

# Attachment E

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**AMENDMENT NO. 3  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN COUNTY OF MONTEREY AND  
BIGGS CARDOSA ASSOCIATES, INC.**

**THIS AMENDMENT NO. 3** to the Professional Services Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Biggs Cardosa Associates, Inc. (hereinafter, "CONTRACTOR") is hereby entered into between the County and the CONTRACTOR (collectively, the County and CONTRACTOR are referred to as the "Parties").

**WHEREAS**, CONTRACTOR entered into a Professional Services Agreement with County on July 22, 2009 (hereinafter, "Agreement"); and

**WHEREAS**, Agreement was amended by the Parties on December 27, 2010 (hereinafter, "Amendment No. 1") and March 6, 2012 (hereinafter, "Amendment No. 2"); and

**WHEREAS**, the 65% Plans, Specifications and Estimate (PS&E) have been completed for the Nacimiento Lake Drive Bridge Replacement (hereinafter, "Project"); and

**WHEREAS**, the final design of the Project has not been completed due to an unanticipated delay caused by the Department of Transportation (Caltrans) and the Historical Resources Review Board (HRRB) requirement that environmental documentation for the Project be revised from a Mitigated Negative Declaration to an Environmental Impact Report (EIR); and

**WHEREAS**, the Parties wish to further amend the Agreement to extend the term to September 30, 2016 with no associated dollar amount increase to allow CONTRACTOR to complete the EIR and final design of the Project as identified in the Agreement.

**NOW, THEREFORE**, the Parties agree to further amend the Agreement as follows:

1. Amend the first sentence of Paragraph 3, "Term of Agreement", to read as follows:

The term of this Agreement is from February 9, 2009 to September 30, 2016, unless sooner terminated pursuant to the terms of this Agreement.

2. Amend Paragraph 4, "Additional Provisions/Exhibits" to add Exhibit A-2. Exhibit A-2 provides the current status of tasks to update the Schedule referenced in the Agreement, Exhibit A – Scope of Services/Payment Provisions.
3. All other terms and conditions of the Agreement remain unchanged and in full force.

4. This Amendment No. 3 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Amendment No. 3 to the Agreement as of the day and year written below:

**COUNTY OF MONTEREY**

By: \_\_\_\_\_  
Contracts/Purchasing Officer

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

**Approved as to Form and Legality  
Office of the County Counsel**

By: \_\_\_\_\_  
Deputy County Counsel

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

**Approved as to Fiscal Provisions**

By: \_\_\_\_\_  
Auditor/Controller

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

**Approved as to Indemnity and Insurance Provisions**

By: \_\_\_\_\_  
Risk Management

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

**CONTRACTOR\***

Biggs Cardosa Associates, Inc.  
Contractor's Business Name

By: \_\_\_\_\_  
(Signature of Chair, President or Vice President)

Its: STEPHEN A. BIGGS / PRESIDENT  
(Print Name and Title)

Date: 9/23/13

By: \_\_\_\_\_  
(Signature of Secretary, Asst. Secretary, CFO,  
Treasurer or Asst. Treasurer)

Its: MARK A. CARDOSA / SECRETARY  
(Print Name and Title)

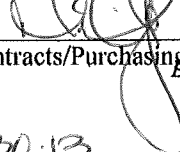
Date: 9/23/13

\*INSTRUCTIONS: IF CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. IF CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

4. This Amendment No. 3 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Amendment No. 3 to the Agreement as of the day and year written below:

**COUNTY OF MONTEREY**

By:   
Contracts/Purchasing Officer  
*BeAundra Lewelling, MBA*  
Deputy Purchasing Agent  
County of Monterey

Date: 9-30-13

**Approved as to Form and Legality  
Office of the County Counsel**

By: *Cynthia L. Olson*  
Deputy County Counsel

Date: 9-25-13

**Approved as to Fiscal Provisions**

By: \_\_\_\_\_  
Auditor/Controller

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

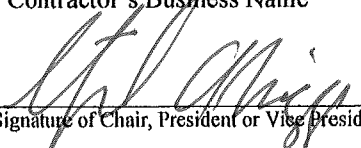
**Approved as to Indemnity and Insurance Provisions**

By: \_\_\_\_\_  
Risk Management

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


**CONTRACTOR\***

Biggs Cardosa Associates, Inc.  
Contractor's Business Name

By:   
(Signature of Chair, President or Vice President)

Its: STEPHEN A. BIGGS / PRESIDENT  
(Print Name and Title)

Date: 9/23/13

By:   
(Signature of Secretary, Asst. Secretary, CFO,  
Treasurer or Asst. Treasurer)

Its: MARK A. CARDOSA / SECRETARY  
(Print Name and Title)

Date: 9/23/13

\*INSTRUCTIONS: IF CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. IF CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

EXHIBIT A - 2

9/12/2013

Nacimiento Lake Drive Bridge at San Antonio River  
Co. No. 449; St. No. 44C-0009

Professional Services Agreement with Biggs Cardosa Associates, Inc.

