

RESOLUTION NO. R-2023-47

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A PROFESSIONAL ENGINEERING SERVICES CONTRACT WITH FREESE AND NICHOLS, INC. FOR A NOT-TO-EXCEED AMOUNT OF ONE HUNDRED SIXTY-FIVE THOUSAND, (\$165,000.00) FOR THE WASTEWATER MASTER PLAN (WWMP); AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, The City Council has appointed the City Manager as the Chief Administrative Officer of the City; and

WHEREAS, The City Manager is responsible for the proper administration of all affairs of the City; and

WHEREAS, The City of Bastrop is interested in developing a Wastewater Master Plan, which is a component of the Comprehensive Plan; and

WHEREAS, The City Council understands the need to evaluate City's existing wastewater infrastructure to serve growth, meet regulations, deliver adequate services and protect health and the environment; and

WHEREAS, The City of Bastrop has chosen Freese and Nichols, Inc. (FNI) from a selection of qualified consulting firms identified during the Request for Qualifications process published in November 2022.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1: That the City Manager is hereby authorized to execute the professional engineering services contract with FNI for the WWMP for a not to exceed amount of \$165,000.00.

Section 2: All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3: That this Resolution shall take effect immediately upon its passage, and it is so resolved.

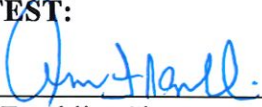
DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop
this 28th day of March 2023.

APPROVED



Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

CITY OF BASTROP
STANDARD CONTRACT FOR GENERAL SERVICES

Over \$50K
(8-16-2021)

This General Services Contract (“Contract”) is entered by and between the **City of Bastrop**, a Texas Home-Rule Municipal Corporation (the “City”), and **Freese and Nichols, Inc.** (the “Engineer/Contractor”), and together with the City jointly referred to as the “Parties,” for the following work described on the Scope of Services, Exhibit A-2, attached and incorporated herein to this Contract (the “Work” or “Project” or “Wastewater Master Plan”).

I. General Information and Terms.

Engineer’s/Contractor’s Name and Address:	Jessica Vassar 10431 Morado Circle, Building 5, Suite 300 Austin, Texas 78759 512-617-3167 jbv@freese.com
General Description of Services:	Wastewater Master Plan
Maximum Contract Amount:	\$165,000
Effective Date:	On the latest of the dates signed by both parties.
Termination Date:	See II.D.

Contract Parts: This Contract consists of the following parts:

- I. General Information and Terms
- II. Standard Contractual Provisions
- III. Additional Terms or Conditions
- IV. Additional Contract Documents
- V. Signatures

II. Standard Contractual Provisions.

A. Contractor’s Services. The Contractor will provide to the City the professional engineering services (“Services”) described in the Scope of Services, Exhibit A-2 attached and incorporated herein to this Contract under the terms and conditions of this Contract.

B. Billing and Payment. The Contractor will bill the City for the Services provided at intervals of at least 30 days of receipt of Contractor’s invoices, except for the final billing. The City will pay the Contractor within 30 days of receipt of Contractor’s invoices for the Services provided for

in this Contract with current revenues available to the City, but all of the City's payments to the Contractor, including the time of payment and the payment of interest on overdue amounts, are subject to the provisions of Chapter 2251 of the Government Code. The City shall have the right to withhold payment, or any part thereof, of any of invoice presented by Contractor until resolution providing reasonable verification of the correctness thereof of is reached. The City shall notify the Contractor, in writing, of the disputed amount within thirty (30) days. The City is not liable to the Contractor for any taxes which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any bill.

C. Executed Contract. The "Notice to Proceed" will not be given nor shall any Services commence until this Contract is fully executed and all exhibits and other attachments are completely executed and attached to this Contract.

D. Termination Provisions.

(1) Unless terminated earlier as allowed by this Contract, this Contract terminates:

- (a) On the termination date, if any, specified in the General Information in Part I, but the obligation of a party to complete a contract requirement pending on the date of termination survives termination; or
- (b) If there is no termination date specified in the General Information in Part I, the Contract terminates when both parties have completed all their respective obligations under the Contract.

(2) The City Manager may terminate this Contract during its term at any time for any reason by giving written notice to the Contractor not less than five (5) business days prior to the termination date, but the City will pay the Contractor for all Services rendered in compliance with this Contract up to the date of termination. The City may terminate the Contract anytime if the City does not have available funds pursuant to Texas Government Code Chapter 2251.

(3) If the City Council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the Contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution).

E. Delays. Contractor shall have no damages for delay or hindrance. In the event of delay or hindrance not the fault of Contractor, an extension of time shall be the Contractor's sole remedy.

F. Independent Contractor. It is understood and agreed by the Parties that the Contractor is an independent contractor retained for the Services described in the Scope of Services, Exhibit A-2, attached and incorporated herein. The City will not control the manner or the means of the

Contractor's performance but shall be entitled to work product as detailed in the Exhibit A-2. The City will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture. Services performed by the Contractor under this Contract are solely for the benefit of the City. Nothing contained in this Contract creates any duties on the part of the Contractor toward any person not a party to this Contract. No person or entity not a signatory to this Contract shall be entitled to rely on the Contractor's performance of its Services hereunder, and no right to assert a claim against the Contractor by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Contract or the performance of the Contractor's Services hereunder.

G. Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contract with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

H. Assignment. The Contractor may not assign this Contract without the City's prior written consent.

I. Law Governing and Venue. This Contract is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Bastrop County, Texas.

J. Entire Contract. This Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.

K. Dispute Resolution Procedures. If either party disputes any matter relating to this Contract, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.

L. Attorney's Fees. Should either party to this Contract bring suit against the other party for any matter relating to this Contract, the prevailing Party shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

M. INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM AND AGAINST CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY, INCLUDING REIMBURSEMENT OF REASONABLE ATTORNEY'S FEES AND COST IN PROPORTION OF CONTRACTOR'S LIABILITY, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR

DAMAGE TO ANY PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT ACT, ERROR, OR WILLFUL MISCONDUCT OF THE CONTRACTOR, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, OR ANYONE WHOM THE CONTRACTOR IS LEGALLY LIABLE FOR UNDER THIS CONTRACT.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES WHETHER UNDER BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, ENHANCED, TREBLE (OR STATUTORY EQUIVALENT), OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITY OR LOSS OF PROSPECTIVE REVENUE, ARISING OUT OF THIS AGREEMENT OR ANY WORK OR SERVICES PERFORMED OR TO BE PERFORMED HEREUNDER.

N. RELEASE. THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON, AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS CAUSED BY, OR ALLEGED TO BE CAUSED BY, THE NEGLIGENCE, RECKLESSNESS, OR WILLFUL MISCONDUCT OF CONTRACTOR, ITS AGENTS, REPRESENTATIVES, VOLUNTEERS, EMPLOYEES, OR SUBCONTRACTORS..

O. Severability. If a court finds or rules that any part of this Contract is invalid or unlawful, the remainder of the Contract continues to be binding on the parties.

P. Conflicting Provisions. If there is a conflict between a provision in the Contractor's Additional Contract Documents and a provision in the remainder of this Contract, the latter controls.

Q. Documents and Data, Licensing of Intellectual Property, and Copyright. All Work progress and final documents and data produced by Contractor during the term of the Contract shall be and remain the property of the City. For purposes of this Contract, the term "Documents and Data" include any original work (the Work), reports, analyses, plans, drawings, designs, renderings, specifications, notes, summaries, charts, schedules, spreadsheets, calculations, lists, data compilations, documents, or any other material developed and assembled by or on behalf of the City in the performance of this Contract. It also includes any medium in which the Documents and Data are kept, including digitally, magnetically, or electronically. This Contract creates at no cost to the City, a perpetual license for the City to use any picture, video, music, brochure, writing, trademark, logo, or other work created by the Contractor for the use of the City, as a "work made for hire" as defined by federal copyright law. The City, as the author and owner of the copyright

to the Work, may alter, reproduce, distribute, or make any other use of the Work as it deems appropriate.

R. Standard of Care for Architects and Engineers. Services must be performed with the professional skill and care ordinarily provided by competent licensed engineers or registered architects practicing in the same or similar locality and under the same or similar circumstances and professional license.

S. Disclosure of Interested Persons for Council-Approved Contracts. Contracts that require City Council approval, such as contracts that exceed \$50,000, are subject to the requirements of Section 2252.908, Tex Gov't Code. Under the provisions of this statute:

(1) The City may not enter into a contract with a business entity that requires Council approval unless the business entity submits a disclosure of interested persons at the time the business entity submits a signed contract to the City;

(2) A disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (Commission), attached and incorporated herein as Exhibit A-1, that includes:

(a) A list of each interested party for the contract of which the contractor business entity is aware, an interested party being a person who has a controlling interest in the business entity or who actively participates in facilitating or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity; and

(b) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

T. Compliance with Laws. The Contractor must comply with the federal, state, and local laws, rules and regulations applicable to the Project and its services under this Contract.

U. Prohibition on Contracts with Companies Boycotting Israel. Certain contracts for goods and services are subject to the requirements of Section 2270.002, Tex Gov't Code (H.B. 89, as amended by H.B. 793). Specifically, contracts for good and services that:

(1) are between the City and a company with ten (10) or more full-time employees; and

(2) have a value of \$100,000.00 or more that is to be paid wholly or partly from public funds of the City.

Under the provisions of this statute, if the above conditions apply the City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

If this is a contract to which the verification requirement applies, the City has approved a verification form which must be filled out and signed by the Contractor and submitted to the City at the time of execution of this Contract.

