

CONTRACT

THIS AGREEMENT, made and entered into this, the 22nd day of October, 2013, by and between the City of Suffolk, Virginia, a Municipal Corporation, whose principal office is the Municipal Center, 441 Market Street, Suffolk, VA 23434, hereinafter called "OWNER", party of the first part, and Noah Enterprises, Inc., with an office located at 1112 Jensen Drive, Suite 211, Virginia Beach, VA 23451 hereinafter referred to as "CONTRACTOR", party of the second part.

The CONTRACTOR did on the 9th day of October, 2013, submit a sealed bid to perform the services stipulated in accordance with specifications and conditions entitled **ADDITION TO THE POLICE ADMINISTRATION BUILDING, IFB# 2014-00017-MC**, hereinafter referred to as "PROJECT", which by reference is made a part hereof.

It is mutually understood and agreed by the parties hereto that the Invitation to Bid inviting Contractors to bid as published; the Conditions of Contract (General, Special, Supplemental and other conditions as they may be titled); the General and Detailed Drawings and Specifications; the Bid; the Performance Bond; the Labor and Materials Payment Bond; the Anti-collusion/Nondiscrimination/Drug Free Workplace Clauses; the Bid; all of the proceedings by the governing body of the OWNER pertaining to the subject matter of this Contract; and all of which documents are hereinafter referred to as Contract Documents and are a part of this Contract by reference the same as if each had been fully set out and attached hereto.

In consideration of the following mutual agreements and covenants to be kept by each party:

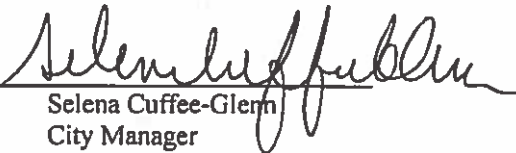
- A.. The CONTRACTOR agrees to furnish and pay for all labor, tools, equipment, machinery, supplies, facilities, superintendence, insurance, taxes, utilities and services necessary to perform all items set forth in the Contract Documents for a sum of \$ 2,118,400.00 *wca* subject to adjustment as provided in said documents.

- B. The CONTRACTOR shall commence and complete the work with adequate force and equipment as specified in the Notice to Proceed. The CONTRACTOR shall fully guarantee his/her workmanship and materials furnished for a period of one (1) year following the date of final acceptance of the work. The performance and payment bonds shall remain in full force for this one (1) year period. As a condition of final acceptance, the CONTRACTOR, shall have executed, and submit to the OWNER, the "Warranty of Construction" and the "Lien and Claims Release" forms that have been attached to this contract document.
- C. If said work is not completed within the time stated in the Notice to Proceed, the CONTRACTOR shall be liable and hereby agrees to pay to the OWNER as liquidated damages, and not as a penalty, the amount of five hundred (\$500.00) per calendar day for each and every part of a day thereafter that said work remains substantially incomplete. The City reserves the right, at its sole discretion, to deduct liquidated damages from any outstanding amount due the Contractor.
- D. Monthly payments for work completed under this contract shall be made in strict accordance with the project specifications and any special conditions attached thereto. The OWNER shall retain five (5) percent of the amount of each payment until final completion and acceptance of all work covered by the Contract Documents.
- E. It is understood and agreed that all work shall be accomplished in strict compliance with the provisions of the Contract Documents. It is understood and agreed by both the City and the Contractor that any modifications or additions to this agreement shall be made only by the full execution of the City's standard contract change order form. Furthermore, it is understood and agreed by both parties that any work done by the CONTRACTOR on any such modification or addition to this AGREEMENT prior to the City's execution of its standard Contract Change Order form shall be at the total risk of the CONTRACTOR and said work shall not be compensated by the City.

IN WITNESS WHEREOF, the parties hereto have executed and sealed this AGREEMENT as of the day and year first above written.