The PSA with Biggs Cardosa Associates, Inc. (Agreement No. A-11432) has been ongoing and will need to be extended. The present agreement will expire on September 30, 2013. The project plans, specifications and estimate have been completed to the 65% complete level. The existing bridge structure to be removed is listed as a Historic Resource under the Monterey County Register of Historic Resources. It has been determined that the removal of the existing Nacimiento Lake Drive bridge which is listed as a historic resource will require an EIR for CEQA. The initial PSA specified a Mitigated Negative Declaration for the CEQA documentation. An amendment to the PSA to change the CEQA documentation and to provide additional funds for this higher level of Documentation is forthcoming. However with the expiration of the present PSA set for September 31, 2013 a prior amendment No. 3 is requested to extend the PSA from September 30, 2013 to September 30, 2016. It is important that this amendment be processed in order to complete the project. The delays in the completion of the project have been due to the recently determined need for an EIR for CEQA documentation and the County Funding restraints that have budgeted the construction of the project to The spring of 2016.

The tasks for the project conducted by Biggs Cardosa Associates for the project are listed with a comment on the completion or non completion of the task. This completion status is proved for information concerning the overall completion of tasks for the project.

TASK

|                            |   |
|----------------------------|---|
| 0. PROJECT MANANGEMENT     | On going  |
| 0.1 Project Initiation     | Complete  |
| 0.2 Coordination Meetings  | On going  |
| 0.3 Design Review Meetings | Design Review Meetings up to 65% review complete. Future design review meetings will be necessary to complete project to 100% |
| 0.4 Permits                | Permitting not complete. Regulatory Agency Permitting usually begins after completion of the NEPA and CEQA approval.          |
| 0.5 Community Meetings     | Field Review/Kickoff Meeting Complete. Attendance at Public Information meeting for EIR and/or                                |

**EXHIBIT A - 2**

Board Hearing for approval of EIR  
not complete.

**PHASE I: PRELIMINARY ENGINEERING AND REPORTS**

|  |  |
|--|--|
| 1.1 DATA COLLECTION                                  | Complete   |
| 1.2 GEOTECHNICAL INVESTIGATION                       | Complete   |
| Final Foundation Report                              | Complete   |
| Log of Test Borings Plan Sheet                       | Complete   |
| 1.3 HAZARDOUS MATERIALS TESTING OF SOIL              | Complete   |
| 1.4 FIELD SURVEYS AND BASE MAP TOPOGRAPHY            | Complete   |
| 1.5 UTILITY MAP AND INVESTIGATION                    | Complete   |
| Utility Map  | Complete   |
| 1.6 PRELIMINARY RIGHT OF WAY                         |  |
| Right of Way delineation                             | Complete   |
| Legal descriptions & plats for right of way purchase | Not Complete   |
|  | CEQA needs to be complete prior to<br>right of way acquisition phase   |
| Right of Way Acquisition/Construction                | Not Complete   |
| Easement Legal Description and Exhibits              | Not Complete   |
| Right of Way Survey Monumentation                    | Not Complete   |
| 1.7 HYDRALICS REPORT                                 | Complete   |
| Updated Design Hydraulic Study Report                | Complete   |
| Updated Location Hydraulic Study                     | Complete   |
| 1.8 ENVIRONMENTAL DOCUMENTS                          |  |
| Task 1: Initial Study/Mitigated Negative Declaration |  |
| Initial Study (IS)                                   | Complete   |
| Mitigated Negative Declaration                       | Amendment No. 4 will upgrade the<br>Mitigated Negative Declaration to an<br>EIR as required by the removal of<br>the existing Historic Bridge. |
| Environmental Impact Report                          | Not Complete   |
| Task 2: Cultural Resources/Section 106 Reports       |  |
| Task 2A: Area of Potential Effects (APE) Map         | Complete   |
| Task 2B: Historic Property Survey Report (HPSR)      | Complete   |
| Task 2C: Archaeological Survey Report (ASR)          | Complete   |
| Task 2D: Initial Study Cultural Resources Section    | Complete   |