III. Additional Terms or Conditions.

Insurance

At all times this Agreement is in effect, Contractor shall maintain insurance of the types and amounts as those required in Exhibit B-1. All of Contractor's insurance policies in any way relating to the Work, whether or not required by this Agreement and regardless of the enforceability or validity of any of the indemnities or other assumptions of liability by Contractor, shall, to the full coverage limits of all such policies without any limitations based on the minimum requirements set forth above: (a) other than the worker's compensation insurance, name City Group as additional insureds on a broad form basis with such additional insured coverage including coverage for the sole or concurrent negligence of the additional insured and not being restricted to (i) "ongoing operations," (ii) coverage for vicarious liability, or (iii) circumstances in which the named insured is partially negligent; (b) provide for waiver of all rights of subrogation against City and the other members of City Group; and (c) be primary and noncontributory as to all other policies (including any deductibles or self-insured retentions) and self-insurance that may provide coverage to any member of City Group, and shall be fully applied and exhausted before application of any applicable indemnity obligations of City or of any applicable insurance coverage provided by City or any other member of City Group.

A. Audit

Contractor shall, and shall ensure that its affiliates, subsidiaries, contractors, subcontractors, consultants, agents, and any other person associated with Contractor including those in Contractor Group, keep full and accurate books and records with respect to all Work performed, and all payments and expenditures in connection with this Agreement. The records to be maintained and retained by Contractor Group shall include, without limitation, (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the Project, as well as canceled payroll checks or signed receipts for payroll payments in cash; (b) invoices for purchases, receiving and issuing documents, and all other unit inventory records for Contractor's stores, stock, or capital items; (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other Third Parties' charges, including, but not limited to, Equipment rental; (d) travel and entertainment documentation, including, but not limited to, employee expense

reports and Contractor facility usage reports; and (e) all field tickets or similar documentation evidencing the Work. The City shall have the right at all reasonable times, for a period of five (5) years from the completion of the Work, to audit and inspect such books and records (excluding trade secrets, formulas, confidential data, proprietary information, or processes).

B. Reports of Incidents

Within twenty-four (24) hours upon occurrence, Contractor shall provide in writing to the City notice and details of any accidents or occurrences resulting in injuries to persons, property, or pollution arising in any way arising out of or related to the Work whether done by Contractor or any subcontractor of Contractor or any other member of Contractor Group performing Work pursuant to this Contract. Contractor shall in writing within twenty-four (24) hours of any claim, demand, or suit that may be presented to or served upon it arising out of or as a result of Work.


IV. Additional Contract Documents. The following documents attached to this Contract are part of this Contract:

- EXHIBIT A-1: Certificate of Interested Parties (1295 Form)
- EXHIBIT A-2 Scope of Work
- EXHIBIT A-3 House Bill 89 Verification
- EXHIBIT B-1 Requirements for General Services Contract

V. Signatures.

FREESE AND NICHOLS, INC.

CITY OF BASTROP

By: 

By: 

Printed Name: Stephanie Neises

Printed Name: Sylvia. Arrillo

Title: Principal

Title: 03/29/23

Date: 03/03/23

Date: Mar 29, 2023

EXHIBIT A-1

Certificate of Interested Persons with Certification of Filing
(Form 1295)

(See Attached)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2023-990224

Date Filed:
03/02/2023

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Freese and Nichols, Inc.
Houston, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Bastrop

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Contract
Professional Engineering Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Pence, Bob	Fort Worth, TX United States	X	
	Coltharp, Brian	Fort Worth, TX United States	X	
	Payne, Jeff	Fort Worth, TX United States	X	
	Johnson, Kevin	Fort Worth, TX United States	X	
	Archer, Charles	Raleigh, NC United States	X	
	Reedy, Mike	Houston, TX United States	X	
	Greer, Alan	Fort Worth, TX United States	X	
	Hatley, Tricia	Oklahoma City, OK United States	X	
	Wolffhope, John	Austin, TX United States	X	

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is Maria Aguilar , and my date of birth is August 10, 1989 .

My address is 10497 Town and Country Way, Suite 600 , Houston , TX , 77024 , US .
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas , on the 2 day of March , 20 23 .
(month) (year)

Maria Aguilar

 Signature of authorized agent of contracting business entity
 (Declarant)

EXHIBIT A-2

Scope of Services dated February 1, 2023

(See Attached)

Exhibit A-2
City of Bastrop
Wastewater Master Plan
Scope of Work

Project Understanding

Freese and Nichols, Inc. (FNI) understands that the City of Bastrop (City) is seeking professional engineering assistance to prepare a Wastewater Master Plan. The intent of the study is to develop a capital improvements plan for the wastewater collection system. FNI will define the service area and develop land use assumptions with the assistance of City staff and use that information for wastewater flow projections. A hydraulic model of the collection system will be developed using a combination of GIS data, as-built data, and measure down information. FNI will utilize the hydraulic model to evaluate lift stations, collection system capacity, and future system improvements. FNI will develop a comprehensive Wastewater Capital Improvements Plan. The results of the study will be summarized in the Wastewater Master Plan Report.

Scope of Work

A. Project Kickoff and Flow Projections

- A1. Project Kickoff Meeting: Freese and Nichols, Inc. (FNI) will meet with the City staff to review scope, project team, schedule of the project, and discuss the data request memorandum.
- A2. Data Collection: FNI will compile information from the City including GIS files, as-built drawings, lift station layouts, pump curves, recently completed system improvements, and wastewater flow data.
- A3. Review Historical Wastewater Flows: FNI will obtain and evaluate historical wastewater flows for the City to develop trends and calculate peaking factors. This data will be used to determine expected per-capita loads for future projections.
- A4. Develop and Distribute Wastewater Flow Projections: FNI will develop wastewater flow projections for existing, 5-year, 10-year, and 25-Year conditions using the future land use assumptions developed as part of the Water Master Plan, previous studies, and selected design criteria. Flows will be calculated by sub-basin. FNI will distribute wastewater flows throughout the service area based on the existing and future population distribution.
- A5. Progress Meeting: Land Use and Flow Projections: FNI will meet with the City to discuss population, land use assumptions, and wastewater flow projections. FNI will address comments from City staff and make revisions as necessary.

B. Wastewater Model Development and Validation

- B1. Evaluate GIS Connectivity in Wastewater Line GIS Files and Build the Wastewater Model: FNI will evaluate the GIS files of the City's wastewater lines for connectivity. FNI will address any connectivity issues required for the model and request as-built drawings needed for major trunk lines for invert data. FNI will import 8-inch and larger lines and critical 6-inch lines into the InfoSewer wastewater modeling software from GIS. City staff will provide manhole measure down data for major interceptors where as-built drawings are not available. FNI will provide the revised shapefile to the City.
- B2. Update Manhole Data in GIS: FNI will update GIS with the results of the survey data including rim elevation and depth. FNI will provide the revised shapefile to the City.
- B3. Add Facilities Data in Model: FNI will verify the configuration of lift stations and control structures in the model with as-built drawings and add them to the wastewater model.
- B4. Obtain and Evaluate Lift Station & WWTP Data: Obtain lift station and WWTP flow data to be used for model development and to assist in model validation.
- B5. Conduct Wastewater Model Validation: FNI will utilize lift station and WWTP influent flow data for steady state wet weather model validation. FNI will conduct model validation by adjusting Manning's roughness factors, force main C-factors, peaking factors, and load distribution.
- B6. Perform Modeling of Existing Wastewater System: FNI will conduct modeling of the existing wastewater system for peak flow operating conditions to determine capacity and deficiencies within the existing wastewater system. FNI will evaluate maximum pipe flows versus full flow capacity (q/Q) in interceptors and level of surcharging in manholes.
- B7. Progress Meeting: Wastewater Model Validation and Existing System Analysis: FNI will prepare mapping showing q/Q for interceptors and level of surcharging in manholes. FNI will meet with the City on validation and existing system analysis results and discuss adjustments needed to the modeling before future system modeling commences.

C. Wastewater System Analysis and Develop Improvements

- C1. Evaluate Basin Delineation: FNI will utilize and analyze the existing basin and sub-basin delineation based on modeling results and lift station locations. FNI will provide updated basin boundaries to the City for review.
- C2. Identify Requirements for System Improvements: FNI will develop target design criteria for interceptors, force mains and lift stations, including allowable surcharging and minimum/maximum velocities.

C3. Evaluate WWTP Capacity Needs to Meet Projected Flows: FNI will evaluate required WWTP capacity needed for projected wastewater flows, including the need for additional treatment facilities outside of the current WWTP.

C4. Perform Future Wastewater System Modeling: Determine sizing of wastewater interceptors, force mains and lift stations needed to serve 25-year flows using the model. FNI will also evaluate which lift stations can be decommissioned as new interceptors are built. FNI will use interim 5-year and 10-year model runs to determine the phasing of improvements.

C5. Progress Meeting: Wastewater System Improvement Alternatives: FNI will meet with the City to discuss future wastewater system improvement options for 25-year conditions.

D. Wastewater CIP and Master Plan Report

D1. Develop Draft Capital Improvement Plan (CIP) Costs, Schedule, and Mapping: FNI will develop costs and phasing for each proposed project. Costs will be in Year 2023 dollars and will include engineering and contingencies. Develop draft CIP scheduling of projects based upon modeling results, future land use, annexation plans, and reliability needs. FNI will develop mapping showing project locations.