CITY OF SUFFOLK, VA


CONTRACTOR

BY: 
Selena Cuffee-Glenn
City Manager

BY: , Pres
Carol R. Curtis
President

ATTEST:

ATTEST:

BY: 
Erika S. Dawley
City Clerk

BY: 

Print Name : Kay Oliver

Title: Office Manager

APPROVED AS TO FORM

BY:  Solomon H. Ashby Jr
City Attorney's Office



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/7/2013

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

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

PRODUCER RUTHERFOORD 222 Central Park Avenue, Suite 1340 Virginia Beach VA 23462	CONTACT NAME: RUTHERFOORD PHONE (A/C, No, Ext): 757-456-0577 E-MAIL ADDRESS: certificates@rutherford.com	FAX (A/C, No): 757-456-5296	
	INSURER(S) AFFORDING COVERAGE		
INSURED NOAHENTE Noah Enterprises, Inc. 1112 Jensen Drive Suite 211 Virginia Beach VA 23451	INSURER A: Pennsylvania National Mutual Casual		NAIC # 14990
	INSURER B: Commonwealth Contractor's Group SIA		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		


COVERAGES **CERTIFICATE NUMBER: 164738432** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <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			CL90670978	4/1/2013	4/1/2014	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000 \$100,000
							MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE	\$10,000 \$1,000,000 \$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> CompDed \$250 <input checked="" type="checkbox"/> CollDed \$500			AU90670978	4/1/2013	4/1/2014	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	\$1,000,000 \$ \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			UL90670978	4/1/2013	4/1/2014	EACH OCCURRENCE AGGREGATE	\$5,000,000 \$5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	6023052	4/1/2013	4/1/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	\$1,000,000 \$1,000,000 \$1,000,000
A	Leased/Rented Equip			CL90670978	4/1/2013	4/1/2014	\$150,000	Any One Item

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

RE: Suffolk Police Administration Building Addition, Contract #2014-00017-MC, NEI Job # 1007, Letter of Intent dated 10-22-13; The City of Suffolk, its' officers/officials, employees, agents and volunteers are included as additional insured under General Liability and a Waiver of Subrogation under General Liability applies in favor of the certificate holder for work performed by the named insured for the referenced job and/or contract as required by written contract. The General Liability insurance evidenced by this certificate shall be primary and non-contributory to any other insurance of the certificate holder as required by written contract. Per the cancellation clause contained in the policies noted on this certificate, the policy provisions include at least 30 days notice of cancellation except for non-payment of premium.

CERTIFICATE HOLDER City of Suffolk c/o Purchasing Division 441 Market Street Suffolk VA 23434	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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**PENN NATIONAL
INSURANCE**

Pennsylvania National Mutual Casualty Insurance Company
Penn National Security Insurance Company
P. O. Box 2361
Harrisburg, PA 17105-2361

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AUTOMATIC ADDITIONAL INSURED(S) --
OWNERS, CONTRACTORS AND SUBCONTRACTORS
(ONGOING OPERATIONS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following provision is added to SECTION II - WHO IS AN INSURED**
1. Any person(s) or organizations(s) (referred to below as additional insured) with whom you are required in a written contract or agreement to name as an additional insured, but 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(s) at the location or project described in the contract or agreement.
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 insurance afforded to these additional insureds, the following additional exclusions apply:**
1. This insurance 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:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings, designs and specifications; and
 - b. Supervisory, inspection, architectural or engineering activities.
 2. This insurance does not apply to "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 part of the same project.
- C. The limits of insurance applicable to the additional insured are those specified in the written contract or agreement or in the Declarations for this policy, whichever are less. These limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.**

