Contract, once awarded.

1. Please state whether any of the following events have occurred in the last five (5) years with respect to said Offeror. If any answer is yes, explain fully the following:

(a) whether a petition under the federal bankruptcy laws or state insolvency laws was filed by or against said Offeror, or a receiver fiscal agent or similar officer was appointed by a court for the business or property of said Offeror;

Circle One: YES  NO

(b) whether Offeror was subject of any order, judgment, or decree not subsequently reversed, suspended or vacated by any court of competent jurisdiction, permanently enjoining said Offeror from engaging in any type of business practice, or otherwise eliminating any type of business practice; and

Circle One: YES  NO

(c) whether said Offeror's business was the subject of any civil or criminal proceeding in which there was a final adjudication adverse to said or Offeror, which directly arose from activities conducted by the business unit or corporate division of said Offeror which submitted a bid or proposal for the subject project. If so please explain.

Circle One: YES  NO

2. Have you or any member of your firm or team to be assigned to this engagement ever been indicted or convicted of a criminal offense within the last five (5) years?

Circle One: YES  NO

3. Have you or any member of your firm or team been terminated (for cause or otherwise) from any work being performed for Fulton County or any other Federal, State or Local Government?

Circle One: YES  NO

4. Have you or any member of your firm or team been involved in any claim or litigation adverse to Fulton County or any other federal, state or local government, or private entity during the last three (3) years?

Circle One: YES  NO

5. Has any offeror, member of offeror's team, or officer of any of them (with respect to any matter involving the business practices or activities of his or her employer), been notified within the five (5) years preceding the date of this offer that any of them are the target of a criminal investigation, grand jury investigation, or civil enforcement proceeding?

Circle One:

YES

NO

If you have answered "YES" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, the name of the court and the file or reference number of the case, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

**NOTE: If any response to any question set forth in this questionnaire has been disclosed in any other document, a response may be made by attaching a copy of such disclosure. (For example, said Offeror's most recent filings with the Securities and Exchange Commission ("SEC") may be provided if they are responsive to certain items within the questionnaire.) However, for purposes of clarity, Offeror should correlate its responses with the exhibits by identifying the exhibit and its relevant text.**

Disclosures must specifically address, completely respond and comply with all information requested and fully answer all questions requested by Fulton County. Such disclosure must be submitted at the time of the bid or proposal submission and included as a part of the bid/proposal submitted for this project. Disclosure is required for Offerors, joint venture partners and first-tier subcontractors.

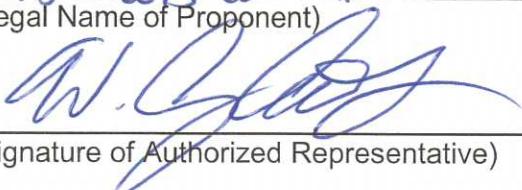
Failure to provide required disclosure, submit officially signed and notarized documents or respond to any and all information requested/required by Fulton County can result in the bid/proposal declared as non-responsive. This document must be completed and included as a part of the bid/proposal package along with other required documents.

[SIGNATURES ON NEXT PAGE]

Under penalty of perjury, I declare that I have examined this questionnaire and all attachments hereto, if applicable, to the best of my knowledge and belief, and all statements contained hereto are true, correct, and complete.

On this 10<sup>th</sup> day of Nov., 2020

WADE COOTS COMPANY, INC. 11-10-20  
(Legal Name of Proponent) (Date)

  
W. Coots 11-10-20  
(Signature of Authorized Representative) (Date)

VICE - PRESIDENT  
(Title)

Sworn to and subscribed before me,

This 10<sup>th</sup> day of NOV.

  
Mark S. Sutton  
(Notary Public)

Commission Expires 4-25-21



**FORM F: GEORGIA SECURITY AND IMMIGRATION CONTRACTOR AFFIDAVIT AND  
AGREEMENT**

**Instructions:**

Contractors must attest to compliance with the requirements of O.C.G.A 13-10-91 and the Georgia Department of Labor Rule 300-10-01-.02 by executing the Contractor Affidavit provided.

STATE OF GEORGIA

COUNTY OF FULTON

**FORM F: GEORGIA SECURITY AND IMMIGRATION CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services<sup>1</sup> under a contract with **[insert name of prime contractor]** WADE COSTS COMPANY, INC. on behalf of **Fulton County Government** has registered with and is participating in a federal work authorization program\*,<sup>2</sup> in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services to this contract with **Fulton County Government**, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the **Fulton County Government** at the time the subcontractor(s) is retained to perform such service.

1435543

EEV/Basic Pilot Program\* User Identification Number

A. C. Cost

BY: Authorized Officer of Agent  
(Insert Contractor Name)

VICE-PRESIDENT

Title of Authorized Officer or Agent of Contractor

W. GREG COSTS

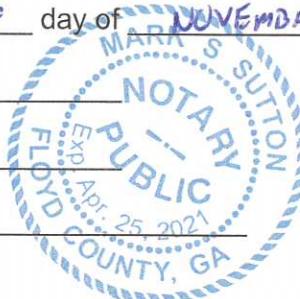
Printed Name of Authorized Officer or Agent

Sworn to and subscribed before me this 10<sup>th</sup> day of NOVEMBER, 2020

Notary Public: Mark D. Sutton

County: Floyd

Commission Expires: 4-05-21



<sup>1</sup>O.C.G.A. § 13-10-90(4), as amended by Senate Bill 160, provides that "physical performance of services" means any performance of labor or services for a public employer (e.g., Fulton County) using a bidding process (e.g., ITB, RFQ, RFP, etc.) or contract wherein the labor or services exceed \$2,499.99, except for those individuals licensed pursuant to title 26 or Title 43 or by the State Bar of Georgia and is in good standing when such contract is for service to be rendered by such individual.

<sup>2</sup>\*[Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603].

## FORM G: GEORGIA SECURITY AND IMMIGRATION SUBCONTRACTOR AFFIDAVIT

### Instructions:

In the event that your company is awarded the contract for this project, and will be utilizing the services of any subcontractor(s) in connection with the physical performance of services pursuant to this contract, the following affidavit must be completed by such subcontractor(s). Your company must provide a copy of each such affidavit to Fulton County Government, Department of Purchasing & Contract Compliance with the proposal submittal.

All subcontractor affidavit(s) shall become a part of the contract and all subcontractor(s) affidavits shall be maintained by your company and available for inspection by Fulton County Government at any time during the term of the contract. All subcontractor(s) affidavit(s) shall become a part of any contractor/subcontractor agreement(s) entered into by your company.

**STATE OF GEORGIA**

**COUNTY OF FULTON**

*N/A*

**FORM G: GEORGIA SECURITY AND IMMIGRATION SUBCONTRACTOR AFFIDAVIT**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services<sup>3</sup> under a contract with **[insert name of prime contractor]** behalf of **Fulton County Government** has registered with and is participating in a federal work authorization program\*,<sup>4</sup> in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

EEV/Basic Pilot Program\* User Identification Number \_\_\_\_\_

BY: Authorized Officer of Agent  
(Insert Subcontractor Name)

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

County: \_\_\_\_\_

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

<sup>3</sup>O.C.G.A. § 13-10-90(4), as amended by Senate Bill 160, provides that "physical performance of services" means any performance of labor or services for a public employer (e.g., Fulton County) using a bidding process (e.g., ITB, RFQ, RFP, etc.) or contract wherein the labor or services exceed \$2,499.99, except for those individuals licensed pursuant to title 26 or Title 43 or by the State Bar of Georgia and is in good standing when such contract is for service to be rendered by such individual.

<sup>4</sup>\*[Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603].

# **EXHIBIT F**

# **CONTRACT COMPLIANCE FORMS**



November 10, 2020

Ms. Bebe Love  
Contract Compliance Officer  
Fulton County Office of Contract Compliance  
130 Peachtree Street, SW  
Atlanta, GA 30303

Project, (Bid): 20ITB100620A-CJC (Small Water Meter Installation)

Re: EBO Plan

Dear Ms. Love,

Our EBO Plan is as follows,

Wade Coots Company, Inc. has reviewed the above mentioned and intends to self perform 100% of the work on the bid based on the amount of work that is expected.

**The Total Planned Minority Participation, (MBE) on this Project will be 0%**

The remainder of the Subcontracted Work is expected to be less than 1%

The total amount of Work to be subcontracted on this Project will be 0%.  
For some reason we need to subcontract other parts of this contract, Wade Coots Company, Inc. will utilize the approved subs list from Fulton County or advertise through local media to find other minority firms.

Please contact us if you require any additional information on our EBO Plan.

Sincerely,

Mark Sutton  
Project Manager

## EXHIBIT A – PROMISE OF NON-DISCRIMINATION

"Know all persons by these presents, that I/We ( W. GREG COUTS ),  
Name

VICE-PRESIDENT

Title

WADE COUTS COMPANY INC.

Firm Name

Hereinafter "Company", in consideration of the privilege to bid on or obtain contracts funded, in whole or in part, by Fulton County, hereby consent, covenant and agree as follows:

- 1) No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, color, national origin or gender in connection with any bid submitted to Fulton County for the performance of any resulting there from,
- 2) That it is and shall be the policy of this Company to provide equal opportunity to all businesses seeking to contract or otherwise interested in contracting with this Company without regard to the race, color, gender or national origin of the ownership of this business,
- 3) That the promises of non-discrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption,
- 4) That the promise of non-discrimination as made and set forth herein shall be made a part of, and incorporated by reference into, any contract or portion thereof which this Company may hereafter obtain,
- 5) That the failure of this Company to satisfactorily discharge any of the promises of non-discrimination as made and set forth herein shall constitute a material breach of contract entitling the Board to declare the contract in default and to exercise any and all applicable rights and remedies, including but not limited to cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owing on a contract; and
- 6) That the bidder shall provide such information as may be required by the Director of Purchasing & Contract Compliance pursuant to Section 102.436 of the Fulton County Non-Discrimination in Purchasing and Contracting Policy.

NAME: W. GREG COUTS

TITLE: VICE-PRESIDENT

SIGNATURE: 

ADDRESS: 174 DUNCAN CIRCLE

Hiram, GA

PHONE NUMBER: 770-815-0601 EMAIL: mark.sutton@wadecoutscompany.com

## EXHIBIT B – EMPLOYMENT REPORT

The demographic employment make-up for the bidder and all subcontractors performing work on this project must be submitted prior to the execution of the contract.

JOB CATEGORIES	TOTAL EMPLOYED		TOTAL MINORITIES		WHITE (Not Hispanic Origin)	BLACK or AFRICAN AMERICAN (Not of Hispanic Origin)	HISPANIC or LATINO	AMERICAN INDIAN or ALASKAN NATIVE (AIAN)	ASIAN	NATIVE HAWAIIAN or OTHER PACIFIC ISLANDER (NHOP)		TWO or MORE RACES
	M	F	M	F						M	F	
EXECUTIVE/SENIOR LEVEL OFFICIALS and MANAGERS	2	1			2	1						
FIRST/MID LEVEL OFFICIALS and MANAGERS	2				2							
PROFESSIONALS	1		1			1						
TECHNICIANS												
SALES WORKERS												
ADMINISTRATIVE SUPPORT WORKERS	2		1			2		1				
CRAFT WORKERS	2					1		2				
OPERATIVES												
LABORERS & HELPERS	7						7					
SERVICE WORKERS												
<b>TOTAL</b>	<b>16</b>	<b>3</b>			<b>14</b>	<b>3</b>	<b>2</b>					

FIRM'S NAME: WADE CAVIS COMPANY INC.