D2. Progress Meeting: Draft Capital Improvement Plan: FNI will meet with the City to discuss future wastewater system improvements for 5-year, 10-year and 25-year planning periods.

D3. Revise CIP and Prepare Draft Wastewater Master Plan Report: FNI will revise the CIP based upon City's comments and modifications and prepare a master plan report discussing model development, validation, wastewater flow projections, and recommended capital improvement plan including costs of improvements. The report will include colored maps showing proposed system improvements as well as GIS digital copies. FNI submit one (1) electronic copy in PDF format of the draft report to the City.

D4. Revise and Finalize Wastewater Master Plan Report: FNI will revise the report based on City comments and submit one (1) final hard copies and one (1) electronic copy in PDF format of the Wastewater Master Plan Report to the City. FNI will provide electronic files of the wastewater model. Purchasing the modeling software is not included.

D5. Council Presentation: FNI Project Manager will present the Wastewater Master Plan report to City Council. FNI will be available to answer questions and discuss content.

E. Additional Services/Allowance

E1. Additional Services/Allowance: This Allowance is to provide additional services as defined by the Director of Engineering and Capital Project Management, which are not fully known or defined at this time. Use of this Allowance will require written direction and authorization from the Director of Engineering and Capital Project Management prior to any additional services or other services not

included under this Wastewater Master Plan Scope of Services. The City may at its sole discretion decline to authorize any services described in this task, and the City shall have no obligation to pay for services not authorized.

Cost of Service

The City will pay for services rendered by FNI a cost not to exceed of \$165,000, according to the Detailed Cost Breakdown table, attached herein. Rate increases will not affect the cost of the project.

Summary of Meetings

1. Project Kickoff Meeting (virtual)
2. Progress Meeting: Land Use and Flow Projections (virtual)
3. Progress Meeting: Wastewater Model Validation and Existing System Analysis
4. Progress Meeting: Wastewater System Improvement Alternatives
5. Progress Meeting: Draft Capital Improvement Plan
6. Council Presentation

Project Schedule

- FNI will submit draft land use assumptions and Task D3 within 3 months of notice to proceed.
- FNI will submit a draft CIP within 12 months of notice to proceed.
- FNI will provide a draft report within 14 months of notice to proceed.
- FNI will provide the final report within 3 weeks of receiving City comments.

Fee Summary

Task	Description	Hours	Total Labor Effort	Total Expense Effort	Total Effort
A	Project Kickoff and Flow Projections	92	\$17,747	\$782	\$18,529
B	Wastewater Model Development and Validation	268	\$49,271	\$2,340	\$51,611
C	Wastewater System Analysis and Develop Improvements	151	\$29,986	\$1,346	\$31,332
D	Wastewater CIP and Master Plan Report	236	\$45,881	\$2,131	\$48,011
E	Additional Services/Allowance	77	\$14,861	\$655	\$15,516
Total Wastewater Master Plan		747	\$157,746	\$7,254	\$165,000

Phase / Task	Activity	Date of Special	Personnel		Equipment		Materials		Subcontractors		Expenses		Total Labor Effort	Total Sub Effort	Total Effort
			Personnel	Equipment	Materials	Subcontractors	Personnel	Equipment	Materials	Subcontractors					
A	1	Project Board and sub-proposals	1	0	0	0	0	0	0	0	0	0	0	0	0
A	2	Design	4	0	0	0	0	0	0	0	0	0	0	0	0
A	3	Design	4	0	0	0	0	0	0	0	0	0	0	0	0
A	4	Design	4	0	0	0	0	0	0	0	0	0	0	0	0
A	5	Design	4	0	0	0	0	0	0	0	0	0	0	0	0
B	1	Waterworks Model Development and Optimization	2	0	0	0	0	0	0	0	0	0	0	0	0
B	2	Develop O&M Connectivity to Wastewater Line O&M Files and Build the	2	0	0	0	0	0	0	0	0	0	0	0	0
B	3	Waterworks Model	2	0	0	0	0	0	0	0	0	0	0	0	0
B	4	Waterworks Model	2	0	0	0	0	0	0	0	0	0	0	0	0
B	5	Waterworks Model	2	0	0	0	0	0	0	0	0	0	0	0	0
B	6	Waterworks Model	2	0	0	0	0	0	0	0	0	0	0	0	0
B	7	Waterworks Model	2	0	0	0	0	0	0	0	0	0	0	0	0
C	1	Waterworks System Analysis and Develop Recommendations	2	0	0	0	0	0	0	0	0	0	0	0	0
C	2	Waterworks System Analysis and Develop Recommendations	2	0	0	0	0	0	0	0	0	0	0	0	0
C	3	Waterworks System Analysis and Develop Recommendations	2	0	0	0	0	0	0	0	0	0	0	0	0
C	4	Waterworks System Analysis and Develop Recommendations	2	0	0	0	0	0	0	0	0	0	0	0	0
D	1	Waterworks CIP and Master Plan Report	1	0	0	0	0	0	0	0	0	0	0	0	0
D	2	Develop Data Collection Improvement Plan (CIP) Goals, Objectives, and Mapping	1	0	0	0	0	0	0	0	0	0	0	0	0
D	3	Review CIP and Prepare Draft Wastewater Master Plan Report	1	0	0	0	0	0	0	0	0	0	0	0	0
D	4	Review and Prepare Wastewater Master Plan Report	1	0	0	0	0	0	0	0	0	0	0	0	0
E	1	Additional Services/Allowance	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Hours / Quantity			19	0	0	0	0	0	0	0	0	0	0	0	0
Total Cost			\$ 3,396	\$ 2,527	\$ 4,022	\$ 4,824	\$ 5,085	\$ 5,267	\$ 5,267	\$ 5,267	\$ 5,267	\$ 5,267	\$ 5,267	\$ 5,267	\$ 5,267

EXHIBIT A-3

House Bill 89 Verification

(See Attached)

House Bill 89 Verification Form

Prohibition on Contracts with Companies Boycotting Israel

The 85th Texas Legislature approved new legislation, effective Sept. 1, 2017, which amends Texas Local Government Code Section 1. Subtitle F, Title 10, Government Code by adding Chapter 2270 which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- 1) does not boycott Israel; and
- 2) will not boycott Israel during the term of the contract

Pursuant to Section 2270.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

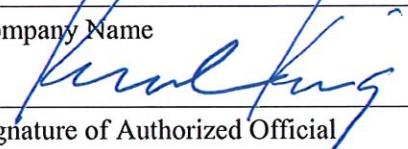
2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

I, (authorized official) Kendall King, do hereby depose and verify the truthfulness and accuracy of the contents of the statements submitted on this certification under the provisions of Subtitle F, Title 10, Government Code Chapter 2270 and that the company named below:

- 1) does not boycott Israel currently; and
- 2) will not boycott Israel during the term of the contract; and
- 3) is not currently listed on the State of Texas Comptroller's Companies that Boycott Israel List located at <https://comptroller.texas.gov/purchasing/publications/divestment.php>

Freese and Nichols, Inc.

Company Name



Signature of Authorized Official

Vice President

Title of Authorized Official

January 30, 2023

Date

EXHIBIT B-1
REQUIREMENTS FOR GENERAL SERVICES CONTRACT

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City, including any delay periods. If the Project is not finalized and the insurance expires, Contractor is obligated to extend the insurance coverage. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Bastrop accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

- A. The City of Bastrop shall be named as an additional insured with respect to General Liability and Automobile Liability on a separate endorsement
- B. A waiver of subrogation in favor of The City of Bastrop shall be contained in the Workers Compensation and all liability policies and must be provided on a separate endorsement.
- C. All insurance policies shall be endorsed to the effect that The City of Bastrop will receive at least thirty (30) days' written notice prior to cancellation or non-renewal of the insurance.
- D. All insurance policies, which name The City of Bastrop as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
- E. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
- F. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Bastrop of any material change in the insurance coverage.
- G. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
- H. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- I. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Bastrop.
- J. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
- K. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2016/03) Coverage must be written on an occurrence form.
- L. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
- M. Upon request, Contractor shall furnish The City of Bastrop with certified copies of all insurance policies.
- N. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Bastrop within ten (10) business days after contract award and prior to starting any work by the successful contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Bastrop, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Bastrop. The certificate of insurance and endorsements shall be sent to:

**City of Bastrop
Engineering and Capital Project Management Department
P. O. Box 427
1311 Chestnut Street
Bastrop, TX 78602**

INSURANCE REQUIREMENTS

Items marked "X" are required to be provided if award is made to your firm.

Coverages Required & Limits (Figures Denote Minimums)

Workers' Compensation Statutory limits, State of TX.