- (1) The expenses are incurred within one year of the date the "product withdrawal" was initiated;
 - (2) The expenses are reported to us within one year of the date the expenses were incurred.
- 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 first 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 or participate in 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; or
 - (2) When you first received, either orally or in writing, notification of an order from an authorized government entity to conduct a "product withdrawal".
- e. "Product withdrawal expenses" incurred to withdraw "your products" which contain the same or substantially similar "defects" will be deemed to have arisen out of the same "product withdrawal".
2. Exclusions
- This insurance does not apply to "product withdrawal expenses" arising out of:
- a. **Breach Of Warranty And Failure To Conform To Intended Purpose**
- Any "product withdrawal" initiated due to the failure of "your product" 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 other than "your product".
- b. **Infringement Of Copyright, Patent, Trade Secret, Trade Dress Or Trademark**
- Any "product withdrawal" initiated due to copyright, patent, trade secret, trade dress or trademark infringements.
- c. **Deterioration, Decomposition Or Chemical Transformation**
- Any "product withdrawal" initiated due to transformation of a chemical nature, deterioration or decomposition of "your product". This exclusion does not apply if it is caused by:
- (1) An error in manufacturing, design, or processing;
 - (2) Transportation of "your product"; or
 - (3) "Product tampering".
- d. **Goodwill, Market Share, Revenue, Profit Or Redesign**
- The costs of regaining goodwill, market share, revenue or "profit" or the costs of redesigning "your product".
- e. **Expiration Of Shelf Life**
- Any "product withdrawal" initiated due to expiration of the designated shelf life of "your product".
- f. **Known Defect**
- 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 date when this Coverage Part was first issued to you or prior to the time "your product" leaves your control or possession.
- g. **Otherwise Excluded Products**
- A 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.
- h. **Governmental Ban**
- A recall when "your product" or a component contained within "your product" has been:
- (1) Banned from the market by an authorized government entity prior to the policy period; or
 - (2) Distributed or sold by you subsequent to any governmental ban.

i. Defense Of Claim

The defense of a claim or "suit" against you for liability arising out of a "product withdrawal".

j. Third Party Damages, Fines And Penalties

Any compensatory damages, fines, penalties, punitive or exemplary or other non-compensatory damages imposed upon the insured.

k. Pollution-Related Expenses

Any loss, cost or expenses due to any:

- (1) Request, demand, order, 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
- (2) 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".

B. For the purposes of this coverage, the following condition is added to Section IV - Commercial General Liability Conditions:

Concealment Or Fraud

We will not provide coverage to you, or any other insured, who at any time:

1. Engaged in fraudulent conduct; or
2. Intentionally concealed or misrepresented a material fact concerning a "product withdrawal" or "product withdrawal expenses" incurred by you.

C. The following definitions are added to Section V - Definitions:

1. "Defect" means a defect, deficiency or inadequacy that creates a dangerous condition.
2. "Product tampering" is an act of intentional alteration of "your product" which has caused or is reasonably expected to cause "bodily injury" or physical injury to tangible property other than "your product".

When "product tampering" is known, suspected or threatened, a "product withdrawal" will be limited to those batches of "your product" which are known or suspected to have been tampered with.

For the purposes of this insurance, 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.

3. "Product withdrawal" means the recall or withdrawal:

- a. From the market; or
- b. From use by any other person or organization;

of "your products", or products which contain "your products", because of known or suspected "defects" in "your product", or known or suspected "product tampering", which has caused or is reasonably expected to cause "bodily injury" or physical injury to tangible property other than "your product".

For the purposes of this insurance, 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.

4. "Product withdrawal expenses" means those reasonable and necessary extra expenses, listed below, paid and directly related to a "product withdrawal":

- a. Costs of notification;
- b. Costs of stationery, envelopes, production of announcements and postage or facsimiles;

- c. Costs of overtime paid to your regular non-salaried employees and costs incurred by your employees, including costs of transportation and accommodations;
 - d. Costs of computer time;
 - e. Costs of hiring independent contractors and other temporary employees;
 - f. Costs of transportation, shipping or packaging;
 - g. Costs of warehouse or storage space; or
 - h. 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.
5. "Profit" means the positive gain from business operation after subtracting for all expenses.

III. Limited Pollution Liability

- a. Subject to the Each Pollution Incident Limit, the following is added to exclusion f. (1) under paragraph 2. Exclusions of Section I - Coverages, Coverage A Bodily Injury And Property Damage:

Paragraph (1)(d) does not apply to a "pollution incident" as defined in this coverage.