CONTACT NAME: Mark Sutin

EMAIL: mark.sutin@wadecaviscompany.com PHONE NUMBER: 770-219-0661

SUBMITTED BY: Mark Sutin TITLE: Project Manager

## EXHIBIT C - SCHEDULE OF INTENDED SUBCONTRACTOR UTILIZATION

If the bidder/proposer intends to subcontract any portion of this scope of work/service(s), this form **must be** completed and **submitted with the bid/proposal**. All prime bidders/proposers **must** submit Letter(s) of Intent (Exhibit D) for all subcontractors who will be utilized under the scope of work/services prior to contract execution.

Prime Bidder/Proposer Company Name WNE COOTS

ITB/RFP Name & Number: SMALL WATER METER INSTALLATION 2017B100620A-CJC

1. My firm, as Prime Bidder/Proposer on this scope of work/service(s) is  is not  a minority or female owned and controlled business enterprise. (Please indicate below the portion of work, including, percentage of bid/proposal amount that your firm will carry out directly):  
\$ 6 - or 0 - %
2. This highlighted information below must be completed and submitted with the bid/proposal if a **joint venture (JV)** approach is to be undertaken. Please provide JV breakdown information below and attach a copy of the executed Joint Venture Agreement.

JV Partner(s) information:

Business Name	Business Name	Business Name
_____	_____	_____
% of JV _____	% of JV _____	% of JV _____
Ethnicity _____	Ethnicity _____	Ethnicity _____
Gender _____	Gender _____	Gender _____
Phone# _____	Phone# _____	Phone# _____

3. Sub-Contractors (including suppliers) to be utilized in the performance of this scope of work/service(s), if awarded, are:

SUBCONTRACTOR NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

ETHNIC GROUP\*: \_\_\_\_\_ COUNTY CERTIFIED\*\* \_\_\_\_\_

WORK TO BE PERFORMED: \_\_\_\_\_

DOLLAR VALUE OF WORK: \$ \_\_\_\_\_ PERCENTAGE VALUE: % \_\_\_\_\_

\*Ethnic Groups: African American (AABE); Asian American (ABE); Hispanic American (HBE); Native American (NABE); White Female American (WFBE); \*\*If yes, please attach copy of recent certification.

SUBCONTRACTOR NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_  
ETHNIC GROUP\*: \_\_\_\_\_ COUNTY CERTIFIED\*\* \_\_\_\_\_  
WORK TO BE PERFORMED: \_\_\_\_\_

DOLLAR VALUE OF WORK: \$ \_\_\_\_\_ PERCENTAGE VALUE: \_\_\_\_\_ %

SUBCONTRACTOR NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_  
ETHNIC GROUP\*: \_\_\_\_\_ COUNTY CERTIFIED\*\* \_\_\_\_\_  
WORK TO BE PERFORMED: \_\_\_\_\_

DOLLAR VALUE OF WORK: \$ \_\_\_\_\_ PERCENTAGE VALUE: \_\_\_\_\_ %

SUBCONTRACTOR NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_  
ETHNIC GROUP\*: \_\_\_\_\_ COUNTY CERTIFIED\*\* \_\_\_\_\_  
WORK TO BE PERFORMED: \_\_\_\_\_

DOLLAR VALUE OF WORK: \$ \_\_\_\_\_ PERCENTAGE VALUE: \_\_\_\_\_ %

SUBCONTRACTOR NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_  
ETHNIC GROUP\*: \_\_\_\_\_ COUNTY CERTIFIED\*\* \_\_\_\_\_  
WORK TO BE PERFORMED: \_\_\_\_\_

DOLLAR VALUE OF WORK: \$ \_\_\_\_\_ PERCENTAGE VALUE: \_\_\_\_\_ %

\*Ethnic Groups: African American (AABE); Asian American (ABE); Hispanic American (HBE); Native American (NABE); White Female American (WFBE); \*\*If yes, please attach copy of recent certification.

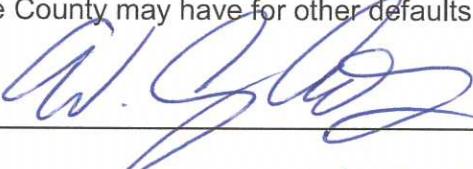
Total Dollar Value of Subcontractor Agreements: (\$)

0 -

Total Percentage Value: (%)

0

**CERTIFICATION:** The undersigned certifies that he/she has read, understands and agrees to be bound by the Bid/Proposer provisions, including the accompanying Exhibits and other terms and conditions regarding sub-contractor utilization. The undersigned further certifies that he/she is legally authorized by the Bidder/Proposer to make the statement and representation in this Exhibit and that said statements and representations are true and correct to the best of his/her knowledge and belief. The undersigned understands and agrees that if any of the statements and representations are made by the Bidder/Proposer knowing them to be false, or if there is a failure of the intentions, objectives and commitments set forth herein without prior approval of the County, then in any such event the Contractor's acts or failure to act, as the case may be, shall constitute a material breach of the contract, entitling the County to terminate the Contract for default. The right to so terminate shall be in addition to, and in lieu of, any other rights and remedies the County may have for other defaults under the contract.

Signature:  Title: VICE-PRESIDENT

Business or Corporate Name: WADE ROOTS COMPANY, INC.

Address: 174 DUNCAN CIR.

HIRAM, GA 30141

Telephone: (770) 819-0601

Fax Number: (770) 819-6601162

Email Address: mark.sutton@waterootscompany.com

N/A

## EXHIBIT D

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR  
OR  
PROVIDE MATERIALS OR SERVICES

This form **must** be completed by ALL known subcontractors and submitted only by subs of awarded Prime prior to contract execution.

To: WADE COOT'S COMPANY, INC.  
(Name of Prime Contractor Firm)

From: N/A  
(Name of Subcontractor Firm)

ITB/RFP Number: 20ITB106620A-CJC

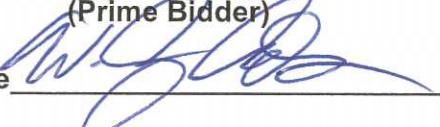
Project Name: SMALL WATER METER INSTALLATION

The undersigned is prepared to perform the following described work or provide materials or services in connection with the above project (specify in detail particular work items, materials, or services to be performed or provided):

Description of Work	Project Commence Date	Project Completion Date	Estimated Dollar Amount
<u>100% SELF-PERFORMED</u>	<u>TBD</u>	<u>TBD</u>	<u>-0-</u>

WADE COOT'S COMPANY, INC.

(Prime Bidder)

Signature 

Title VICE-PRESIDENT

Date 11-10-20

N/A

(Subcontractor)

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT – E PRIME CONTRACTOR/SUB-CONTRACTOR UTILIZATION REPORT**

This report **must** be submitted by the **tenth** day of each month, along with a copy of your monthly invoice (schedule of values/payment application) to Contract Compliance. Failure to comply **shall** result in the County commencing proceedings to impose sanctions to the prime contractor, in addition to pursuing any other available legal remedy. Sanctions may include the suspending of any payment or part thereof, termination or cancellation of the contract, and the denial of participation in any future contracts awarded by Fulton County.

<b>REPORTING PERIOD</b>	<b>PROJECT NAME:</b>
FROM:	PROJECT NUMBER:
TO:	PROJECT LOCATION:

PRIME CONTRACTOR		Contract Award Date	Contract Award Amount	Change Order Amount	Contract Period	% Complete to Date
Name:						
Address:						
Telephone #:						

AMOUNT OF REQUISITION THIS PERIOD: \$  
 TOTAL AMOUNT REQUISITION TO DATE: \$  
 TOTAL AMOUNT REQUISITION TO DATE: \$

SUBCONTRACTOR UTILIZATION (add additional rows as necessary)		Contract Period	Contract Period		
Name of Sub-Contractor	Description of Work	Amount Paid To Date	Amount Requisition This Period	Starting Date	Ending Date
<b>TOTALS</b>					

Executed By: \_\_\_\_\_  
 (Signature) \_\_\_\_\_  
 (Printed Name) \_\_\_\_\_

Notary: \_\_\_\_\_ Date: \_\_\_\_\_ My Commission Expires: \_\_\_\_\_

# **EXHIBIT G**

# **INSURANCE AND RISK MANAGEMENT FORMS**

## **Insurance and Risk Management Provisions**

### **Small Water Meter Installation Service**

The following is the minimum insurance and limits that the Contractor/Vendor must maintain. If the Contractor/Vendor maintains broader coverages and/or higher limits than the minimum shown below, Fulton County Government requires and shall be entitled to coverage for the higher limits maintained by the Contractor/Vendor.

It is Fulton County Government's practice to obtain Certificates of Insurance from our Contractors and Vendors. Insurance must be written by a licensed agent in a company licensed to write insurance in the State of Georgia. Respondents shall submit with the bid/proposal evidence of insurability satisfactory to Fulton County Government as to form and content. Either of the following forms of evidence is acceptable:

- A letter from an insurance carrier stating that upon your firm/company being the successful Bidder/Respondent that a Certificate of Insurance shall be issued in compliance with the Insurance and Risk Management Provisions outlined below.
- A Certificate of Insurance complying with the Insurance and Risk Management Provisions outlined below (Request for Bid/Proposal number and Project Description must appear on the Certificate of Insurance).
- A combination of a specific policy written with an umbrella policy covering liabilities in excess of the required limits is acceptable to achieve the applicable insurance coverage levels.

Any and all Insurance Coverage(s) and Bonds required under the terms and conditions of the contract shall be maintained during the entire length of the contract, including any extensions or renewals thereto, and until all work has been completed to the satisfaction of Fulton County Government. Evidence of said insurance coverages shall be provided on or before the initiation date of the Contract.