Employers' Liability \$500,000 per employee per disease / \$500,000 per employee per accident / \$500,000 by disease aggregate

Commercial General Liability:

	<input type="checkbox"/> Very High/High Risk	<input checked="" type="checkbox"/> Medium Risk	<input type="checkbox"/> Low Risk
Each Occurrence	\$1,000,000	\$500,000	\$300,000
Fire Damage	\$300,000	\$100,000	\$100,000
Personal & ADV Injury	\$1,000,000	\$1,000,000	\$600,000
General Aggregate	\$2,000,000	\$1,000,000	\$600,000
Products/Compl Op	\$2,000,000	\$500,000	\$300,000
XCU	\$2,000,000	\$500,000	\$300,000

Automobile Liability: (Owned, Non-Owned, Hired and Injury & Property coverage for all)

	<input type="checkbox"/> Very High/ High Risk	<input checked="" type="checkbox"/> Medium Risk	<input type="checkbox"/> Low Risk
Combined Single Limits		Combined Single Limits	Combined Single Limits
\$1,000,000 Bodily		\$500,000 Bodily	\$300,000 Bodily

Garage Liability for BI & PD

\$1,000,000 each accident for Auto, \$1,000,000 each accident Non-Auto
\$2,000,000 General Aggregate

Garage Keepers Coverage (for Auto Body & Repair Shops)

\$500,000 any one unit/any loss and \$200,000 for contents

Umbrella each-occurrence with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies at minimum limits as follows:

Contract value less than \$1,000,000: **not required**

Contract value between \$1,000,000 and \$5,000,000: **\$4,000,000 is required**

Contract value between \$5,000,000 and \$10,000,000: **\$9,000,000 is required**

Contract value between \$10,000,000 and \$15,000,000: **\$15,000,000 is required**

Contract value above \$15,000,000: **\$20,000,000 is required**

Excess coverage over \$10,000,000 can be provided on "following form" type to the underlying coverages to the extent of liability coverage as determined by the City.

Professional Liability, including, but not limited to services for Accountant, Appraiser, Architecture, Consultant, Engineering, Insurance Broker, Legal, Medical, Surveying, construction/renovation contracts for engineers, architects, constructions managers, including design/build Contractors.

Minimum limits of \$1,000,000 per claim/aggregate. This coverage must be maintained for at least two (2) years after the project is completed.

Builder's Risk (if project entails vertical construction, including but not limited to bridges and tunnels or as determined by the City of Bastrop) Limit is 100% of insurable value, replacement cost basis

Pollution Liability for property damage, bodily injury and clean up (if project entails possible contamination of air, soil or ground or as determined by the City of Bastrop)

\$1,000,000 each occurrence

\$2,000,000 aggregate

Other Insurance Required: _____

NOTE: The nature/size of a contract/agreement may necessitate higher limits than shown above. These requirements are only meant as a guide, but in any event, should cover most situations. Check with Purchasing & Risk Management if you need assistance or need additional information.



FREEAND-02

KSUTTON

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/23/2023

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

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

PRODUCER Ames & Gough 8300 Greensboro Drive Suite 980 McLean, VA 22102	CONTACT NAME:	
	PHONE (A/C, No, Ext): (703) 827-2277	FAX (A/C, No): (703) 827-2279
	E-MAIL ADDRESS: admin@amesgough.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED Freese and Nichols, Inc. 801 Cherry Street, Suite 2800 Fort Worth, TX 76102	INSURER A: Hartford Underwriters Insurance Company A+ (XV)	30104
	INSURER B: Hartford Casualty Insurance Company A+ (XV)	29424
	INSURER C: Hartford Accident and Indemnity Company A+ (XV)	22357
	INSURER D: Continental Casualty Company (CNA) A, XV	20443
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: 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
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			42UUNOL5238	10/23/2022	10/23/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 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	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			42UENOL5558	10/23/2022	10/23/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			42 XHU OL 5836	10/23/2022	10/23/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	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 N	N/A	42WBOL6H3F	10/23/2022	10/23/2023	<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
D	Professional Liab.			AEH008214422	10/23/2022	10/23/2023	Per Claim \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
PROFESSIONAL LIABILITY AGGREGATE LIMIT: \$10,000,000

RE: Wastewater Master Plan

City of Bastrop, TX is included as Additional Insured with respect to General Liability, Auto Liability, and Umbrella Liability when required by written contract. General Liability, Auto Liability and Umbrella Liability are primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and when required by written contract. General Liability, Auto Liability, Umbrella Liability and Workers Compensation SEE ATTACHED ACORD 101

CERTIFICATE HOLDER City of Bastrop Engineering and Capital Project Management Department P. O. Box 427 1311 Chestnut Street Bastrop, TX 78602	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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ADDITIONAL REMARKS SCHEDULE

AGENCY Ames & Gough		NAMED INSURED Freese and Nichols, Inc. 801 Cherry Street, Suite 2800 Fort Worth, TX 76102	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:
 policies include a Waiver of Subrogation in favor of the Additional Insured where permissible by state law and when required by written contract. 30-day Notice of Cancellation will be issued for the General Liability, Auto Liability, Umbrella Liability, Workers Compensation and Professional Liability policies in accordance with policy terms and conditions. The General Liability policy contains a Separation of Insured Clause per form HG 00 01 09 16.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - OPTION I

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Designated Project(s) Or Location(s) Of Covered Operations:
ANY PERSON OR ORGANIZATION THAT YOU HAVE AGREED TO NAME AS AN ADDITIONAL INSURED IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT PROVIDED THAT THE INJURY OR DAMAGE OCCURS SUBSEQUENT TO THE EXECUTION OF THE CONTRACT OR AGREEMENT. A PERSON OR ORGANIZATION	IS INCLUDED AS AN ADDITIONAL INSURED UNDER THIS ENDORSEMENT ONLY FOR THAT TIME PERIOD REQUIRED BY THE CONTRACT OR AGREEMENT.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. With respect to those person(s) or organization(s) shown in the Schedule above when you have agreed in a written contract or written agreement to provide insurance such as is afforded under this policy to them, Subparagraph f., **Any Other Party**, under the **Additional Insureds When Required By Written Contract, Written Agreement Or Permit Paragraph of Section II – Who Is An Insured** is replaced with the following:

f. Any Other Party

Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for such additional insured at the project(s) or location(s) designated in the Schedule;
- (2) In connection with your premises owned by or rented to you and shown in the Schedule; or

(3) In connection with "your work" for the additional insured at the project(s) or location(s) designated in the Schedule and included within the "products-completed operations hazard", but only if:

- (a) The written contract or written agreement requires you to provide such coverage to such additional insured at the project(s) or location(s) designated in the Schedule; and
- (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

The insurance afforded to the additional insured shown in the Schedule applies:

- (1) Only if the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed:
 - (a) During the policy period; and
 - (b) Subsequent to the execution of such written contract or written agreement; and

- (c) Prior to the expiration of the period of time that the written contract or written agreement requires such insurance be provided to the additional insured.
- (2) Only to the extent permitted by law; and
- (3) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

With respect to the insurance afforded to the person(s) or organization(s) that are additional insureds under this endorsement, the following additional exclusion applies:

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:

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

The limits of insurance that apply to the additional insured shown in the Schedule are described in the Limits Of Insurance section.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in **Section IV – Commercial General Liability Conditions**, except as otherwise amended below.

B. With respect to insurance provided to the person(s) or organization(s) that are additional insureds under this endorsement, the **When You Add Others As An Additional Insured To This Insurance** subparagraph, under the **Other Insurance** Condition of **Section IV – Commercial General Liability Conditions** is replaced with the following:

When You Add Others As An Additional Insured To This Insurance

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Paragraph (c) below. This insurance does not apply to other insurance to which the additional insured in the Schedule has been added as an additional insured.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

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

- (i) The additional insured in the Schedule is a Named Insured under such other insurance; and
- (ii) You have agreed in a written contract or written agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured in the Schedule.

(c) Method Of Sharing

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

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

All other terms and conditions in the policy remain unchanged.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

ANY PERSON OR ORGANIZATION FROM WHOM YOU ARE REQUIRED BY WRITTEN CONTRACT OR WRITTEN AGREEMENT TO OBTAIN THIS WAIVER OF RIGHTS FROM US.

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

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION OR NONRENEWAL TO DESIGNATED GOVERNMENTAL ENTITY

SCHEDULE	
Number of Days Notice: Part A: <u>030</u> Part B: <u>010</u> Part C: <u>030</u> Part D: <u>030</u>	Name of Governmental Entity: City of Bastrop Mailing Address: Attn: Engineering and Capital Project Management Department P.O. Box 427 1311 Chestnut Street Bastrop, TX 78602

This policy is subject to the following additional Conditions when a number of days are shown in the Schedule for any of the above Parts.

- A. If this policy is cancelled by the Company, other than for nonpayment of premium, or if coverages or limits are reduced below the minimum level contractually required by the governmental entity, notice of such cancellation or reduction in coverage will be provided to the governmental entity in the Schedule, at least the number of days in advance of the cancellation effective date, as shown in Part A.
- B. If this policy is cancelled by the Company for nonpayment of premium, notice of such cancellation will be provided to the governmental entity in the Schedule within the number of days notice of the cancellation effective date, as shown in Part B.
- C. If this policy is cancelled by the insured, notice of such cancellation will be provided to the governmental entity in the Schedule, within the number of days notice of the cancellation effective date, as shown in Part C.

- D. If this policy is nonrenewed by the Company, notice of such nonrenewal will be provided to the governmental entity in the Schedule, at least the number of days in advance of the nonrenewal effective date, as shown in Part D.

If notice is mailed, proof of mailing notice to the governmental entity's mailing address as shown in the Schedule will be sufficient proof of notice. If the number of days notice in the Schedule for any Part is left blank or is shown as zero, no notice will be provided to the Scheduled governmental entity under that Part.

Any notification rights provided by this endorsement apply to the governmental entity in the Schedule so long as it was issued a certificate of insurance applicable to this policy's term.

Failure to provide such notice to the governmental entity in the Schedule will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon the Company or its agents or representatives.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (a) That is a partnership or joint venture,
 - (b) That is an "insured" under any other policy,
 - (c) That has exhausted its Limit of Insurance under any other policy, or
 - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

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

C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
 - (1) The agreement requires you to provide direct primary insurance for the lessor and
 - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

D. Additional Insured if Required by Contract

(1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - OF SECTION IV - BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

E. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty 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.