- 1. "Pollution incident" means an unexpected, unintended, abrupt, and instantaneous discharge, dispersal, seepage, migration, release or escape of "pollutants" which is demonstrated by the insured as having commenced at a specific date and time during the policy period, and became known to the insured within 72 hours thereafter.
- 2. This coverage does not apply to a "pollution incident" resulting from the insured's willful and intentional violation of any governmental statute, rule or regulation.
- 3. The insured has taken all reasonable steps necessary to mitigate the "pollution incident".

This insurance does not modify coverage provided by the exceptions to exclusion (1)(d) contained in paragraphs d(i), (ii), and (iii).

- b. Coverage provided by this insurance does not apply to liability assumed by the insured under an "insured contract" unless the insured would have been liable for damages in the absence of the contract or agreement.

- c. With respect to this coverage:

- 1. Paragraphs (1) and (2) of Paragraph 1.a. of Section I - Coverages, Coverage A Bodily Injury And Property Damage are deleted and replaced by the following:

(1) The amount we will pay for damages and "defense costs" is limited to the Each Pollution Incident Limit.

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments, settlements or "defense costs".

- 2. Supplementary Payments - Coverages A And B are deleted and replaced by the following:

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

(1) 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.

(2) 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, or before we have paid or offered to pay "defense costs" within the applicable limit of insurance.

- 3. Section III - Limits Of Insurance Paragraph's 4 through 7 are deleted and replaced by the following:

- 4. Subject to 2. or 3. above, the most we will pay for the sum of:

- a. Damages under Coverage A;
- b. Medical expenses under Coverage C; and
- c. "Defense costs"

arising from all "pollution incidents" during the policy period, is the Each Pollution Incident Limit.

5. Subject to 2., 3. or 4. above, the Each Pollution Incident Limit is the most we will pay for the sum of:

- a. Damages under Coverage A;
- b. Medical expenses under Coverage C; and
- c. "Defense costs"

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

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

7. "Defense costs" afforded by this insurance are part of and not in addition to the limits of insurance.

d. The following is added to Section V - Definitions:

"Defense costs" means reasonable and necessary expenses that result from investigating, settlement or defense of a specific claim including attorney fees and expenses, cost of legal proceedings, all reasonable expenses that an insured incurs at our request while helping us investigate a claim. "Defense costs" also include all costs taxed against the insured in a "suit", cost of appeal bonds, cost of bonds to release property being used to satisfy a legal obligation (but only for bond amounts within the limit of coverage that applies) but we have no obligation to provide such bonds. "Defense costs" do not include salaries or expenses of our employees or employed attorney's salaries or expenses of your employees, expenses of independent adjusters or post judgment interest.

e. The Each Pollution Incident Limit is \$100,000 unless a higher limit is shown in the Schedule of this endorsement.

IV. Non-Owned Watercraft

a. Exclusion g. Paragraph (2) of Section I - Coverages, Coverage A Bodily Injury And Property Damage Liability is deleted and replaced by the following:

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

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

b. Paragraph IV.a. applies to any person who, with your expressed or implied consent, either uses or is responsible for the use of a watercraft.

V. Consolidated Insurance (Wrap - Up) Program

The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverages, Coverage A Bodily Injury And Property Damage Liability:

This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" if such operations were at any time subject to a "consolidated insurance (wrap-up) program".

This exclusion applies whether or not the "consolidated insurance (wrap-up) program" provided:

- (1) Coverage identical to that provided by this Coverage Part;
- (2) Limits adequate to cover all claims; or
- (3) Coverage that remains in effect.

This exclusion applies regardless of whether such operations are or were conducted by you or on your behalf.

This exclusion does not apply to your operations away from a "consolidated insurance (wrap-up) program" project site incidental to the support of such a project and not included within the "consolidated insurance (wrap-up) program".

This exclusion does not apply to "bodily injury" or "property damage" within the "products-completed operations hazard" if all coverage available to the insured for the "products-completed operations hazard" in a "consolidated insurance (wrap-up) program" has been cancelled, non-renewed or otherwise no longer applies for reasons other than the exhaustion of all available limits, whether such limits are available on a primary, excess or on any other basis.