**Accordingly the Respondent shall provide a certificate evidencing the following:**

**1. WORKERS COMPENSATION/EMPLOYER'S LIABILITY INSURANCE – STATUTORY (In compliance with the Georgia Workers Compensation Acts and any other State or Federal Acts or Provisions in which jurisdiction may be granted)**

Employer's Liability Insurance	BY ACCIDENT - EACH ACCIDENT	\$1,000,000
Employer's Liability Insurance	BY DISEASE - POLICY LIMIT	\$1,000,000
Employer's Liability Insurance	BY DISEASE - EACH EMPLOYEE	\$1,000,000

**2. COMMERCIAL GENERAL LIABILITY INSURANCE (Including contractual Liability Insurance)**

Bodily Injury and Property Damage Liability (Other than Products/Completed Operations)	Each Occurrence	-	\$1,000,000
	General Aggregate	-	\$2,000,000
Products\Completed Operations	Aggregate Limit	-	\$2,000,000
Personal and Advertising Injury	Limits	-	\$1,000,000
Damage to Rented Premises	Limits	-	\$100,000

<b>3. BUSINESS AUTOMOBILE LIABILITY INSURANCE</b>		
<b>Bodily Injury &amp; Property Damage</b>	Any One Accident (coverage to include owned, non-owned and hired automobiles)	- \$1,000,000
<b>4. UMBRELLA LIABILITY</b>	Each Occurrence (In excess of Auto, General Liability and Employers Liability)	- \$1,000,000

### Certificates

The aforementioned insurance policies shall contain or be endorsed to contain a Provision that coverage afforded under such policies shall not expire, be cancelled or altered without at least thirty (30) days' written notice to Fulton County Government. Certificates of Insurance are to list Fulton County Government, it's Officials, Officers and Employees as an Additional Insured (except for Workers' Compensation) using the ISO Additional Insured Endorsement form CG 20 10 (11/85) version, it's equivalent or on a blanket basis.

The insurance shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, non-contributory, and Waiver of Subrogation provided in favor of Fulton County.

Additional Insured under the General Liability, Auto Liability, Umbrella Policies (with exception of Workers Compensation), with no Cross Suits exclusion.

If Fulton County Government shall so request, the Respondent, Contractor or Vendor will furnish the County for its inspection and approval such policies of insurance with all endorsements, or confirmed specimens thereof certified by the insurance company to be true and correct copies.

Such certificates and notices shall be sent to:

Fulton County Government – Purchasing Department  
130 Peachtree Street, S.W.  
Suite 1168  
Atlanta, Georgia 30303-3459

### Important:

The obligations for the Contractor/Vendor to procure and maintain insurance shall not be construed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor/Vendor from liability incurred as a result of their activities/operations in conjunction with the Contract and/or Scope of Work.

### USE OF PREMISES

Contractor/Vendor shall confine its apparatus, the storage of materials and the operations of its workers to limits/requirements indicated by law, ordinance, permits and any restrictions of Fulton County Government and shall not unreasonably encumber the premises with its materials (Where applicable).

### **PROTECTION OF PROPERTY**

Contractor/Vendor will adequately protect its own work from damage, will protect Fulton County Government's property from damage or loss and will take all necessary precautions during the progress of the work to protect all persons and the property of others from damage or loss.

Contractor/Vendor shall take all necessary precautions for the safety of employees of the work and shall comply with all applicable provisions of the Federal, State and local safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where work is being performed.

Contractor/Vendor shall erect and properly maintain at all times as required by the conditions and progress of the work, all necessary safeguards for the protection of its employees, Fulton County Government employees and the public and shall post all applicable signage and other warning devices to protect against potential hazards for the work being performed (Where applicable).

THE RESPONDENT ACKNOWLEDGES HAVING READ, UNDERSTANDING, AND AGREES TO COMPLY WITH THE ABOVE STATEMENTS, AND IS AUTHORIZED TO SIGN CONTRACTS ON BEHALF OF THE RESPONDING COMPANY.

COMPANY: WADE COOTS COMPANY, INC. SIGNATURE: 

NAME: W. COOTS TITLE: VICE-PRESIDENT

DATE: 11-10-20

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

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

<b>PRODUCER</b> Yates Insurance Agency 2800 Century Parkway NE Suite 300 Atlanta GA 30345-	<b>CONTACT NAME:</b>	
	PHONE (A/C, No, Ext): 404-633-4321	FAX (A/C, No): 404-633-1312
	<b>E-MAIL ADDRESS:</b> certs@yatesins.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b> Wade Coots Co., Inc. 174 Duncan Circle Hiram GA 30141	<b>INSURER A :</b> Illinois Union Insurance Company	27960
	<b>INSURER B :</b> Monroe Guaranty Insurance Company	32506
	<b>INSURER C :</b> National Trust Insurance Company	20141
	<b>INSURER D :</b> FCCI Insurance Company	10178
	<b>INSURER E :</b>	
	<b>INSURER F :</b>	

## COVERAGES

**CERTIFICATE NUMBER: 1621296294**

**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE		ADDL INSD	SUBR WWD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS						
D	X	COMMERCIAL GENERAL LIABILITY	Y	Y	CPP100049281	7/1/2020	7/1/2021	EACH OCCURRENCE	\$ 1,000,000					
		CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000					
								MED EXP (Any one person)	\$ 10,000					
								PERSONAL & ADV INJURY	\$ 1,000,000					
		GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 2,000,000					
		POLICY <input checked="" type="checkbox"/> PRO- JECT <input checked="" type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG	\$ 2,000,000					
		OTHER:							\$					
									\$					
									\$					
									\$					
B	AUTOMOBILE LIABILITY			CA100003783	<i>APPLIES</i>	7/1/2020	7/1/2021	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000					
	X	ANY AUTO						BODILY INJURY (Per person)	\$					
		OWNED AUTOS ONLY	<input checked="" type="checkbox"/>					BODILY INJURY (Per accident)	\$					
	X	Hired AUTOS ONLY						PROPERTY DAMAGE (Per accident)	\$					
									\$					
									\$					
C	X	UMBRELLA LIAB	<input checked="" type="checkbox"/>	OCCUR	UMB100015831	7/1/2020	7/1/2021	EACH OCCURRENCE	\$ 5,000,000					
		EXCESS LIAB		CLAIMS-MADE				AGGREGATE	\$ 5,000,000					
		DED <input checked="" type="checkbox"/>	RETENTION \$ 0						\$					
									\$					
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			Y/N <input checked="" type="checkbox"/> N/A	WC0100058632	7/1/2020	7/1/2021	X PER STATUTE	OTH- ER					
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below							E.L. EACH ACCIDENT	\$ 1,000,000					
								E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000					
								E.L. DISEASE - POLICY LIMIT	\$ 1,000,000					
									\$ 1,000,000					
A	Pollution Liability				CPYG28174329005	7/1/2020	7/1/2021	Occ/Agg \$10,000 Ded	\$ 1,000,000					

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

Subject to policy terms, conditions, forms, and exclusions, the insurance coverages afforded by the policies above include the following when required by written contract for the certificate holder and/or entities listed below: Blanket Additional Insured in regards to General Liability for Ongoing & Completed Operations and Automobile Liability; Blanket Primary and Non-Contributory in regards to General Liability; Blanket Waiver of Subrogation in regards to General Liability, Automobile Liability and Workers Compensation. Per Project Aggregate applies to the General Liability. Umbrella is subject to policy limits, forms, terms, conditions, and exclusions.

See Attached...

## CERTIFICATE HOLDER

## CANCELLATION

Cobb County, Georgia  
Attention: Cobb County Water System  
Engineering & Records Division  
660 South Cobb Drive  
Marietta GA 30060-3105

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

**AUTHORIZED REPRESENTATIVE**

W. C. Dawson



## ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Yates Insurance Agency	NAMED INSURED Wade Coots Co., Inc. 174 Duncan Circle Hiram GA 30141
POLICY NUMBER	
CARRIER	NAIC CODE
EFFECTIVE DATE:	

### ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

**FORMS:**

CGL088 (01/15) First Choice Contractors Liability Endorsement  
 CGL084 (10/13) Additional Insured-Owners Lessees or Contractors-Automatic Status When Required In Construction Agreement With You-Ongoing Operations And Products-Completed Operations  
 CG2033 (04/13) Additional Insured-Owners, Lessees Or Contractors-Automatic Status When Required In Construction Agreement  
 CAU003 (05/19) Auto Advantage Coverage Endorsement  
 MAN-AU (01/02) Blanket Waiver  
 WC000313 (1983) Waiver Of Our Right To Recover From Others Endorsement  
 1UNCUM 9549 (09/16) Schedule of Underlying Insurance  
 CU0001 (04/13) Commercial Liability Umbrella Coverage Form

**All Projects:**

Cobb County Board of Commissioners, Cobb County, Georgia, Owner, its officers, officials, employees and volunteers are included as additional insured's with respects to liability arising out of actions performed by or on behalf of the contractor when required by written contract. 30 Day Notice of Cancellation (IL011 10/15) is included and applies on behalf of certificate holder.

**IN WITNESS THEREOF**, the Parties hereto have caused this Contract to be executed by their duly authorized representatives as attested and witnessed and their corporate seals to be hereunto affixed as of the day and year date first above written.

OWNER:

**FULTON COUNTY, GEORGIA**

DocuSigned by:

*Robert L. Pitts*

14E1B4AA5F6A44A...

Robert L. Pitts, Chairman  
Fulton County Board of Commissioners  
Please select Attest or Notary from checkbox

ATTEST:

DocuSigned by:

*Tonya R. Grier*

EEC476C4937648D...

Tonya R. Grier  
Interim Clerk to the Commission  
Please select Attest or Notary from checkbox

(Affix County Seal)



APPROVED AS TO FORM:

DocuSigned by:

*Denval Stewart*

2277A2CE73F4E4...

Office of the County Attorney

APPROVED AS TO CONTENT:

DocuSigned by:

*David Clark*

65CE1C9FDD834B8...

David Clark  
Public works

Director

Please select RCS or RM from the checkbox

 RCS

RM

ITEM#: 2021-0137 RCS: 2/17/2021  
RECESS MEETING

ITEM#: RM:  
REGULAR MEETING

Insurance Certificate to be attached





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/22/2021

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

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

<b>PRODUCER</b> Yates Insurance Agency 2800 Century Parkway NE Suite 300 Atlanta GA 30345-	<b>CONTACT</b> NAME: PHONE (A/C, No, Ext): 404-633-4321      FAX (A/C, No): 404-633-1312 E-MAIL ADDRESS: certs@yatesins.com
	<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A : Illinois Union Insurance Company      NAIC # 27960 INSURER B : Monroe Guaranty Insurance Company      32506 INSURER C : National Trust Insurance Company      20141 INSURER D : FCCI Insurance Company      10178 INSURER E : INSURER F :
<b>INSURED</b> Wade Coots Co., Inc. 174 Duncan Circle Hiram GA 30141	WADEC00-01

**COVERAGES**      **CERTIFICATE NUMBER:** 189060835      **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
D	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR     GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO- JECT <input checked="" type="checkbox"/> LOC  OTHER:			CPP100049281	7/1/2020	7/1/2021	EACH OCCURRENCE	\$ 1,000,000	
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	
							MED EXP (Any one person)	\$ 10,000	
							PERSONAL & ADV INJURY	\$ 1,000,000	
							GENERAL AGGREGATE	\$ 2,000,000	
							PRODUCTS - COMP/OP AGG	\$ 2,000,000	
								\$	
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			CA100003783	7/1/2020	7/1/2021	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	
							BODILY INJURY (Per person)	\$	
							BODILY INJURY (Per accident)	\$	
							PROPERTY DAMAGE (Per accident)	\$	
								\$	
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE  DED <input checked="" type="checkbox"/> RETENTION \$ 0			UMB100015831	7/1/2020	7/1/2021	EACH OCCURRENCE	\$ 5,000,000	
							AGGREGATE	\$ 5,000,000	
								\$	
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/> Y / N <input type="checkbox"/> N / A		WC0100058632	7/1/2020	7/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH- ER E.L. EACH ACCIDENT	\$ 1,000,000	
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000	
A	Pollution Liability			CPYG28174329005	7/1/2020	7/1/2021	Occ/Agg \$10,000 Ded	\$1,000,000	

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

Subject to policy terms, conditions, forms, and exclusions, the insurance coverages afforded by the policies above include the following when required by written contract for the certificate holder and/or entities listed below: Blanket Additional Insured in regards to General Liability for Ongoing & Completed Operations and Automobile Liability; Blanket Primary and Non-Contributory in regards to General Liability; Blanket Waiver of Subrogation in regards to General Liability, Automobile Liability and Workers Compensation. Per Project Aggregate applies to the General Liability. Umbrella is subject to policy limits, forms, terms, conditions, and exclusions.