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

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

2. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

3. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

6. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

7. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

9. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

14. HIRED AUTO - COVERAGE TERRITORY

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

15. WAIVER OF SUBROGATION

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

16. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

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

17. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

- c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.
- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

19. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION OR NONRENEWAL TO DESIGNATED GOVERNMENTAL ENTITY

SCHEDULE	
Number of Days Notice: Part A: <u>30</u> Part B: <u>10</u> Part C: <u>30</u> Part D: <u>30</u>	Name of Governmental Entity: City of Bastrop Mailing Address: Attn: Engineering and Capital Project Management Department P.O. Box 427 1311 Chestnut Street Bastrop, TX 78602

This policy is subject to the following additional Conditions when a number of days are shown in the Schedule for any of the above Parts.

- A. If this policy is cancelled by the Company, other than for nonpayment of premium, or if coverages or limits are reduced below the minimum level contractually required by the governmental entity, notice of such cancellation or reduction in coverage will be provided to the governmental entity in the Schedule, at least the number of days in advance of the cancellation effective date, as shown in Part A.
- B. If this policy is cancelled by the Company for nonpayment of premium, notice of such cancellation will be provided to the governmental entity in the Schedule within the number of days notice of the cancellation effective date, as shown in Part B.
- C. If this policy is cancelled by the insured, notice of such cancellation will be provided to the governmental entity in the Schedule, within the number of days notice of the cancellation effective date, as shown in Part C.

- D. If this policy is nonrenewed by the Company, notice of such nonrenewal will be provided to the governmental entity in the Schedule, at least the number of days in advance of the nonrenewal effective date, as shown in Part D.

If notice is mailed, proof of mailing notice to the governmental entity's mailing address as shown in the Schedule will be sufficient proof of notice. If the number of days notice in the Schedule for any Part is left blank or is shown as zero, no notice will be provided to the Scheduled governmental entity under that Part.

Any notification rights provided by this endorsement apply to the governmental entity in the Schedule so long as it was issued a certificate of insurance applicable to this policy's term.

Failure to provide such notice to the governmental entity in the Schedule will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon the Company or its agents or representatives.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

Policy Number: 42 WB OL6H3F

Endorsement Number:

Effective Date 10/23/22 Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: FREESE AND NICHOLS, INC.
801 CHERRY STREET, SUITE 2800
FORT WORTH TX 76102

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

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, but this waiver applies only with

respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. () Special Waiver
Name of person or organization
- (X) Blanket Waiver
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.
2. Operations:
All Texas Operations
3. Premium:
The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.
4. Advance Premium:



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS NOTICE OF MATERIAL CHANGE ENDORSEMENT

Policy Number: 42 WB OL6H3F

Endorsement Number: 4

Effective Date: 01/30/23

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: FREESE AND NICHOLS, INC.
801 CHERRY ST STE 2800
FORT WORTH TX 76102

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

In the event of cancellation or other material change of the policy, we will mail advance notice to the person or organization named in the Schedule. The number of days advance notice is shown in the Schedule.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE

1. Number of days advance notice: 30
2. Notice will be mailed to:

City of Bastrop

Attn: Engineering and Capital Project Management Department P. O. Box 427 1311 Chestnut Street Bastrop, TX 78602

Countersigned by _____ Authorized Representative



UMBRELLA LIABILITY POLICY PROVISIONS

In this policy the words "you" and "your" refer to the Named Insured first shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. "We", "us" and "our" refer to the stock insurance company member of The Hartford Financial Services Group Inc. shown in the Declarations.

Other words and phrases that appear in quotation marks also have special meaning. Refer to DEFINITIONS (Section VII).

IN RETURN FOR THE PAYMENT OF THE PREMIUM, in reliance upon the statements in the Declarations made a part hereof and subject to all of the terms of this policy, we agree with you as follows:

SECTION I - COVERAGES

INSURING AGREEMENTS

A. Umbrella Liability Insurance

1. We will pay those sums that the "insured" becomes legally obligated to pay as "damages" in excess of the "underlying insurance" or of the "self-insured retention" when no "underlying insurance" applies, because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies caused by an "occurrence". But, the amount we will pay as "damages" is limited as described in **Section IV - LIMITS OF INSURANCE.**

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Section II - INVESTIGATION, DEFENSE, SETTLEMENT.**

2. This insurance applies to "bodily injury", "property damage" or "personal and advertising injury" only if:
 - a. The "bodily injury", "property damage" or "personal and advertising injury" occurs during the "policy period"; and
 - b. Prior to the "policy period", no insured listed under Paragraph A. of Section III - 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".

3. "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 A. of Section III - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - a. Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - b. Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - c. Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

B. Exclusions

This policy does not apply to:

1. Pollution

Any obligation:

- a. To pay for the cost of investigation, defense or settlement of any claim or suit against any "insured" alleging actual or threatened injury or damage of any nature or kind to persons or property which arises out of or would not have occurred but for the pollution hazard; or
- b. To pay any "damages", judgments, settlements, loss, costs or expenses that may be awarded or incurred:
 - i. By reason of any such claim or suit or any such injury or damage; or
 - ii. In complying with any action authorized by law and relating to such injury or damage.

As used in this exclusion, pollution hazard means an actual exposure or threat of exposure to the corrosive, toxic or other harmful properties of any solid, liquid, gaseous or thermal:

- a. Pollutants;
- b. Contaminants;

- c. Irritants; or
- d. Toxic substances;

Including:

Smoke;
Vapors;
Soot;
Fumes;
Acids;
Alkalis;
Chemicals, and
Waste materials consisting of or containing any of the foregoing.
Waste includes materials to be recycled, reconditioned or reclaimed.

EXCEPTION

This exclusion does not apply:

- a. To "bodily injury" to any of your "employees" arising out of and in the course of their employment by you; or
- b. To injury or damage as to which valid and collectible "underlying insurance" with at least the minimum limits shown in the Schedule of Underlying Insurance Policies is in force and applicable to the "occurrence". In such event, any coverage afforded by this policy for the "occurrence" will be subject to the pollution exclusions of the "underlying insurance" and to the conditions, limits and other provisions of this policy. In the event that "underlying insurance" is not maintained with limits of liability as set forth in the Schedule of Underlying Insurance Policies, coverage under any of the provisions of this exception does not apply.

Exception b. does not apply to:

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (1) That are, or that are contained in any property that is :
 - (a) Being transported or towed by, handled, or handled for movement into, onto or from, any "auto";

- (b) Otherwise in the course of transit by or on behalf of the "insured"; or

- (c) Being stored, disposed of, treated or processed in or upon any "auto";

- (2) Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto any "auto"; or

- (3) After the "pollutants" or any property in which the "pollutants" are contained are moved from any "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph (1) above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of an "auto", covered by the "underlying insurance" or its parts, if:

- a. The "pollutants" escape, seep, migrate, or are discharged or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- b. The "bodily injury," "property damage" or "covered pollution cost or expense" does not arise out of the operation of any following equipment:
 - i. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment; and
 - ii. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers.

Paragraphs (2) and (3) above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon an "auto"

covered by the "underlying insurance" if:

- a. The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of the "auto", and
- b. The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

2. Workers Compensation And Similar Laws

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

3. Contractual Liability

Liability assumed by the "insured" under any contract or agreement with respect to an "occurrence" taking place before the contract or agreement is executed.

4. Personal And Advertising Injury

This policy does not apply to "personal and advertising injury".

EXCEPTION

This exclusion does not apply to the extent that coverage for such "personal and advertising injury" is provided by "underlying insurance", but in no event shall any "personal and advertising injury" coverage provided under this policy apply to any claim or "suit" to which "underlying insurance" does not apply.

Any coverage restored by this **EXCEPTION** applies only to the extent that such coverage provided by the "underlying insurance" is maintained having limits as set forth in the Schedule of Underlying Insurance Policies.

5. Underlying Insurance

Any injury or damage:

- a. Covered by "underlying insurance" but for any defense which any underlying insurer may assert because of the "insured's" failure to comply with any condition of its policy; or
- b. For which "damages" would have been payable by "underlying insurance" but for the actual or alleged insolvency or financial impairment of an underlying insurer.

6. Aircraft

"Bodily injury" or "property damage" arising out of the ownership, operation,

maintenance, use, entrustment to others, loading or unloading of any aircraft:

- a. Owned by any "insured"; or
- b. Chartered or loaned to any "insured".

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

This exclusion does not apply to aircraft that is:

- a. Hired, chartered or loaned with a paid crew; but
- b. Not owned by any "insured".

This exclusion does not apply to "bodily injury" to any of your "employees" arising out of and in the course of their employment by you.

7. Watercraft

"Bodily injury" or "property damage" arising out of the ownership, operation, maintenance, use, entrustment to others, loading or unloading of any watercraft.

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

This exclusion does not apply to:

- a. Watercraft you do not own that is:
 - (1) Less than 51 feet long, and
 - (2) Not being used to carry persons or property for a charge;
- b. "Bodily injury" to any of your "employees" arising out of and in the course of their employment by you; or
- c. Any watercraft while ashore on premises owned by, rented to or controlled by you.

8. War

Any injury or damage, however caused, arising, directly or indirectly, out of:

- a. War, including undeclared or civil war; or

- 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.

9. Damage To Property

"Property damage" to property you own.

10. Damage To Your Product

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

11. 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.

12. 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:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. 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 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.

13. 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:

- a. "Your product";
- b. "Your work"; or
- c. "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.

14. Expected Or Intended

"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.