"Consolidated insurance (wrap-up) program" means any agreement or arrangement, including any contractor-controlled, owner-controlled or similar insurance program, under which some or all of the contractors working on a specific project or specific projects, are required to participate in a program to obtain insurance that:

- (1) Includes same or similar insurance as that provided by this Coverage Part; and
- (2) Is issued specifically for "bodily injury" or "property damage" arising out of such project or projects.

VI. Supplementary Payments Increased Limits
In the Supplementary Payments - Coverages A And B provision of Section I - Coverages:

- a. The limit for the cost of bail bonds is changed from \$250 to \$2000.

VII. Broad Form Named Insured

- a. Section II - Who Is An Insured is amended to include as an insured any organization or subsidiary thereof, other than a partnership, joint venture, or limited liability company, which is a legally incorporated entity of which you own a financial interest of more than 50 percent of the voting stock on the effective date of this endorsement.
- b. Paragraph VII.a. does not apply to injury or damage with respect to which an insured under this policy is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.
- c. Paragraph VII.b. does not apply to a policy written to apply specifically in excess of this policy.

VIII. Newly Formed or Acquired Organizations

In Paragraph 3.a. of Section II - Who Is An Insured, 90th day is changed to 180th day.

IX. Incidental Malpractice Liability - Nurse, EMT, or Paramedic

Paragraph 2.a.(1)(d) of Section II - Who Is An Insured is deleted and replaced by the following:

(d) Arising out of his or her providing or failing to provide professional health care services. However, if you have "employees" who are a nurse, emergency medical technician or paramedic, they are an insured with respect to their providing or failing to provide professional health care services to your "employees".

X. Automatic Additional Insureds

Section II - Who Is An Insured is amended to add:

- a. The Lessor of Leased Equipment from whom you lease equipment 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 insured 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 or organization.

A person's or organization's status as an additional insured under this insurance ends when their contract or agreement with you for such leased equipment ends.

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.

- b. The Grantor of Franchise 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 insured only with respect to their liability as grantor of a franchise to you.

A person's or organization's status as an additional insured under this insurance ends when their contract or agreement with you for such franchise ends.

- c. **The Manager or Lessor of premises** 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 insured only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you.

A person's or organization's status as an additional insured under this insurance ends when their contract or agreement with you for such leased premises ends.

This insurance does not apply to:

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

- d. **The Mortgagee, Assignee, or Receiver** 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 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.

A person's or organization's status as an additional insured under this insurance ends when their contract or agreement with you for such premises ends.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- e. **The Vendor** 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 insured only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

- (1) The insurance afforded the vendor does not apply to:

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

XI. Amendment - Aggregate Limits of Insurance
The General Aggregate Limit under the Section III - Limits Of Insurance applies separately to each of your:

- a. Projects away from premises owned by or rented to you;
- b. "Locations" owned by or rented to you.

"Location" 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.

XII. Electronic Data Liability

- a. Exclusion 2.p. of Coverage A Bodily Injury And Property Damage Liability in Section I - Coverages is deleted and replaced by the following:

2. Exclusions

This insurance does not apply to:

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.

- b. The following paragraph is added to Section III - Limits Of Insurance:

Subject to 5. above, the most we will pay under Coverage A for "property damage" because of all loss of "electronic data" is \$15,000 each "occurrence" subject to \$15,000 aggregate for the policy period.

- c. Paragraph XII.b. does not apply to "property damage" arising out of damage to "electronic data" on embedded controllers used to operate or maintain building equipment.

- d. The following definition is added to Section V - Definitions:

"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.

- e. For the purposes of this coverage, the definition of "Property Damage" in Section V - Definitions is deleted and 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; or
- 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 the purposes of this insurance, "electronic data" is not tangible property.

XIII. Duties in the Event of Occurrence, Claim or Suit Redefined

- a. The requirement in Condition 2.a. of Section IV - Commercial General Liability Conditions that you must see to it that we are notified of an "occurrence" only applies when the "occurrence" or offense is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An officer of the corporation or insurance manager, if you are a corporation.

b. The requirement in Condition 2.b. of Section IV - Commercial General Liability Conditions that you must see to it that we receive notice of a claim or "suit" will not be considered breached unless the breach occurs after such claim or "suit" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An officer of the corporation or insurance manager, if you are a corporation.