## EXHIBIT A - 2

|   |   |
|---|---|
| Coordination with Monterey County Historical Resources Review Board | Not Complete  |
|   | Extensive coordination will be necessary during the EIR review period.                  |
| Task 2E: Initial Study Environmental Check List Question C          | Complete  |
| Task 3: Natural Environmental Study (NES)                           | Complete  |
| Background Research   | Complete  |
| Biotic Habitat Surveys  | Complete  |
| Wildlife Surveys  | Complete  |
| Wetland Assessment  | Complete  |
| Impact Analysis   | Complete  |
| Task 4: Protocol Level Surveys for Rare Plants                      | Complete  |
| Task 5: Protocol Level Surveys for California Red Legged Frog       | Complete  |
| Task 6: Fish Passage Assessment                                     | Complete  |
| Task 7: Biological Assessment (BA)                                  | Complete  |
| NEPA Compliance   | Complete  |
| CEQA Compliance   | Not Complete  |
| Task 8: Permits   |   |
| CDFW  | Not Complete  |
| RWQCB   | Not Complete  |
| ACOE  | Not Complete  |
|   | Permitting will be done after completion of EIR.  |
| Protocol level survey for Bald Eagle                                | This survey was a new requirement by Caltrans that was not included in the initial PSA. |
| 1.9 35% SUBMITTAL:  |   |
| Preliminary Design and Type Selection                               | Complete  |
| 35% Plans   | Complete  |
| 35% level Construction Estimate                                     | Complete  |
| Type Selection Report   | Complete  |
| PHASE II: FINAL DESIGN  |   |
| CONSTRUCTION DOCUMENTS  |   |
| 2.1 UNCHECKED DESIGN SUBMITTAL (65% PS&E):                          |   |
| 65% Road Plans  | Complete  |
| 65% Bridge Plans  | Complete  |
| 65% Specifications  | Complete  |



EXHIBIT A - 2

|   |              |
|---|--------------|
| 65% Construction Cost Estimate  | Complete     |
| County Review of 65% PS&E   | Complete     |
| 2.2 CHECKED DESIGN SUBMITTAL (95% PS&E):  | Not Complete |
| Environmental EIR will need to be completed prior to submittal of 95% PS&E  |              |
| 95% Complete Road Plans   | Not Complete |
| 95% Complete Bridge Plans   | Not Complete |
| 95% Complete Specifications   | Not Complete |
| 95% Construction Cost Estimate  | Not Complete |
| County Review of 95% PS&E   | Not Complete |
| Quality Assurance Review  | Not Complete |
| Memorandum: Response to Comments  | Not Complete |
| 2.3 FINAL DESIGN SUBMITTAL (100% PS&E):   | Not Complete |
| 100% Final Plans (PS&E complete and ready for Advertisement)  | Not Complete |
| Memorandum: Response to Comments  | Not Complete |
| Bid Documents   | Not Complete |
| 2.5 RIGHT OF WAY ACQUISITION SERVICES   |              |
| Consultant in conjunction with COUNTY Public Works has performed Surveys and document search and evaluation to determine existing property lines and ownership. An existing property line and proposed right of way exhibit has been developed. | Complete     |
| Environmental CEQA Documentation needs to be complete prior to right of way appraisals and acquisition and final Record of Survey Map.  |              |
| Legal Descriptions of areas to be acquired.   | Not Complete |
| Record of Survey Map to show new right of way   | Not Complete |
| 2.6 BIDDING PERIOD SERVICES   | Not Complete |



## DESCRIPTIONS (Continued from Page 1)

policy form wording. Insurance is primary per policy form.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **NAME OF PERSON(S) OR ORGANIZATION(S):**

County of Monterey  
Contracts/Purchasing Department  
168 West Alisal Street, 2nd Floor  
Salinas, CA 93901

#### **PROJECT/LOCATION OF COVERED OPERATIONS:**

SCHEDULE NAME OF ADDITIONAL INSURED PERSONS OR ORGANIZATIONS CONT: The County of Monterey, its agents, officers and employees are Additional Insured.

#### **PROVISIONS**

##### **A. The following is added to WHO IS AN INSURED (Section II):**

The person or organization shown in the Schedule above is an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply to the rendering of or failure to render any "professional services".
- e. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF INSURANCE (Section III)** for this Coverage Part.

##### **B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

However, if you specifically agree in a "contract or agreement requiring insurance" that, for the additional insured shown in the Schedule, the insurance provided to that additional insured under this

## COMMERCIAL GENERAL LIABILITY

Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance" for such additional insured. But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when the additional insured is also an additional insured under any other insurance.