15. Employer Liability

Coverage afforded any of your "employees" for "bodily injury" or "personal and advertising injury":

- a. To other "employees" arising out of and in the course of their employment;
- b. To the spouse, child, parent, brother or sister of that "employee" as a consequence of such "bodily injury" to that "employee".
- c. To you or, any of your partners or members, (if you are a partnership, joint venture), or your members (if you are a limited liability company); or
- d. Arising out of the providing or failing to provide professional health care services.

Subparagraphs a. and b. of this exclusion apply:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share "damages" with or repay someone else who must pay "damages" because of the injury.

EXCEPTION

Subparagraphs a. and b. of this exclusion do not apply if "underlying insurance" is maintained providing coverage for such liability with minimum underlying limits, as described in the Schedule of Underlying Insurance Policies.

16. Property Damage To Employee's Property

Coverage afforded any of your "employees" for "property damage" to property owned or occupied by or rented or loaned to:

- a. That "employee";
- b. Any of your other "employees";
- c. Any of your partners or members (if you are a partnership or joint venture); or
- d. Any of your members (if you are a limited liability company).

17. Uninsured Or Underinsured Motorists

Any claim for:

- a. Uninsured or Underinsured Motorists Coverage;
- b. Personal injury protection;
- c. Property protection; or
- d. Any similar no-fault coverage by whatever name called;

Unless this policy is endorsed to provide such coverage.

18. Employment Practices Liability

- a. Any injury or damage 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 but not limited to: 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 any injury or damage to that person at whom any of the employment-related practices described in paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- i. Whether the injury-causing event described in part (1) above occurs before employment, during employment or after employment of that person;
- ii. Whether the "insured" may be liable as an employer or in any other capacity; and
- iii. To any obligation to share "damages" with or repay someone else who must pay "damages" because of the injury.

19. Employee Retirement Income Security Act

Any liability arising out of intentional or unintentional violation of any provision of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (commonly referred to as the Revision Act of 1974), or any amendments to them.

20. Asbestos

Any injury, damages, loss, cost or expense, including but not limited to "bodily injury", "property damage" or "personal and advertising injury" arising out of, or relating to, in whole or in part, the "asbestos hazard" that:

- a. May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard"; or
- b. Arise out of any request, demand, order, or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of any "asbestos hazard"; or
- c. Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

21. Racing And Stunting Activities

"Bodily injury" or "property damage" arising out of the ownership, operation, maintenance, use, entrustment to others, or loading or unloading of any "auto" or "mobile equipment" while being used in any:

- a. Prearranged or organized racing, speed or demolition contest;
- b. Stunting activity; or
- c. Preparation for any such contest or activity.

22. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- a. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- b. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit

monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to 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.

23. Limited Underlying Coverage

Any injury, damage, loss, cost or expense, including but not limited to "bodily injury", "property damage" or "personal and advertising injury" for which:

- a. an "underlying insurance" policy or policies specifically provides coverage; but
- b. because of a provision within the "underlying insurance" such coverage is provided at a limit or limits of insurance that are less than the limit(s) for the "underlying insurance" policy or policies shown on the Schedule of Underlying Insurance Policies.

24. Recording And Distribution Of Material Or Information In Violation Of Law

Any injury, damage, loss, cost or expense, including but not limited to "bodily injury", "property damage", or "personal and advertising injury" 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 Transaction 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.

SECTION II - INVESTIGATION, DEFENSE, SETTLEMENT

A. With respect to "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies (whether or not the "self-insured retention" applies) and

1. For which no coverage is provided under any "underlying insurance"; or
2. For which the underlying limits of any "underlying insurance" policy have been exhausted solely by payments of "damages" because of "occurrences" during the "policy period",

We:

1. Will have the right and the duty to defend any "suit" against the "insured" seeking "damages" on account thereof, even if such "suit" is groundless, false or fraudulent; but 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 afforded by this policy;
2. May make such investigation and settlement of any claim or "suit" as we deem expedient;
3. Will pay all expenses incurred by us, all court costs taxed against the "insured" in any "suit" defended by us and all interest on the entire amount of any judgment therein which accrues after the entry of the judgment and before we have paid or tendered or deposited in court that part of the judgment which does not exceed the applicable limit of insurance. However, such costs do not include attorneys' fees, attorneys' expenses, witness or expert fees, or any other expenses of a party taxed to the insured;
4. Will pay all premiums on appeal bonds required in any such "suit", premiums on bonds to release attachments in any such "suit" for an amount not in excess of the applicable limit of insurance, and the cost of bail bonds required of the "insured" because of an accident or traffic law violation arising out of the operation of any vehicle to which this policy applies, but we will have no obligation to apply for or furnish any such bonds;
5. Will pay all reasonable expenses incurred by the "insured" at our request in assisting us in the investigation or defense of any claim or "suit", including actual loss of earnings not to exceed \$500 per day per "insured";

and the amounts so incurred, except settlement of claims and "suits," are not subject to the "self-insured retention" and are payable in addition to any applicable limit of insurance.

The "Insured" agrees to reimburse us promptly for amounts paid in settlement of claims or "suits" to the extent that such amounts are within the "self-insured retention".

- B. You agree to arrange for the investigation, defense or settlement of any claim or "suit" in any country where we may be prevented by law from carrying out this agreement. We will pay defense expenses incurred with our written consent in connection with any such claim or "suit" in addition to any applicable limit of insurance. We will also promptly reimburse you for our proper share, but subject to the applicable limit of insurance, of any settlement above the "self-insured retention" made with our written consent.
- C. We will have the right to associate at our expense with the "insured" or any underlying insurer in the investigation, defense or settlement of any claim or "suit" which in our opinion may require payment hereunder. In no event, however, will we contribute to the cost and expenses incurred by any underlying insurer.

SECTION III - WHO IS AN INSURED

- A. If you are doing business 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 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:

- a. Within the scope of their employment by you or while performing duties related to the conduct of your business; and
 - b. Only if such "volunteer workers" or "employees" are insureds under "underlying insurance" with limits of liability no less than stated in the Schedule of Underlying Insurance Policies, subject to all the coverage, terms, conditions and limitations of such "underlying insurance".
- 2. Any person or organization with whom you agreed, because of a written contract, written agreement or because of a permit issued by a state or political subdivision, to provide insurance such as is afforded under this policy, but only with respect to your operations, "your work" or facilities owned or used by you.

This provision does not apply:

- a. Unless the written contract or written agreement has been executed, or the permit has been issued prior to the "bodily injury," "property damage," or "personal and advertising injury"; and
 - b. Unless limits of liability specified in such written contract, written agreement or permit is greater than the limits shown for "underlying insurance"; or
 - c. Beyond the period of time required by the written contract or written agreement.
- 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 his or her duties as such. That representative will have all your rights and duties under this policy.
- C. With respect to "auto", any "insured" in the "underlying insurance" is an "insured" under this insurance policy, subject to all the limitations of such "underlying insurance".
 - D. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain

financial interest of more than 50% of the voting stock, will qualify as an "insured" if there is no other similar insurance available to that organization.

However:

1. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the "policy period", whichever is earlier;
2. This insurance does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
3. This insurance does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

- E. Each person or organization, not included as an "insured" in Paragraphs A., B., C., or D., who is an "insured" in the "underlying insurance" is an "insured" under this insurance subject to all the terms, conditions and limitations of such "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.

With respect to any person or organization who is not an "insured" under "underlying insurance", coverage under this policy shall apply only to loss in excess of the amount of the "underlying insurance" or "self-insured retention" applicable to you.

However, coverage afforded by reason of the provisions set forth above applies only to the extent:

- (i) Of the scope of coverage provided by the "underlying insurance" but in no event shall coverage be broader than the scope of coverage provided by this policy and any endorsements attached hereto; and
- (ii) That such coverage provided by the "underlying insurance" is maintained having limits as set forth in the Schedule of Underlying Insurance Policies.

SECTION IV - LIMITS OF INSURANCE

- A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
1. "Insureds";
 2. Claims made or "suits" brought;
 3. Persons or organizations making claims or bringing "suits"; or
 4. Coverages under which damages are covered under this policy.

- B. The Limit of Insurance stated as the General Aggregate Limit is the most we will pay for the sum of "damages", other than "damages":

1. Because of injury or damage included within the "products-completed operations hazard";
2. Because of "bodily injury" by disease to your "employees" arising out of and in the course of their employment by you; and
3. Because of "bodily injury" and "property damage" arising out of the ownership, operations, maintenance, use, entrustment to others, loading or unloading of any "auto".

- C. The Limit of Insurance stated as the Products Completed Operations Aggregate Limit is the most we will pay for "damages" because of injury or damage included within the "products-completed operations hazard".

- D. The Limit of Insurance stated as the Bodily Injury By Disease Aggregate Limit is the most we will pay for "damages" because of "bodily injury" by disease to your "employees" arising out of and in the course of their employment by you.

- E. Subject to B., C., or D above, whichever applies, the Each Occurrence Limit is the most we will pay for "damages" because of all "bodily injury", "property damage", and "personal and advertising injury" arising out of any one "occurrence".

- F. Our obligations under this insurance end when the applicable Limit of Insurance available is used up. If we pay any amounts for "damages" in excess of that Limit of Insurance, you agree to reimburse us for such amounts.

- G. The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the "policy period" shown in the Declarations. However, if the "policy period" is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for the purpose of determining the Limits of Insurance.