See Attached...

<b>CERTIFICATE HOLDER</b>  Fulton County Public Works 141 Pryor Street, SW, Suite 6001 Atlanta GA 30303	<b>CANCELLATION</b>  <p style="text-align: center;">SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p style="text-align: center;">AUTHORIZED REPRESENTATIVE</p> <p style="text-align: center;"></p>
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## ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Yates Insurance Agency		NAMED INSURED Wade Coots Co., Inc. 174 Duncan Circle Hiram GA 30141	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

**ADDITIONAL REMARKS****THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE****FORMS:**

CGL088 (01/15) First Choice Contractors Liability Endorsement  
 CGL084 (10/13) Additional Insured-Owners Lessees or Contractors-Automatic Status When Required In Construction Agreement With You-Ongoing Operations And Products-Completed Operations  
 CG2033 (04/13) Additional Insured-Owners, Lessees Or Contractors-Automatic Status When Required In Construction Agreement  
 CAU003 (05/19) Auto Advantage Coverage Endorsement  
 MAN-AU (01/02) Blanket Waiver  
 WC000313 (1983) Waiver Of Our Right To Recover From Others Endorsement  
 1UNCUM 9549 (09/16) Schedule of Underlying Insurance  
 CU0001 (04/13) Commercial Liability Umbrella Coverage Form

Project: Fulton County Small Meter

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## FIRST CHOICE CONTRACTORS LIABILITY ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

NOTE: The following are additions, replacements and amendments to the Commercial General Liability Coverage Form, and will apply unless excluded by separate endorsement(s) to the Commercial General Liability Coverage Form.

**The COMMERCIAL GENERAL LIABILITY COVERAGE FORM is amended as follows:**

**SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE is amended as follows:**

#### 1. Extended "Property Damage"

Exclusion 2.a., Expected or Intended Injury, is replaced with the following:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

#### 2. Non-owned Watercraft

Exclusion 2.g. (2) (a) is replaced with the following:

- (a) Less than 51 feet long; and

#### 3. Property Damage Liability – Borrowed Equipment

The following is added to Exclusion 2.j. (4):

Paragraph (4) of this exclusion does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations. The most we will pay for "property damage" to any one borrowed equipment item under this coverage is \$25,000 per "occurrence". The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

#### 4. Limited Electronic Data Liability

Exclusion 2.p. is replaced with the following:

- p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

The most we will pay under Coverage A for "property damage" because of all loss of "electronic data" arising out of any one "occurrence" is \$10,000.

We have no duty to investigate or defend claims or "suits" covered by this Limited Electronic Data Liability coverage.

The following definition is added to **SECTION V – DEFINITIONS** of the Coverage Form:

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

For purposes of this **Limited Electronic Data Liability** coverage, the definition of "Property Damage" in **SECTION V – DEFINITIONS** of the Coverage Form is replaced by the following:

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it;
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For purposes of this insurance, "electronic data" is not tangible property.

**SECTION I – COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** is amended as follows:

Paragraph 2.e. Exclusions – the Contractual Liability Exclusion is deleted.

**SECTION I – COVERAGES, the following coverages are added:**

**COVERAGE D. VOLUNTARY PROPERTY DAMAGE**

**1. Insuring Agreement**

We will pay, at your request, for "property damage" caused by an "occurrence", to property of others caused by you, or while in your possession, arising out of your business operations. The amount we will pay for damages is described in **SECTION III LIMITS OF INSURANCE**.

**2. Exclusions**

This insurance does not apply to:

"Property Damage" to:

- a. Property at premises owned, rented, leased or occupied by you;
- b. Property while in transit;
- c. Property owned by, rented to, leased to, loaned to, borrowed by, or used by you;
- d. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;
- e. Property caused by or arising out of the "products-completed operations hazard";
- f. Motor vehicles;
- g. "Your product" arising out of it or any part of it; or
- h. "Your work" arising out of it or any part of it.

**3. Deductible**

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. We will then pay the amount of loss in excess of \$250 up to the applicable limit of insurance.

**4. Cost Factor**

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

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The insurance afforded under COVERAGE D is excess over any other valid and collectible property or inland marine insurance (including the deductible applicable to the property or inland marine coverage) available to you whether primary, excess, contingent or any other basis.

Coverage D covers unintentional damage or destruction, but does not cover disappearance, theft, or loss of use.

The insurance under COVERAGE D does not apply if a loss is paid under COVERAGE E.

**COVERAGE E. CARE, CUSTODY OR CONTROL****1. Insuring Agreement**

We will pay those sums that the insured becomes legally obligated to pay as damages because of "property damage" caused by an "occurrence", to property of others while in your care, custody, or control or property of others as to which you are exercising physical control if the "property damage" arises out of your business operations. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

**2. Exclusions**

This insurance does not apply to:

"Property Damage" to:

- a. Property at premises owned, rented, leased or occupied by you;
- b. Property while in transit;
- c. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;
- d. Property caused by or arising out of the "products-completed operations hazard";
- e. Motor vehicles;
- f. "Your product" arising out of it or any part of it; or
- g. "Your work" arising out of it or any part of it.

**3. Deductible**

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. We will then pay the amount of loss in excess of \$250 up to the applicable limit of insurance.

**4. Cost Factor**

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance afforded under COVERAGE E is excess over any other valid and collectible property or inland marine insurance (including the deductible applicable to the property or inland marine coverage) available to you whether primary, excess, contingent or any other basis.

The insurance under COVERAGE E does not apply if a loss is paid under COVERAGE D.

**COVERAGE F. LIMITED PRODUCT WITHDRAWAL EXPENSE****1. Insuring Agreement**

- a. If you are a "seller", we will reimburse you for "product withdrawal expenses" associated with "your product" incurred because of a "product withdrawal" to which this insurance applies.

The amount of such reimbursement is limited as described in SECTION III - LIMITS OF INSURANCE. No other obligation or liability to pay sums or perform acts or services is covered.

- a. This insurance applies to a "product withdrawal" only if the "product withdrawal" is initiated in the "coverage territory" during the policy period because:
  - (1) You determine that the "product withdrawal" is necessary; or
  - (2) An authorized government entity has ordered you to conduct a "product withdrawal".
- c. We will reimburse only those "product withdrawal expenses" which are incurred and reported to us within one year of the date the "product withdrawal" was initiated.
- d. The initiation of a "product withdrawal" will be deemed to have been made only at the earliest of the following times:
  - (1) When you have announced, in any manner, to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to conduct a "product withdrawal". This applies regardless of whether the determination to conduct a "product withdrawal" is made by you or is requested by a third party;
  - (2) When you received, either orally or in writing, notification of an order from an authorized government entity to conduct a "product withdrawal"; or
  - (3) When a third party has initiated a "product withdrawal" and you communicate agreement with the "product withdrawal", or you announce to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to participate in the "product withdrawal", whichever comes first.
- e. "Product withdrawal expenses" incurred to withdraw "your products" which contain:
  - (1) The same "defect" will be deemed to have arisen out of the same "product withdrawal"; or
  - (2) A different "defect" will be deemed to have arisen out of a separate "product withdrawal" if newly determined or ordered in accordance with paragraph 1.b of this coverage.

## 2. Exclusions

This insurance does not apply to "product withdrawal" expenses" arising out of:

- a. Any "product withdrawal" initiated due to:
  - (1) The failure of "your products" to accomplish their intended purpose, including any breach of warranty of fitness, whether written or implied. This exclusion does not apply if such failure has caused or is reasonably expected to cause "bodily injury" or physical damage to tangible property.
  - (2) Copyright, patent, trade secret or trademark infringements;
  - (3) Transformation of a chemical nature, deterioration or decomposition of "your product", except if it is caused by:
    - (a) An error in manufacturing, design, processing or transportation of "your product"; or
    - (b) "Product tampering".
  - (4) Expiration of the designated shelf life of "your product".
- b. A "product withdrawal", initiated because of a "defect" in "your product" known to exist by the Named Insured or the Named Insured's "executive officers", prior to the inception date of this Coverage Part or prior to the time "your product" leaves your control or possession.
- c. Recall of any specific products for which "bodily injury" or "property damage" is excluded under Coverage A - Bodily Injury And Property Damage Liability by endorsement.
- d. Recall of "your products" which have been banned from the market by an authorized government entity prior to the policy period.
- e. The defense of a claim or "suit" against you for "product withdrawal expenses".

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## 3. For the purposes of the insurance afforded under COVERAGE F, the following is added to 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition under SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

## e. Duties In The Event Of A "Defect" Or A "Product Withdrawal"

- (1) You must see to it that we are notified as soon as practicable of any actual, suspected or threatened "defect" in "your products", or any governmental investigation, that may result in a "product withdrawal". To the extent possible, notice should include:
  - (a) How, when and where the "defect" was discovered;
  - (b) The names and addresses of any injured persons and witnesses; and
  - (c) The nature, location and circumstances of any injury or damage arising out of use or consumption of "your product".
- (2) If a "product withdrawal" is initiated, you must:
  - (a) Immediately record the specifics of the "product withdrawal" and the date it was initiated;
  - (b) Send us written notice of the "product withdrawal" as soon as practicable; and
  - (c) Not release, consign, ship or distribute by any other method, any product, or like or similar products, with an actual, suspected or threatened defect.
- (3) You and any other involved insured must:
  - (a) Immediately send us copies of pertinent correspondence received in connection with the "product withdrawal";
  - (b) Authorize us to obtain records and other information; and
  - (c) Cooperate with us in our investigation of the "product withdrawal".

## 4. For the purposes of this Coverage F, the following definitions are added to the Definitions Section:

- a. "Defect" means a defect, deficiency or inadequacy that creates a dangerous condition.
- b. "Product tampering" is an act of intentional alteration of "your product" which may cause or has caused "bodily injury" or physical injury to tangible property.