XIV. Transfer Of Rights Of Recovery Against Others To Us

The following is added to 8. Transfer Of Rights Of Recovery Against Others To Us condition in Section IV - Commercial General Liability Conditions:

We waive any right of recovery we may have against any person(s) or organization(s) because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person(s) or organization(s) and included in the "products-completed operations hazard". This waiver applies only to the person(s) or organizations(s) with whom you have agreed in a written contract or agreement to waive your right of recovery.

XV. Bodily Injury Redefined

The definition of "bodily injury" in Section V - Definitions is deleted and replaced by the following:

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

XVI. Unintentional Errors or Omissions

We will not deny coverage under this Coverage Part because of the unintentional omission of, or unintentional error in, any information provided by you. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

XVII. Liberalization

If we adopt any revision that would broaden the coverage under this policy without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

XVIII. Voluntary Property Damage

a. We will pay, at the request of any Named Insured, for "voluntary property damage" to the property of others provided:

1. the "voluntary property damage" occurs while such property is in the care, custody or control of an insured or to property over which an insured is, for any purpose, exercising physical control;
2. the "voluntary property damage" arises out of operations away from the premises owned by, rented to, or controlled by the Named Insured; and
3. the "property damage" coverage of the policy would extend to the operation causing the loss.

b. The insurance under this coverage does not apply to "voluntary property damage" to property:

1. while being transported by, or caused by the ownership, maintenance, operation, use, loading or unloading of any automobile, watercraft or aircraft; or
2. rented to any Named Insured.

c. This insurance will apply only to loss that is in excess of \$250 for each "occurrence."

d. The most we will pay under this coverage is \$1,000 for each "occurrence" subject to \$2,000 aggregate for the policy year.

e. Payment under this coverage will not include any prospective profit or overhead charges of any nature.

f. "Voluntary property damage" as used in this coverage means physical injury to tangible property and does not include disappearance, abstraction or loss of use.

XIX. Special Broad Form Property Damage Liability Coverage

a. Section 1. Coverage A., 2. Exclusion, j. Damage To Property, Paragraphs j.(3), j.(4), and j.(5) are modified as follows:

Exclusions j.(3), j.(4) and j.(5) do not apply to the first \$1,000 of "property damage" for each "occurrence" that would otherwise be insured except for the application of these exclusions, as long as the "occurrence" takes place away from the premises you own, rent or control.



THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY

**AUTOMATIC ADDITIONAL INSUREDS --
OWNERS, CONTRACTORS AND SUBCONTRACTORS
(COMPLETED OPERATIONS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following provision is added to SECTION II - WHO IS AN INSURED

1. Any person(s) or organization(s) (referred to below as additional insured) with whom you are required in a written contract or agreement to name as an additional insured for the "products-completed operations hazard", but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work", at the location or project designated and described in the contract or agreement, performed for that additional insured and included in the "products-completed operations hazard".

A person's or organization's status as an additional insured under this endorsement ends when the obligation to provide additional insured status for the "products-completed operations hazard" in the written contract or agreement ends.

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

This insurance does not apply to "bodily injury" or "property damage" 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, designs and specifications; and
2. Supervisory, inspection, architectural or engineering activities.

- C. The limits of insurance applicable to the additional insured are those specified in the written contract or agreement or in the Declarations for this policy, whichever are less. These limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.**

- D. With respect to the coverage provided by this endorsement, SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 4. Other Insurance, Subparagraph a. Primary Insurance, is deleted and replaced by the following:**

a. Primary Insurance

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

- (1) If a written contract or agreement that requires any person(s) or organization(s) to be an additional insured also requires this insurance to be primary and noncontributory, then this insurance is primary over any other insurance in which the additional insured is a Named Insured. We will not seek contribution from any other liability policy in which the additional insured is a Named Insured.