SECTION V - NUCLEAR ENERGY LIABILITY EXCLUSION (Broad Form)

- A. The insurance does not apply:
1. To "bodily injury" or "property damage":
 - a. With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured

under any such policy but for its termination upon exhaustion of its limit of liability; or

- b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
2. To "bodily injury" or "property damage" resulting from the "hazardous properties" of "nuclear material" if:
- a. The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
 - b. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an "insured"; or
 - c. The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion c. applies only to "property damage" to such "nuclear facility" and any property thereat.

B. As used in this exclusion:

"Hazardous properties" include radioactive, toxic or explosive properties;

"Nuclear material" means "source material", "special nuclear material" or "by-product material";

"Source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or

concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (1) Any "nuclear reactor";
- (2) Any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing "spent fuel," or (c) handling, processing or packaging "waste";
- (3) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste"; and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Property damage" includes all forms of radioactive contamination of property.

SECTION VI - CONDITIONS

A. Premium

All premiums for this policy shall be computed in accordance with Item 5 of the Declarations. The premium stated as such in the Declarations is a deposit premium only which shall be credited to the amount of any earned premium. At the close of each "policy period", the earned premium shall be computed for such period, and upon notice thereof to the Named Insured first shown in the Declarations shall become due and payable by such Named Insured.

If the total earned premium for the "policy period" is less than the premium previously paid and more than the minimum premium, we shall return to such Named Insured the unearned portion paid by such Named Insured.

The Named insured first shown in the Declarations shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to us at the end of the "policy period" and at such times during the "policy period" as we may direct.

B. Inspection And Audit

We shall be permitted but not obligated to inspect your property and operations at any time. Neither our right to make inspections, nor the making thereof, nor any report thereon, shall constitute an undertaking on your behalf or for your benefit or that of others to determine or warrant that such property or operations are:

1. Safe;
2. Healthful; or
3. In compliance with any law, rule or regulation.

We may examine and audit your books and records at any time during the "policy period" and extensions thereof and within three years after the final termination of this policy, insofar as they relate to the subject matter of this policy.

C. Duties In The Event Of Occurrence, Claim Or Suit

1. You must see to it that we are notified as soon as practicable of an "occurrence" which may result in a claim under this policy. This requirement applies only when such "occurrence" is known to any of the following:

- a. You or any additional insured that is an individual;
- b. Any partner, if you or an additional insured are a partnership;
- c. Any manager, if you or an additional insured are a limited liability company;
- d. Any "executive officer" or insurance manager, if you or an additional insured are a corporation;
- e. Any trustee, if you or an additional insured is a trust; or
- f. Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This duty applies separately to you and any additional insured.

To the extent possible, notice should include:

- a. How, when and where the "occurrence" took place;
- b. The names and addresses of any injured persons and witnesses; and
- c. The nature and location of any injury or damage arising out of the "occurrence" or "offense".

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

- a. Immediately record the specifics of the claim or "suit" and the date received; and

b. Notify us in writing as soon as practicable if the claim is likely to exceed the amount of the "self-insured retention" or "underlying insurance", whichever applies.

3. You and any other involved insured must:

- a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit" involving or likely to involve a sum in excess of any "self-insured retention" or "underlying insurance", whichever applies;
- b. Authorize us to obtain records and other information;
- c. Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- d. 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 policy or any "underlying insurance" or "self-insured retention" may apply.

4. No insured will, except at that insured's own cost, make or agree to any settlement for a sum in excess of:

- a. The total limits of "underlying insurance"; or
- b. The "self-insured retention" if no "underlying insurance" applies without our consent.

5. No insureds will, except at that insured's own cost, make a payment, assume any obligation, or incur any expenses, other than first aid, without our consent.

D. Assistance And Cooperation Of The Insured

The "insured" shall:

1. Cooperate with us and comply with all the terms and conditions of this policy; and
2. Cooperate with any of the underlying insurers as required by the terms of the "underlying insurance" and comply with all the terms and conditions thereof.

The "insured" shall enforce any right of contribution or indemnity against any person or organization who may be liable to the "insured" because of "bodily injury", "property damage" or "personal and advertising injury" with respect to this policy or any "underlying insurance".

E. Legal Action Against Us

No person or organization has a right under this policy:

- 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 policy unless all of its terms and those of the "underlying insurance" 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 policy or that are in excess of the limit of liability. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

F. Appeals

In the event the "insured" or the "insured's" underlying insurer elects not to appeal a judgment in excess of the "underlying insurance" or the "self-insured retention," we may elect to make such appeal, at our cost and expense.

If we so elect, we shall be liable in addition to the applicable Limit of Insurance, for the:

1. Taxable costs;
2. Disbursements; and
3. Additional interest incidental to such appeal;

But in no event will we be liable for "damages" in excess of the applicable aggregate Limit of Insurance.

If a judgment is rendered in excess of the limits of "underlying insurance" and we offer to pay our full share of such judgment, but you or your underlying insurers elect to appeal it, you, your underlying insurers or both will bear:

- a. The cost and duty of obtaining any appeal bond;
- b. The taxable costs, disbursements and additional interest incidental to such appeal; and
- c. Any increase in damages over the amount the matter could have been settled for after the verdict was entered and before the appeal was filed.

G. Other Insurance

This policy shall apply in excess of all "underlying insurance" whether or not valid and collectible. It shall also apply in excess of other valid and collectible insurance (except other insurance purchased specifically to apply in excess of this insurance) which also applies to any loss for which insurance is provided by this policy.

These excess provisions apply, whether such other insurance is stated to be:

1. Primary;
2. Contributing;
3. Excess; or
4. Contingent.

H. Transfer Of Rights Of Recovery Against Others To Us

1. Transfer Of Rights Of Recovery

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

- a. Recoveries shall be applied to reimburse:

- (1) First, any interest (including the Named Insured) that paid any amount in excess of our limit of liability;
- (2) Second, us, along with any other insurers having a quota share interest at the same level;
- (3) Third, such interests (including the Named Insured) of whom this insurance is excess.

However, a different apportionment may be made to effect settlement of a claim by agreement signed by all interests.

- b. Reasonable expenses incurred in the exercise of rights of recovery shall be apportioned among all interests in the ratio of their respective losses for which recovery is sought.

2. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the "insured" has waived any rights of recovery against any person or organization for all or part of any payment we have made under this policy, we also waive that right, provided the "insured" waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

I. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. Notice to any agent, or knowledge possessed by any agent or any other person shall not effect a waiver or a change in any part of this policy, or stop us from asserting any rights under the terms of this policy.

The Named Insured first shown in the Declarations is authorized on behalf of all "insureds" to agree with us on changes in the terms of this policy.

If the terms are changed, the changes will be shown in an endorsement issued by us and made a part of this policy.

J. Separation Of Insureds

Except with respect to the Limits of Liability, and any rights or duties specifically assigned in this policy to the Named Insured first shown in the declarations, 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.

K. Maintenance Of Underlying Insurance

Policies affording in total the coverage and limits stated in the Schedule of Underlying Insurance Policies shall be maintained in full effect during the currency of this policy. Your failure to comply with the foregoing shall not invalidate this policy, but in the event of such failure, we shall be liable only to the extent that we would have been liable had you complied herewith.

The Named Insured first shown in the Declarations shall give us written notice as soon as practicable of any of the following:

1. Any change in the coverage or in the limits of any "underlying insurance", including but not limited to a change from occurrence coverage to claims made coverage;
2. Termination of part or all of one or more of the policies of "underlying insurance";
3. Reduction or exhaustion of an aggregate limit of liability of any "underlying insurance".

The "self-insured retention" shall not apply should the "underlying insurance" be exhausted by the payment of claims or "suits" which are also covered by this policy.

L. Cancellation

1. The Named Insured first shown in the Declarations may cancel this policy by mailing or delivering to us or to any of our authorized agents advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the Named Insured first shown in the Declarations at the address shown in this policy, written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if such Named Insured fails to pay the premium or any installment when due; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. If notice is mailed, proof of mailing will be sufficient proof of notice. Notice will state the effective date of cancellation. The "policy period" will end on that date.

Delivery of such notice by the Named Insured first shown in the Declarations or by us will be equivalent to mailing.

4. If the Named Insured first shown in the Declarations cancels, the refund may be less than pro rata, but we will retain any minimum premium stated as such in the Declarations. If we cancel, the refund will be pro rata. The cancellation will be effective even if we have not made or offered a refund.

M. Non-Renewal

1. If we decide not to renew, we will mail or deliver to the Named Insured first shown in the Declarations, at the address shown in this policy, written notice of non-renewal at least 30 days before the end of the "policy period".
2. If notice is mailed, proof of mailing will be sufficient proof of notice.
3. If we offer to renew but such Named Insured does not accept, this policy will not be renewed at the end of the current "policy period".

N. Workers' Compensation Agreement

With respect to "bodily injury" to any officer or other employee arising out of and in the course of employment by you, you represent and agree that you have not abrogated and will not abrogate your common-law defenses under any Workers' Compensation Law by rejection of such law or otherwise. If at any time during the "policy period" you abrogate such defenses, the insurance for "bodily injury" to such officer or other employee automatically terminates at the same time.

O. Bankruptcy Or Insolvency

In the event of the bankruptcy or insolvency of the "insured" or any entity comprising the "insured", we shall not be relieved of any of our obligations under this policy.

P. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. The statements in the Schedule Of Underlying Insurance Policies are accurate and complete;
- c. The statements in a. and b. are based upon representations you made to us;
- d. We have issued this policy in reliance upon your representations; and
- e. If unintentionally you should fail to disclose all hazards at the inception of this policy, we shall not deny coverage under this policy because of such failure.