When "product tampering" is known, suspected or threatened, a "product withdrawal" will not be limited to those batches of "your product" which are known or suspected to have been tampered with.

- c. "Product withdrawal" means the recall or withdrawal of "your products", or products which contain "your products", from the market or from use, by any other person or organization, because of a known or suspected "defect" in "your product", or a known or suspected "product tampering", which has caused or is reasonably expected to cause "bodily injury" or physical injury to tangible property.
- d. "Product withdrawal expenses" means those reasonable and necessary extra expenses, listed below paid and directly related to a "product withdrawal":
  - (1) Costs of notification;
  - (2) Costs of stationery, envelopes, production of announcements and postage or facsimiles;
  - (3) Costs of overtime paid to your regular non-salaried employees and costs incurred by your employees, including costs of transportation and accommodations;
  - (4) Costs of computer time;
  - (5) Costs of hiring independent contractors and other temporary employees;
  - (6) Costs of transportation, shipping or packaging;
  - (7) Costs of warehouse or storage space; or

- (8) Costs of proper disposal of "your products", or products that contain "your products", that cannot be reused, not exceeding your purchase price or your cost to produce the products; but "product withdrawal expenses" does not include costs of the replacement, repair or redesign of "your product", or the costs of regaining your market share, goodwill, revenue or profit.
- e. "Seller" means a person or organization that manufactures, sells or distributes goods or products. "Seller" does not include a "contractor" as defined elsewhere in this endorsement.

The insurance under COVERAGE F does not apply if a loss is paid under COVERAGE G.

#### **COVERAGE G. CONTRACTORS ERRORS AND OMISSIONS**

##### **1. Insuring Agreement**

If you are a "contractor", we will pay those sums that you become legally obligated to pay as damages because of "property damage" to "your product", "your work" or "impaired property", due to faulty workmanship, material or design, or products including consequential loss, to which this insurance applies. The damages must have resulted from your negligent act, error or omission while acting in your business capacity as a contractor or subcontractor or from a defect in material or a product sold or installed by you while acting in this capacity. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

We have no duty to investigate or defend claims or "suits" covered by this Contractors Errors or Omissions coverage.

This coverage applies only if the "property damage" occurs in the "coverage territory" during the policy period.

This coverage does not apply to additional insureds, if any.

Supplementary Payments – Coverage A and B do not apply to Coverage G. Contractors Errors and Omissions.

##### **2. Exclusions**

This insurance does not apply to:

- a. "Bodily injury" or "personal and advertising injury".
- b. Liability or penalties arising from a delay or failure to complete a contract or project, or to complete a contract or project on time.
- c. Liability because of an error or omission:
  - (1) In the preparation of estimates or job costs;
  - (2) Where cost estimates are exceeded;
  - (3) In the preparation of estimates of profit or return on capital;
  - (4) In advising or failure to advise on financing of the work or project; or
  - (5) In advising or failing to advise on any legal work, title checks, form of insurance or suretyship.
- d. Any liability which arises out of any actual or alleged infringement of copyright or trademark or trade dress or patent, unfair competition or piracy, or theft or wrongful taking of concepts or intellectual property.
- e. Any liability for damages:
  - (1) From the intentional dishonest, fraudulent, malicious or criminal acts of the Named Insured, or by any partner, member of a limited liability company, or executive officer, or at the direction of any of them; or
  - (2) Which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually expected or intended.

- f. Any liability arising out of manufacturer's warranties or guarantees whether express or implied.
- g. Any liability arising from "property damage" to property owned by, rented or leased to the insured.
- h. Any liability incurred or "property damage" which occurs, in whole or in part, before you have completed "your work." "Your work" will be deemed completed at the earliest of the following times:
  - (1) When all of the work called for in your contract or work order has been completed;
  - (2) When all the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
  - (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service or maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as complete.

- i. Any liability arising from "property damage" to products that are still in your physical possession.
- j. Any liability arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
  - (1) Providing engineering, architectural or surveying services to others; and
  - (2) Providing or hiring independent professionals to provide engineering, architectural or surveying services in connection with construction work you perform.

Professional services include the preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications. Professional services also include supervisory or inspection activities performed as part of any related architectural or engineering activities.

But, professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with construction work you perform.

- k. Your loss of profit or expected profit and any liability arising therefrom.
- l. "Property damage" to property other than "your product," "your work" or "impaired property."
- m. Any liability arising from claims or "suits" where the right of action against the insured has been relinquished or waived.
- n. Any liability for "property damage" to "your work" if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
- o. Any liability arising from the substitution of a material or product for one specified on blueprints, work orders, contracts or engineering specifications unless there has been written authorization, or unless the blueprints, work orders, contracts or engineering specifications were written by you, and you have authorized the changes.
- p. Liability of others assumed by the insured under any contract or agreement, whether oral or in writing. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

**3. For the purposes of Coverage G, the following definition is added to the Definitions section:**

- a. "Contractor" means a person or organization engaged in activities of building, clearing, filing, excavating or improvement in the size, use or appearance of any structure or land. "Contractor" does not include a "seller" as defined elsewhere in this endorsement.

**4. Deductible**

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. The limits of insurance will not be reduced by the application of the deductible amount.

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

### 5. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance under COVERAGE G does not apply if a loss is paid under COVERAGE F.

## COVERAGE H. LOST KEY COVERAGE

### 1. Insuring Agreement

We will pay those sums, subject to the limits of liability described in SECTION III LIMITS OF INSURANCE in this endorsement and the deductible shown below, that you become legally obligated to pay as damages caused by an "occurrence" and due to the loss or mysterious disappearance of keys entrusted to or in the care, custody or control of you or your "employees" or anyone acting on your behalf. The damages covered by this endorsement are limited to the:

- a. Actual cost of the keys;
- b. Cost to adjust locks to accept new keys; or
- c. Cost of new locks, if required, including the cost of installation.

### 2. Exclusions

This insurance does not apply to:

- a. Keys owned by any insured, employees of any insured, or anyone acting on behalf of any insured;
- b. Any resulting loss of use; or
- c. Any of the following acts by any insured, employees of any insured, or anyone acting on behalf of any insured:
  - 1) Misappropriation;
  - 2) Concealment;
  - 3) Conversion;
  - 4) Fraud; or
  - 5) Dishonesty.

### 3. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$1,000. The limits of insurance will not be reduced by the application of the deductible amount.

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

## EXPANDED COVERAGE FOR TENANT'S PROPERTY AND PREMISES RENTED TO YOU

The first paragraph after subparagraph (6) in Exclusion j., Damage to Property is amended to read as follows:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

**SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGE A and B is amended as follows:**

All references to SUPPLEMENTARY PAYMENTS – COVERAGES A and B are amended to SUPPLEMENTARY PAYMENTS – COVERAGES A, B, D, E, G, and H.

**1. Cost of Bail Bonds**

Paragraph 1.b. is replaced with the following:

b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

**2. Loss of Earnings**

Paragraph 1.d. is replaced with the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

**SECTION II – WHO IS AN INSURED is amended as follows:**

**1. Incidental Malpractice**

Paragraph 2.a.(1)(d) is replaced with the following:

(d) Arising out of his or her providing or failing to provide professional health care services. However, this exclusion does not apply to a nurse, emergency medical technician or paramedic employed by you to provide medical services, unless:

- (i) You are engaged in the occupation or business of providing or offering medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction; or
- (ii) The "employee" has another insurance that would also cover claims arising under this provision, whether the other insurance is primary, excess, contingent or on any other basis.

**2. Broadened Who Is An Insured**

The following are added to Paragraph 2.:

**Subsidiaries**

e. Your subsidiaries if:

- (1) They are legally incorporated entities; and
- (2) You own more than 50% of the voting stock in such subsidiaries as of the effective date of this policy. If such subsidiaries are not shown in the Declarations, you must report them to us within 180 days of the inception of your original policy.

**Additional Insureds**

f. Any person or organization described in paragraphs g. through k. below whom you are required to add as an additional insured on this policy under a written contract or agreement in effect during the term of this policy, provided the written contract or agreement was executed prior to the "bodily injury", "property damage" or "personal and advertising injury" for which the additional insured seeks coverage.

However, the insurance afforded to such additional insured(s):

- (1) Only applies to the extent permitted by law;
- (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured;
- (3) Will not be broader than that which is afforded to you under this policy;
- (4) Is subject to the conditions described in paragraphs g. through k. below; and
- (5) Nothing herein shall extend the term of this policy.

## g. Owner, Lessor or Manager of Premises

If the additional insured is an owner, lessor or manager of premises, such person or organization shall be covered only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you and subject to the following additional exclusions:

- (1) Any "occurrence" that takes place after you cease to occupy those premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

## h. State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations

If the additional insured is the state or any political subdivision, the state or political subdivision shall be covered only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit or authorization. This insurance does not apply to:

- (1) "Bodily injury", "property damage", or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

## i. Lessor of Leased Equipment

If the additional insured is a lessor of leased equipment, such lessor shall be covered only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s). With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

## j. Mortgagee, Assignee, or Receiver

If the additional Insured is a mortgagee, assignee, or receiver of premises, such mortgagee, assignee or receiver of premises is an additional insured only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

## k. Vendor

If the additional insured is a vendor, such vendor is an additional insured only with respect to "bodily injury" or "property damage" caused by "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 to the vendor does not apply:
  - (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 absence of the contract or agreement.
  - (b) Any express warranty unauthorized by you;
  - (c) Any physical or chemical change in "your product" made intentionally by the vendor;
  - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
  - (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
  - (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - i. The exceptions contained in Subparagraphs d. or f.; or
  - ii. Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

### **3. Newly Formed or Acquired Organizations**

Paragraph 3. is amended as follows:

- a. Coverage under this provision is afforded until the end of the policy period.
- d. Coverage A does not apply to product recall expense arising out of any withdrawal or recall that occurred before you acquired or formed the organization.

### **SECTION III – LIMITS OF INSURANCE is amended as follows:**

#### **1. Paragraph 2. is replaced with the following:**

- 2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";
  - c. Damages under Coverage B;
  - d. Voluntary "property damage" payments under Coverage D;
  - e. Care, Custody or Control damages under Coverage E.; and
  - f. Lost Key Coverage under Coverage H.

#### **2. Paragraph 5. is replaced with the following:**

- 5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A;
  - b. Medical expenses under Coverage C;
  - c. Voluntary "property damage" payments under Coverage D;
  - d. Care, Custody or Control damages under Coverage E;
  - e. Limited Product Withdrawal Expense under Coverage F;
  - f. Contractors Errors and Omissions under Coverage G.; and,
  - g. Lost Key Coverage under Coverage H.

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

#### **3. Paragraph 6. is replaced with the following:**

- 6. Subject to Paragraph 5. above the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you,

or in the case of damage by fire or explosion, while rented to you or temporarily occupied by you with permission of the owner.

The Damage to Premises Rented to You Limit is the higher of the Each Occurrence Limit shown in the Declarations or the amount shown in the Declarations as Damage To Premises Rented To You Limit.

**4. Paragraph 7. is replaced with the following:**

7. Subject to Paragraph 5. above, the higher of \$10,000 or the Medical Expense Limit shown in the Declarations is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

**5. Paragraph 8. is added as follows:**

8. Subject to Paragraph 5. above, the most we will pay under Coverage D. Voluntary Property Damage for loss arising out of any one "occurrence" is \$1,500. The most we will pay in any one-policy period, regardless of the number of claims made or suits brought, is \$3,000.

**6. Paragraph 9. is added as follows:**

9. Subject to Paragraph 5. above, the most we will pay under Coverage E. Care, Custody or Control for "property damage" arising out of any one "occurrence" is \$1,000. The most we will pay in any one-policy period, regardless of the number of claims made or suits brought, is \$5,000.

**7. Paragraph 10. is added as follows:**

10. Subject to Paragraph 5. above, the most we will pay under Coverage F. Limited Product Withdrawal Expense for "product withdrawal expenses" in any one-policy period, regardless of the number of insureds, "product withdrawals" initiated or number of "your products" withdrawn is \$10,000.

**8. Paragraph 11. is added as follows:**

11. Subject to Paragraph 5. above, the most we will pay under Coverage G. Contractors Errors and Omissions for damage in any one-policy period, regardless of the number of insureds, claims or "suits" brought, or persons or organizations making claim or bringing "suits" is \$10,000.

For errors in contract or job specifications or in recommendations of products or materials to be used, this policy will not pay for additional costs of products and materials to be used that would not have been incurred had the correct recommendations or specifications been made.

**9. Paragraph 12. is added as follows:**

12. Subject to Paragraph 5. above, the most we will pay under Coverage H., Lost Key Coverage for damages arising out of any one occurrence is \$50,000.

**10. Paragraph 13. is added as follows:**

13. The General Aggregate Limit applies separately to:
  - a. Each of your projects away from premises owned by or rented to you; or
  - b. Each "location" owned by or rented to you.

"Location" as used in this paragraph means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

**11. Paragraph 14. is added as follows:**

14. With respect to the insurance afforded to any additional insured provided coverage under this endorsement:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or

- b. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:**

**1. Subparagraph 2.a. of Duties In The Event Of Occurrence, Offense, Claim, or Suit is replaced with the following:**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. This requirement applies only when the "occurrence" or offense is known to the following:
  - (1) An individual who is the sole owner;
  - (2) A partner, if you are a partnership or joint venture;
  - (3) An "executive officer" or insurance manager, if you are a corporation;
  - (4) A manager, if you are a limited liability company;
  - (5) A person or organization having proper temporary custody of your property if you die;
  - (6) The legal representative of you if you die; or
  - (7) A person (other than an "employee") or an organization while acting as your real estate manager.

To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

**2. The following is added to Subparagraph 2.b. of Duties In The Event Of Occurrence, Offense, Claim, or Suit:**

The requirement in 2.b.applies only when the "occurrence" or offense is known to the following:

- (1) An individual who is the sole owner;
- (2) A partner or insurance manager, if you are a partnership or joint venture;
- (3) An "executive officer" or insurance manager, if you are a corporation;
- (4) A manager or insurance manager, if you are a limited liability company;
- (5) Your officials, trustees, board members or insurance manager, if you are a not-for-profit organization;
- (6) A person or organization having proper temporary custody of your property if you die;
- (7) The legal representative of you if you die; or
- (8) A person (other than an "employee") or an organization while acting as your real estate manager.

**3. The following is added to paragraph 2. of Duties in the Event of Occurrence, Offense, Claim or Suit:**

- e. If you report an "occurrence" to your workers compensation carrier that develops into a liability claim for which coverage is provided by the Coverage Form, failure to report such an "occurrence" to us at the time of the "occurrence" shall not be deemed a violation of paragraphs a., b., and c. above. However, you shall give written notice of this "occurrence" to us as soon as you become aware that this "occurrence" may be a liability claim rather than a workers compensation claim.

**4. Paragraph 6. is replaced with the following:**

- 6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

Any error or omission in the description of, or failure to completely describe or disclose any premises, operations or products intended to be covered by the Coverage Form will not invalidate or affect coverage for those premises, operations or products, provided such error or omission or failure to completely describe or disclose premises, operations or products was not intentional.

You must report such error or omission to us as soon as practicable after its discovery. However, this provision does not affect our right to collect additional premium charges or exercise our right of cancellation or nonrenewal.

**5. The following is added to paragraph 8. Transfer Of Rights Of Recovery Against Others To Us:**

However, we waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" included in the "products-completed operations hazard" under the following conditions:

- a) Only when you have agreed in writing to waive such rights of recovery in a contract or agreement;
- b) Only as to the person/entity as to whom you are required by the contract to waive rights of recovery; and
- c) Only if the contract or agreement is in effect during the term of this policy, and was executed by you prior to the loss.

**6. Paragraph 10. is added as follows:**

**10. Liberalization**

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in the applicable state(s).

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –  
AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION  
AGREEMENT WITH YOU – ONGOING OPERATIONS AND  
PRODUCTS-COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**SCHEDULE (OPTIONAL)**

**Name of Additional Insured Persons or Organizations**

(As required by written contract or agreement per Paragraph A. below.)

**Locations of Covered Operations**

(As per the written contract or agreement, provided the location is within the "coverage territory".)

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

A. **Section II – Who Is An Insured** is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement in effect during the term of this policy that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above; and
3. The particular person or organization, if any, scheduled above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" occurring after the execution of the contract or agreement described in Paragraph 1. above and caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf in the performance of your ongoing operations for the additional insured; or
3. Your work" performed for the additional insured and included in the "products-completed operations hazard" if such coverage is specifically required in the written contract or agreement.

COMMERCIAL GENERAL LIABILITY  
CGL 084 (10 13)

However, the insurance afforded to such additional insured(s) described above:

1. Only applies to the extent permitted by law;
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured;
3. Will not be broader than that which is afforded to you under this policy; and
4. Nothing herein shall extend the term of this policy.

B. The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

C. This insurance is excess over any other valid and collectible insurance available to the additional insured whether on a primary, excess, contingent or any other basis; unless the written contract or agreement requires that this insurance be primary and non-contributory, in which case this insurance will be primary and non-contributory relative to insurance on which the additional insured is a Named Insured.

D. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

E. **Section IV – Commercial General Liability Conditions** is amended as follows:

The Duties In The Event of Occurrence, Offense, Claim or Suit condition is amended to add the following additional conditions applicable to the additional insured:

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

1. Give us written notice of an "occurrence" or an offense which may result in a claim or "suit" under this insurance, and of any claim or "suit" that does result;
2. Send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions; and
3. Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover under this endorsement and agree to make available all such other insurance. However, this condition does not affect Paragraph C. above.

COMMERCIAL GENERAL LIABILITY  
CGL 084 (10 13)

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

F. This endorsement does not apply to any additional insured or project that is specifically identified in any other additional insured endorsement attached to the Commercial General Liability Coverage Form.

COMMERCIAL GENERAL LIABILITY  
CG 20 33 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – AUTOMATIC STATUS WHEN  
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

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

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

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

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

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

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

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

## AUTO ADVANTAGE COVERAGE ENDORSEMENT

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## AUTO ADVANTAGE COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

NOTE: The following are additions, replacements and amendments to the Business Auto Coverage Form, and will apply unless excluded by separate endorsement(s) to the Business Auto Coverage Form.

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

The Business Auto Coverage Form is amended as follows:

### SECTION II – COVERED AUTOS LIABILITY COVERAGE

is amended as follows:

**A. Paragraph 1. Who Is An Insured** in section **A. Coverage** is amended by the addition of the following:

- d. Any legally incorporated subsidiary of yours in which you own more than 50% of the voting stock on the effective date of this coverage form. However, "insured" does not include any subsidiary that is an "insured" under any other liability policy or would be an "insured" under such a policy but for its termination or the exhaustion of its limits of insurance. In order for such subsidiaries to be considered insured under this policy, you must notify us of such subsidiaries within 60 days of policy effective date.
- e. Any organization you newly acquire or form during the policy period, other than a partnership or joint venture, and over which you maintain sole ownership or a majority interest. However, coverage under this provision:
  - (1) Does not apply if the organization you acquire or form is an "insured" under another liability policy or would be an "insured" under such a policy but for its termination or the exhaustion of its limits of insurance;
  - (2) Does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - (3) Is afforded only for the first 90 days after you acquire or form the organization or until the end of the policy period, whichever comes first.

- f. Who Is An Insured is amended to include as an "insured" any person or organization except a person or organization that leases or rents "auto(s)" to you, but only to the extent of his, her, or its liability for whom you and such person or organization have agreed in writing in a contract or agreement, signed and executed by you prior to the loss for which coverage is sought, that such person or organization be added as an additional "insured" on your policy. Certificates of insurance will not be considered an Agreement to Insure.

Such person or organization is an additional "insured" but only with respect to your negligent actions, which cause liability to be imposed on such person or organization without fault on the part of said person or organization.

**B. Paragraphs (2) and (4) under section 2. Coverage Extensions, a. Supplementary Payments** are deleted and replaced by the following:

- (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$350 a day because of time off from work.

**SECTION III – PHYSICAL DAMAGE COVERAGE** is amended as follows:

**A. Paragraph 4. Coverage Extensions** under section **A. Coverage** is deleted and replaced by the following:

**4. Coverage Extensions**

**a. Transportation Expenses**

We will pay up to \$40 per day to a total maximum of \$1,200 for temporary transportation expenses incurred by you because of the total theft of a covered "auto" of the private passenger type or light trucks with a gross vehicle weight of less than 10,000 pounds. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

**b. Loss of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for hired "autos";
- (2) Specified Causes of Loss only if the Declarations indicate that Specified Causes of Loss Coverage is provided for hired "autos"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for hired "autos".

However, the most we will pay for any expenses for loss of use to any one vehicle is \$40 per day, to a total maximum of \$1200.

**B. The following is added to paragraph 4. Coverage Extensions under section A. Coverage:**

**c. Fire Department Service Charge**

When a fire department is called to save or protect a covered "auto", its equipment, its contents, or occupants from a covered cause of loss, we will pay up to \$1,000 for your liability for fire department service charges:

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

No deductible applies to this additional coverage.

**d. Auto Loan/Lease Gap Coverage**

The following provisions apply:

- (1) If a long term leased "auto", under an original lease agreement, is a covered "auto" under this Coverage Form and the lessor of the covered "auto" is named as an additional "insured" under this policy, in the event of a total "loss" to the leased covered "auto", we will pay any unpaid amount due on the lease, less the amount paid under the Physical Damage Coverage Section of the policy; and less any:
  - (a) Overdue lease payments at the time of the "loss";
  - (b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - (c) Security deposits not returned by the lessor;
  - (d) Costs for extended warranties, Credit Life Insurance, Health Accident or Disability Insurance purchased with the lease; and
  - (e) Carry-over balances from previous loans or leases.