SECTION VII - DEFINITIONS

Except as otherwise provided in this section or amended by endorsement, the words or phrases that appear in quotation marks within this policy shall follow the definitions of the applicable "underlying insurance" policy.

"Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".

"Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

"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".

"Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement; or
2. Any claim or "suit" by or on behalf of a governmental authority demanding

that the "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".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (1) That are, or that are contained in any property that is:
 - a. Being transported or towed by, handled, or handled for movement into, onto or from, any "auto";
 - b. Otherwise in the course of transit by or on behalf of the "insured"; or
 - c. Being stored, disposed of, treated or processed in or upon any "auto"; or
- (2) Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto any "auto"; or
- (3) After the "pollutants" or any property in which the "pollutants" are contained are moved from any "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of an "auto", covered by the "underlying insurance" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury," "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in paragraphs 6.b and 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon an "auto" covered by the "underlying insurance" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of the "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

"Damages" include prejudgment interest awarded against the "insured" on that part of the judgment we pay.

"Damages" do not include:

1. Fines;
2. Penalties; or
3. Damages for which insurance is prohibited by the law applicable to the construction of this policy.

Subject to the foregoing, "damages" include damages for any of the following which result at any time from "bodily injury" to which this policy applies:

1. Death;
2. Mental anguish;
3. Shock;
4. Disability; or
5. Care and loss of services or consortium.

"Insured" means any person or organization qualifying as an insured in the applicable WHO IS AN INSURED provision of this policy. The insurance afforded applies separately to each "insured" against whom claim is made or "suit" is brought, except with respect to the limit of our liability under LIMITS OF INSURANCE (SECTION IV).

"Occurrence" means

1. With respect to "bodily injury" or "property damage": an accident, including continuous or

repeated exposure to substantially the same general harmful conditions, and

2. With respect to "personal and advertising injury": an offense described in one of the numbered subdivisions of that definition in the "underlying insurance".

"Policy period" means the period beginning with the inception date stated as such in the Declarations and ending with the earlier of:

1. The date of cancellation of this policy; or
2. The expiration date stated as such in the Declarations.

"Self-insured retention" means the amount stated as such in the Declarations which is retained and payable by the "insured" with respect to each "occurrence".

"Underlying insurance" means the insurance policies listed in the Schedule of Underlying Insurance Policies, including any renewals or replacements thereof, which provide the underlying coverages and limits stated in the Schedule of Underlying Insurance Policies. The limit of "underlying insurance" includes:

1. Any deductible amount;
2. Any participation of any "insured"; and
3. Any "self-insured retention" above or beneath any such policy;

Less the amount, if any, by which the aggregate limit of such insurance has been reduced by any payment relating to any act, error, omission, injury, damage or offense for which insurance is provided by this policy, including Medical Payments Coverage as described in the "underlying insurance." The coverages and limits of such policies and any such deductible amount, participation or "self-insured retention" shall be deemed to be applicable regardless of:

1. Any defense which any underlying insurer may assert because of the "insured's" failure to comply with any condition of its policy; or
2. The actual or alleged insolvency or financial impairment of any underlying insurer or any "insured".

The risk of insolvency or financial impairment of any underlying insurer or any "insured" is borne by you and not by us.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION OR NONRENEWAL TO DESIGNATED GOVERNMENTAL ENTITY

SCHEDULE	
Number of Days Notice: Part A: <u>30</u> Part B: <u>10</u> Part C: <u>30</u> Part D: <u>30</u>	Name of Governmental Entity: City of Bastrop Mailing Address: Attn: Engineering and Capital Project Management Department P.O. Box 427 1311 Chestnut Street Bastrop, TX 78602

This policy is subject to the following additional Conditions when a number of days are shown in the Schedule for any of the above Parts.

- A. If this policy is cancelled by the Company, other than for nonpayment of premium, or if coverages or limits are reduced below the minimum level contractually required by the governmental entity, notice of such cancellation or reduction in coverage will be provided to the governmental entity in the Schedule, at least the number of days in advance of the cancellation effective date, as shown in Part A.
- B. If this policy is cancelled by the Company for nonpayment of premium, notice of such cancellation will be provided to the governmental entity in the Schedule within the number of days notice of the cancellation effective date, as shown in Part B.
- C. If this policy is cancelled by the insured, notice of such cancellation will be provided to the governmental entity in the Schedule, within the number of days notice of the cancellation effective date, as shown in Part C.

- D. If this policy is nonrenewed by the Company, notice of such nonrenewal will be provided to the governmental entity in the Schedule, at least the number of days in advance of the nonrenewal effective date, as shown in Part D.

If notice is mailed, proof of mailing notice to the governmental entity's mailing address as shown in the Schedule will be sufficient proof of notice. If the number of days notice in the Schedule for any Part is left blank or is shown as zero, no notice will be provided to the Scheduled governmental entity under that Part.

Any notification rights provided by this endorsement apply to the governmental entity in the Schedule so long as it was issued a certificate of insurance applicable to this policy's term.

Failure to provide such notice to the governmental entity in the Schedule will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon the Company or its agents or representatives.



After the **Insured** reports a **circumstance** or a **claim** is made and the **Insured** has the right under any contract to either reject or demand arbitration or other alternative dispute resolution process, the **Insured** shall only do so with the Insurer's prior written consent.

C. The Insured's Rights and Duties in the Event of a Circumstance

If the **Insured** reports a **circumstance** for which there may be coverage under this Policy, and the **Insured** gives the Insurer written notice containing as much detail as the **Insured** can reasonably provide regarding:

1. what happened and the **professional services** or activities the **Insured** performed;
2. the nature of any possible injury or damages; and
3. how and when the **Insured** first became aware of such **circumstance**,

then any **claim** or **related claims** that subsequently may be made against the **Insured** arising out of such **circumstance** shall be deemed to have been made on the date the Insurer received written notice of the **circumstance**.

The **Insured** will cooperate with the Insurer in addressing the **circumstance**, and refuse, except solely at the **Insured's** own cost, to voluntarily make any payment, admit liability, assume any obligation, or incur any expense without the Insurer's prior written approval.

D. Subrogation

If any **Insured** has rights to recover amounts from another, those rights are transferred to the Insurer to the extent of the Insurer's payment. The **Insured** must do everything necessary to secure these rights and must do nothing after a **claim** is made to jeopardize them. The Insurer hereby waives subrogation rights against any person or organization to the extent that the **Named Insured** has, prior to a **wrongful act** or **circumstance**, entered into a written agreement to waive such rights.

E. Premium

All premium charges under this Policy will be computed according to the rules, rates and rating plans that apply at the effective date of the current **policy term**.

F. Examination and Audit

The **Insured** agrees to allow the Insurer to examine and audit the **Insured's** financial books and records that relate to this insurance. The Insurer may do this at any time during the **policy term** or any extensions, and up to three years after the end of the **policy term**.

G. Legal Action Limitation

1. The **Insured** agrees not to bring any legal action against the Insurer concerning this Policy unless the **Insured** has fully complied with all the provisions of this Policy.
2. If, after the final adjudication or settlement of a **claim**, there is any dispute concerning tort allegations against the Insurer regarding the handling or settlement of any **claim**, the **Insured** and the Insurer agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should the **Insured** and the Insurer be unable to agree on the form of alternative dispute resolution, then such dispute shall be submitted to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

H. Changes to Policy

None of the provisions of this Policy will be waived, changed, or modified except by written endorsement to this Policy.

I. Transfer of Interest



Professional Liability and Pollution Incident Liability Insurance
Policy Endorsement

NOTICE ENDORSEMENT - NOTICE OF CANCELLATION, NON-RENEWAL OR REDUCTION IN LIMITS
WHERE REQUIRED BY WRITTEN CONTRACT

It is understood and agreed that if the **Named Insured** has agreed in a written contract with its client to provide such client with notice of cancellation or non-renewal of this Policy, or notice of a reduction in the Limits of Liability of this Policy by endorsement during the **policy term**, the Insurer will provide such notice of cancellation, non-renewal or reduction in Limits to the client as set forth herein.

Within ten (10) business days of the Insurer's request, the **Named Insured** will deliver to the Insurer, or cause to be delivered by the broker or agent of record, a list acceptable to the Insurer containing the names and addresses of all entities entitled to receive notice. If the list is not provided to the Insurer within such time period, the Insurer will not provide notification. The Insurer will assume that the list provided to the Insurer by the **Named Insured** or the broker is a complete and accurate list of certificate holders. Only those persons or entities listed on the schedule will receive notification. The Insurer will keep no other record of any certificate holders in the Insurer's file. Such notice will be delivered to such client at the address recorded by certificate on file with the broker or agent of record and provided to the Insurer.

With respect to cancellation or non-renewal of this Policy, the Insurer will provide the **Named Insured's** client with the greater of:

- (1) thirty (30) days' notice; or
- (2) the number of days' notice set forth in the applicable State Provisions endorsement attached to this Policy in accordance with the Cancellation/Non-Renewal condition of the Policy.

With respect to a reduction in the Limits of Liability of this Policy by endorsement during the **policy term**, the Insurer will provide the **Named Insured's** client with the lesser of:

- (1) sixty (60) days' notice; or
- (2) the number of days' notice required in the **Named Insured's** contract with such client.

The Insurer's failure to provide such notification will not extend the Policy cancellation date, negate cancellation or non-renewal of the Policy, invalidate any endorsement to the Policy or be cause for legal action against the Insurer.

All other terms and conditions of the policy remain unchanged.

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