(2) If an owned "auto" is a covered "auto" under this Coverage Form and the loss payee of the covered "auto" is named a loss payee under this policy, in the event of a total loss to the covered "auto", we will pay any unpaid amount due on the loan, less the amount paid under the Physical Damage Coverage Section of the policy; and less any:

- (a) Overdue loan payments at the time of the "loss";
- (b) Costs for extended warranties, Credit Life Insurance, Health Accident or Disability Insurance purchased with the loan; and
- (c) Carry-over balances from previous loans.

**C. Section D. Deductible** is deleted and replaced by the following:

**D. Deductible**

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations subject to the following:

Any Comprehensive Coverage deductible shown in the Declarations does not apply to:

- (1) "Loss" caused by fire or lightning; and
- (2) Glass damage if repaired rather than replaced.

**SECTION IV – BUSINESS AUTO CONDITIONS** is amended as follows:

**A. The following is added to paragraph a. under section A. Loss Conditions, 2. Duties in the Event of Accident, Claim, Suit or Loss:**

This duty applies when the "accident", claim, "suit" or "loss" is first known to:

- (a) You, if you are an individual;
- (b) A partner, if you are a partnership;
- (c) An executive officer or insurance manager, if you are a corporation; or
- (d) A member or manager, if you are a limited liability company.

**B. The following is added to Condition 2. Concealment, Misrepresentation or Fraud under section B. General Conditions:**

However, if you unintentionally fail to disclose any hazards at the inception of your policy, we will not deny coverage under this Coverage Form because of such failure. This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**Policy Number  
CA 100003783**

**ENDORSEMENT**

**Monroe Guaranty Insurance Company**

Named Insured Wade Coots Co Inc; Coots

Effective Date: 07-01-20  
12:01 A.M., Standard Time

Agent Name YATES INSURANCE AGENCY INC

Agent No. 3036001

**BLANKET WAIVER**

**AUTOMATIC WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

This endorsement is subject to the terms, conditions, and any other provisions of the Business Auto Coverage Form and any endorsements attached thereto, unless changes are indicated below.

The following is added to sub-paragraph 5. Transfer Of Rights Of Recovery Against Others To Us of Paragraph A. Loss Conditions under section IV - Business Auto Conditions:

However, we will waive any right of recovery we may have because of payments we make under this coverage form arising out of an "accident" or "loss" if:

a. The "accident" or "loss" is caused by operations undertaken by you in accordance with a written contract or agreement requiring such waiver with that person or organization in the written contract or agreement and

b. The written contract or agreement was executed prior to any "accident" or "loss".

Our waiver of our right to recovery applies only to the extent that the person or organization included in the written contract or agreement with you is considered to be an Additional Insured under this coverage form or is entitled to indemnity from you. No waiver of the right to recovery will directly or indirectly apply to your employees or employees of the person or organization included in the written contract or agreement with you.

We reserve our rights or lien to be reimbursed from any recovery funds by an injured employee.

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WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

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Insured Name: WADE COOTS CO INC  
Policy Number: WCO 100058632  
Agency Name: 3036, Yates Insurance Agency Inc

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**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

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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 anyone not named in the Schedule.

**SCHEDULE**

All persons or organizations that, in a written contract executed by both parties prior to the date of the injury covered by this policy, require you to obtain this agreement from us.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise noted.

Issued by: Monroe Guaranty Insurance Company 14893  
Endorsement Number: 0000010  
Effective Date: 7/01/20 Date Issued: 6/30/2020

Countersigned by \_\_\_\_\_  
Authorized Representative

POLICY NUMBER: UMB100015831

## SCHEDULE OF UNDERLYING INSURANCE

NAME OF UNDERLYING INSURER UNDERLYING POLICY NUMBER UNDERLYING POLICY PERIOD	COVERAGE	LIMIT OF INSURANCE (UNDERLYING LIMIT)
001 FCCI INSURANCE COMPANY  CA 100003783 07/01/2020 - 07/01/2021	Commercial Automobile Liability	Combined Single Limit-Each Accident \$1,000,000 OR Bodily Injury-Each Person  Bodily Injury-Each Accident  Property Damage-Each Accident
026 MONROE GUARANTY INSURANCE COMPANY CPP 100049281 07/01/2020 - 07/01/2021	Commercial General Liability  <input checked="" type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-Made Form _____ Retroactive Date	Each Occurrence Limit \$1,000,000 General Aggregate Limit \$2,000,000 Personal and Advertising Injury Limit \$1,000,000 Products-Completed Operations Aggregate Limit \$2,000,000
026 MONROE GUARANTY INSURANCE COMPANY WC 0100058632 07/01/2020 - 07/01/2021	Employers Liability	Bodily Injury by Accident-Each Accident \$1,000,000 Bodily Injury by Disease-Policy Limit \$1,000,000 Bodily Injury by Disease-Each Employee \$1,000,000
001 FCCI INSURANCE COMPANY  CPP 100049281 07/01/2020 - 07/01/2021	Employee Benefits Liability  <input checked="" type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-Made Form _____ Retroactive Date	Each Employee Limit \$1,000,000 Aggregate Limit \$1,000,000

1-UNCUM-9549 0916

QUOTE

COMMERCIAL LIABILITY UMBRELLA  
CU 00 01 04 13

## COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### SECTION I – COVERAGES

#### COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking damages for such "bodily injury" or "property damage" when the "underlying insurance" does not provide coverage or the limits of "underlying insurance" have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other "suit" seeking damages to which this insurance may apply. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. At our discretion, we may investigate any "occurrence" that may involve this insurance and settle any resultant claim or "suit" for which we have the duty to defend. But:

- (1) The amount we will pay for the "ultimate net loss" is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" or "property damage" that is subject to an applicable "retained limit". If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "bodily injury" or "property damage" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "underlying insurance".
- c. This insurance applies to "bodily injury" and "property damage" only if:
  - (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and
  - (3) Prior to the policy period, no insured listed under Paragraph 1.a. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- d. "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 insured listed under Paragraph 1.a. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

e. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1.a. of Section II –Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

f. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 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.

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage" involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

This exclusion does not apply to the extent that valid "underlying insurance" for the liquor liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the liquor liability risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. ERISA**

Any obligation of the insured under the Employee Retirement Income Security Act of 1974 (ERISA), and any amendments thereto or any similar federal, state or local statute.

**f. Auto Coverages**

- (1) "Bodily injury" or "property damage" arising out of the ownership, maintenance or use of any "auto" which is not a "covered auto"; or
- (2) Any loss, cost or expense payable under or resulting from any first-party physical damage coverage; no-fault law; personal injury protection or auto medical payments coverage; or uninsured or underinsured motorist law.

**g. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

With respect to injury arising out of a "covered auto", this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits. For the purposes of this insurance, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

This exclusion does not apply to the extent that valid "underlying insurance" for the employer's liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the employer's liability risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

**h. Employment-related Practices**

"Bodily injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraph (a), (b), or (c) above is directed.

This exclusion applies whether the injury-causing event described in Paragraph (a), (b) or (c) above occurs before employment, during employment or after employment of that person.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**i. Pollution**

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time; or
- (2) "Pollution cost or expense".

This exclusion does not apply if valid "underlying insurance" for the pollution liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage".

To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the pollution risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

**j. Aircraft Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 50 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (4) The extent that valid "underlying insurance" for the aircraft or watercraft liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" or "property damage". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the aircraft or watercraft risks described above will follow the same provisions, exclusions and limitations that are contained in the "underlying insurance", unless otherwise directed by this insurance; or

**(5) Aircraft that is:**

- (a) Chartered by, loaned to, or hired by you with a paid crew; and
- (b) Not owned by any insured.

**k. Racing Activities**

"Bodily injury" or "property damage" arising out of the use of "mobile equipment" or "autos" in, or while in practice for, or while being prepared for, any prearranged professional or organized racing, speed, demolition, or stunting activity or contest.

**l. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**m. Damage To Property**

"Property damage" to:

- (1) Property:
  - (a) 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; or
  - (b) Owned or transported by the insured and arising out of the ownership, maintenance or use of a "covered auto".
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

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

Paragraphs (3) and (4) of this exclusion do not apply to liability assumed under a written Trailer Interchange agreement.

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

**n. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**o. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**p. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**q. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or

- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**r. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**s. Professional Services**

"Bodily injury" or "property damage" due to rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;
- (3) Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;
- (4) Engineering services, including related supervisory or inspection services;
- (5) Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;
- (6) Any health or therapeutic service treatment, advice or instruction;
- (7) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
- (8) Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;
- (9) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (10) Body piercing services;
- (11) Services in the practice of pharmacy;
- (12) Law enforcement or firefighting services; and
- (13) Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", involved the rendering of or failure to render any professional service.

**t. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

This exclusion does not apply if valid "underlying insurance" for the electronic data risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage". The insurance provided under this Coverage Part will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

**u. Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking damages for such "personal and advertising injury" when the "underlying insurance" does not provide coverage or the limits of "underlying insurance" have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other "suit" seeking damages to which this insurance may apply. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. At our discretion, we may investigate any offense that may involve this insurance and settle any resultant claim or "suit" for which we have the duty to defend. But:

- (1) The amount we will pay for the "ultimate net loss" is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" that is subject to an applicable "retained limit". If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "personal and advertising injury" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "underlying insurance".
- c. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

## **2. Exclusions**

This insurance does not apply to:

a. "Personal and advertising injury":

### **(1) Knowing Violation Of Rights Of Another**

Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

### **(2) Material Published With Knowledge Of Falsity**

Arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

### **(3) Material Published Prior To Policy Period**

Arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

### **(4) Criminal Acts**

Arising out of a criminal act committed by or at the direction of the insured.

### **(5) Contractual Liability**

For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to:

(a) Liability for damages that the insured would have in the absence of the contract or agreement.

(b) Liability for false arrest, detention or imprisonment assumed in a contract or agreement.

### **(6) Breach Of Contract**

Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

### **(7) Quality Or Performance Of Goods – Failure To Conform To Statements**

Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

### **(8) Wrong Description Of Prices**

Arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

### **(9) Infringement Of Copyright, Patent, Trademark Or Trade Secret**

Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

### **(10) Insureds In Media And Internet Type Businesses**

Committed by an insured whose business is:

(a) Advertising, broadcasting, publishing or telecasting;

(b) Designing or determining content of web sites for others; or

(c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

### **(11) Electronic Chatrooms Or Bulletin Boards**

Arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

### **(12) Unauthorized Use Of Another's Name Or Product**

Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

### **(13) Pollution**

Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**(14) Employment-related Practices**

To:

- (a) A person arising out of any:
  - (i) Refusal to employ that person;
  - (ii) Termination of that person's employment; or
  - (iii) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (b) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraph (i), (ii) or (iii) above is directed.

This exclusion applies whether the injury-causing event described in Paragraph (i), (ii) or (iii) above occurs before employment, during employment or after employment of that person.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**(15) Professional Services**

Arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (a) Legal, accounting or advertising services;
- (b) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;
- (c) Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;
- (d) Engineering services, including related supervisory or inspection services;
- (e) Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;

- (f) Any health or therapeutic service treatment, advice or instruction;
- (g) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
- (h) Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;
- (i) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (j) Body piercing services;
- (k) Services in the practice of pharmacy;
- (l) Law enforcement or firefighting services; and
- (m) Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional service.

**(16) War**

However caused, arising, directly or indirectly, out of:

- (a) War, including undeclared or civil war;
- (b) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (c) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**(17) Recording And Distribution Of Material Or Information In Violation Of Law**

Arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (a) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (b) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (c) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (d) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

- b. "Pollution cost or expense".

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend, when the duty to defend exists:
  - a. All expenses we incur.
  - b. Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "occurrence" we cover. We do not have to furnish these bonds.
  - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
  - e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. When we have the right but not the duty to defend the insured and elect to participate in the defense, we will pay our own expenses but will not contribute to the expenses of the insured or the "underlying insurer".
3. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
  - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
  - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - f. The indemnitee:
    - (1) Agrees in writing to:
      - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
      - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
      - (c) Notify any other insurer whose coverage is available to the indemnitee; and

- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
- (2) Provides us with written authorization to:
  - (a) Obtain records and other information related to the "suit"; and
  - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

## SECTION II – WHO IS AN INSURED

1. Except for liability arising out of the ownership, maintenance or use of "covered autos":
  - a. If you are designated in the Declarations as:
    - (1) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
    - (2) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
    - (3) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
    - (4) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- (5) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- b. Each of the following is also an insured:
  - (1) Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
    - (a) "Bodily injury" or "personal and advertising injury":
      - (i) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" 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;
      - (ii) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (a)(i) above; or
      - (iii) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (a)(i) or (ii) above.
    - (b) "Property damage" to property:
      - (i) Owned, occupied or used by;
      - (ii) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;
 

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
    - (2) Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

- (3) Any person or organization having proper temporary custody of your property if you die, but only:
  - (a) With respect to liability arising out of the maintenance or use of that property; and
  - (b) Until your legal representative has been appointed.
- (4) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- c. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - (1) Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - (2) Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - (3) Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
- 2. Only with respect to liability arising out of the ownership, maintenance or use of "covered autos":
  - a. You are an insured.
  - b. Anyone else while using with your permission a "covered auto" you own, hire or borrow is also an insured except:
    - (1) The owner or anyone else from whom you hire or borrow a "covered auto". This exception does not apply if the "covered auto" is a trailer or semitrailer connected to a "covered auto" you own.
    - (2) Your "employee" if the "covered auto" is owned by that "employee" or a member of his or her household.
    - (3) Someone using a "covered auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a "covered auto".
- (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a "covered auto" owned by him or her or a member of his or her household.
- (6) "Employees" with respect to "bodily injury" to:
  - (a) Any fellow "employee" of the insured arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
  - (b) The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph (a) above.
- c. Anyone liable for the conduct of an insured described above is also an insured, but only to the extent of that liability.
- 3. Any additional insured under any policy of "underlying insurance" will automatically be an insured under this insurance.

Subject to Section III – Limits Of Insurance, if coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement, less any amounts payable by any "underlying insurance"; or
- b. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "underlying insurance".

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.

### 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, "suits" brought, or number of vehicles involved; or
  - c. Persons or organizations making claims or bringing "suits".
2. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss" under:
  - a. Coverage A, except "ultimate net loss" because of "bodily injury" or "property damage" arising out of the ownership, maintenance or use of a "covered auto"; and
  - b. Coverage B.
3. Subject to Paragraph 2. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under Coverage A because of all "bodily injury" and "property damage" arising out of any one "occurrence".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all "ultimate net loss" because of all "personal and advertising injury" sustained by any one person or organization.
5. If there is "underlying insurance" with a policy period that is nonconcurrent with the policy period of this Commercial Liability Umbrella Coverage Part, the "retained limit(s)" will only be reduced or exhausted by payments for:
  - a. "Bodily injury" or "property damage" which occurs during the policy period of this Coverage Part; or
  - b. "Personal and advertising injury" for offenses that are committed during the policy period of this Coverage Part.

However, if any "underlying insurance" is written on a claims-made basis, the "retained limit(s)" will only be reduced or exhausted by claims for that insurance that are made during the policy period, or any Extended Reporting Period, of this Coverage Part.

The Aggregate Limit, as described in Paragraph 2. above, applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### SECTION IV – CONDITIONS

#### 1. Appeals

If the "underlying insurer" or insured elects not to appeal a judgment in excess of the "retained limit", we may do so at our own expense. We will also pay for taxable court costs, pre- and postjudgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in Section III – Limits Of Insurance.

#### 2. Bankruptcy

##### a. Bankruptcy Of Insured

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

##### b. Bankruptcy Of Underlying Insurer

Bankruptcy or insolvency of the "underlying insurer" will not relieve us of our obligations under this Coverage Part.

However, this insurance will not replace the "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". This insurance will apply as if the "underlying insurance" were in full effect.

#### 3. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense, regardless of the amount, which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

## **10. When We Do Not Renew**

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

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

## **11. Loss Payable**

Liability under this Coverage Part does not apply to a given claim unless and until:

- a. The insured or insured's "underlying insurer" has become obligated to pay the "retained limit"; and
- b. The obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant and us.

## **12. Transfer Of Defense**

When the underlying limits of insurance have been used up in the payment of judgments or settlements, the duty to defend will be transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or "suits" seeking damages to which this insurance applies which would have been covered by the "underlying insurance" had the applicable limit not been used up.

## **13. Maintenance Of/Changes To Underlying Insurance**

Any "underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of the aggregate limit in accordance with the provisions of such "underlying insurance" that results from payment of claims, settlement or judgments to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "underlying insurance". Failure to maintain "underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "underlying insurance" were in full effect.

If there is an increase in the scope of coverage of any "underlying insurance" during the term of this policy, our liability will be no more than it would have been if there had been no such increase.

You must notify us in writing, as soon as practicable, if any "underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "underlying insurance" is changed.

## **14. Expanded Coverage Territory**

- a. If a "suit" is brought in a part of the "coverage territory" that is outside the United States of America (including its territories and possessions), Puerto Rico or Canada, and we are prevented by law, or otherwise, from defending the insured, the insured will initiate a defense of the "suit". We will reimburse the insured, under Supplementary Payments, for any reasonable and necessary expenses incurred for the defense of a "suit" seeking damages to which this insurance applies, that we would have paid had we been able to exercise our right and duty to defend.

If the insured becomes legally obligated to pay sums because of damages to which this insurance applies in a part of the "coverage territory" that is outside the United States of America (including its territories and possessions), Puerto Rico or Canada, and we are prevented by law, or otherwise, from paying such sums on the insured's behalf, we will reimburse the insured for such sums.

- b. All payments or reimbursements we make for damages because of judgments or settlements will be made in U.S. currency at the prevailing exchange rate at the time the insured became legally obligated to pay such sums. All payments or reimbursements we make for expenses under Supplementary Payments will be made in U.S. currency at the prevailing exchange rate at the time the expenses were incurred.
- c. Any disputes between you and us as to whether there is coverage under this policy must be filed in the courts of the United States of America (including its territories and possessions), Canada or Puerto Rico.

- d. The insured must fully maintain any coverage required by law, regulation or other governmental authority during the policy period, except for reduction of the aggregate limits due to payments of claims, judgments or settlements.

Failure to maintain such coverage required by law, regulation or other governmental authority will not invalidate this insurance. However, this insurance will apply as if the required coverage by law, regulation or other governmental authority was in full effect.

- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### **4. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### **5. Other Insurance**

- a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

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

- b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:
  - (1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and
  - (2) The total of all deductible and self-insured amounts under all that other insurance.

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

#### **6. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### **7. Representations Or Fraud**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us;
- c. We have issued this policy in reliance upon your representations; and
- d. This policy is void in any case of fraud by you as it relates to this policy or any claim under this policy.

#### **8. Separation Of Insureds**

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

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

#### **9. Transfer Of Rights Of Recovery Against Others To Us**

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

## SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
  - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
  - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, disability, sickness or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".
4. "Coverage territory" means anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America.
5. "Covered auto" means only those "autos" to which "underlying insurance" applies.
6. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
7. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work", or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".
  - g. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraphs f. and g. do not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Pollution cost or expense" means any loss, cost or expense arising out of any:

- a. Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- b. Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

17. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed.
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or

(2) The existence of tools, uninstalled equipment or abandoned or unused materials.

18. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

With respect to the ownership, maintenance or use of "covered autos", property damage also includes "pollution cost or expense", but only to the extent that coverage exists under the "underlying insurance" or would have existed but for the exhaustion of the underlying limits.

For the purposes of this insurance, with respect to other than the ownership, maintenance or use of "covered autos", electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

19. "Retained limit" means the available limits of "underlying insurance" scheduled in the Declarations or the "self-insured retention", whichever applies.

20. "Self-insured retention" means the dollar amount listed in the Declarations that will be paid by the insured before this insurance becomes applicable only with respect to "occurrences" or offenses not covered by the "underlying insurance". The "self-insured retention" does not apply to "occurrences" or offenses which would have been covered by "underlying insurance" but for the exhaustion of applicable limits.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

(3) That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a "covered auto" over a route or territory that person or organization is authorized to serve by public authority.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- While it is in or on an aircraft, watercraft or "auto"; or
- While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- Vehicles maintained for use solely on or next to premises you own or rent;
- Vehicles that travel on crawler treads;
- Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - Power cranes, shovels, loaders, diggers or drills; or
  - Road construction or resurfacing equipment such as graders, scrapers or rollers;
- Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- Equipment designed primarily for:
  - Snow removal;
  - Road maintenance, but not construction or resurfacing; or
  - Street cleaning;
- Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- False arrest, detention or imprisonment;
- Malicious prosecution;
- The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- Oral or written publication, in any manner, of material that violates a person's right of privacy;
- The use of another's advertising idea in your "advertisement"; or
- Infringing upon another's copyright, trade dress or slogan in your "advertisement".

**b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent or the "underlying insurer's" consent.

**22.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

**23.** "Ultimate net loss" means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of settlement or judgments or any arbitration or other alternate dispute method entered into with our consent or the "underlying insurer's" consent.

**24.** "Underlying insurance" means any policies of insurance listed in the Declarations under the Schedule of "underlying insurance".

**25.** "Underlying insurer" means any insurer who provides any policy of insurance listed in the Schedule of "underlying insurance".

**26.** "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

**27.** "Your product":

**a. Means:**

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a) You;
  - (b) Others trading under your name; or
  - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**b. Includes:**

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of 'your product'; and
- (2) The providing of or failure to provide warnings or instructions.

**c. Does not include vending machines or other property rented to or located for the use of others but not sold.**

**28.** "Your work":

**a. Means:**

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

**b. Includes:**

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of 'your work'; and
- (2) The providing of or failure to provide warnings or instructions.