- C. The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** in **COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV)**:

We waive any rights of recovery we may have against the additional insured shown in the Schedule above because of payments we make for "bodily injury", "property damage" or "personal

injury" arising out of "your work" on or for the project, or at the location, shown in the Schedule above, performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that additional insured. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with that additional insured entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

- D. The following definition is added to **DEFINITIONS (Section V)**:

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include the person or organization shown in the Schedule as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

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

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

|   |                                      |
|---|--------------------------------------|
| Endorsement effective<br>09/01/13               |                                      |
| Named Insured<br>Biggs Cardoso Associates, Inc. | Countersigned by <i>Michael C...</i> |

(Authorized Representative)

#### SCHEDULE

**Name of Person(s) or Organization(s):**

SCHEDULE NAME OF ADDITIONAL INSURED PERSONS OR ORGANIZATIONS CONT: The County of Monterey, its agents, officers and employees are Additional Insured.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

## BUSINESS AUTO COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

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

### SECTION I – COVERED AUTOS

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

#### A. Description Of Covered Auto Designation Symbols

| Symbol | Description Of Covered Auto Designation Symbols  |
|--------|--|
| 1      | Any "Auto"   |
| 2      | Owned "Autos" Only<br>Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.  |
| 3      | Owned Private Passenger "Autos" Only<br>Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.  |
| 4      | Owned "Autos" Other Than Private Passenger "Autos" Only<br>Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.  |
| 5      | Owned "Autos" Subject To No-fault<br>Only those "autos" you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.  |
| 6      | Owned "Autos" Subject To A Compulsory Uninsured Motorists Law<br>Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement. |
| 7      | Specifically Described "Autos"<br>Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).   |
| 8      | Hired "Autos" Only<br>Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent 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.   |
| 9      | Non-owned "Autos" Only<br>Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households but only while used in your business or your personal affairs.                                  |

## COMMERCIAL AUTO

- |    |   |   |
|----|---|---|
| 19 | Mobile<br>Equipment<br>Subject To<br>Compulsory<br>Or Financial<br>Responsibility<br>Or Other Motor<br>Vehicle<br>Insurance Law<br>Only | Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged. |
|----|---|---|

### B. Owned Autos You Acquire After The Policy Begins

1. If Symbols 1, 2, 3, 4, 5, 6 or 19 are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol 7 is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

### C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos

If Liability Coverage is provided by this coverage form, the following types of vehicles are also covered "autos" for Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. "Loss"; or
  - e. Destruction.

## SECTION II – LIABILITY COVERAGE

### A. Coverage

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

#### 1. Who Is An Insured

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
  - (1) The owner or anyone else from whom you hire or borrow a covered "auto".



This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
- (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.
- c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

**2. Coverage Extensions**

**a. Supplementary Payments**

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".

- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

**b. Out-of-state Coverage Extensions**

While a covered "auto" is away from the state where it is licensed we will:

- (1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

**B. Exclusions**

This insurance does not apply to any of the following:

**1. Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

**2. Contractual**

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- b. That the "insured" would have in the absence of the contract or agreement.

## COMMERCIAL AUTO

### 3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

### 4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

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

This exclusion applies:

- (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.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the coverage form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

### 5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

### 6. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this ex-

clusion does not apply to liability assumed under a sidetrack agreement.

### 7. Handling Of Property

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

### 8. Movement Of Property By Mechanical Device

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

### 9. Operations

"Bodily injury" or "property damage" arising out of the operation of:

- a. Any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment"; or
- b. Machinery or equipment that is on, attached to or part of a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

### 10. Completed Operations

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraph a. or b. above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.

- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or sub-contractor working on the same project.

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

**11. Pollution**

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

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled or handled for movement into, onto or from the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. 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 the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "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 the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed 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 of this exclusion 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 a covered "auto" 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 a covered "auto"; and
- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

**12. War**

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

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

**13. Racing**

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

**C. Limit Of Insurance**

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from

## COMMERCIAL AUTO

continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this coverage form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

### SECTION III – PHYSICAL DAMAGE COVERAGE

#### A. Coverage

1. We will pay for "loss" to a covered "auto" or its equipment under:

- a. **Comprehensive Coverage**

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

- b. **Specified Causes Of Loss Coverage**

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

- c. **Collision Coverage**

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

2. **Towing**

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

3. **Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles**

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

4. **Coverage Extensions**

- a. **Transportation Expenses**

We will pay up to \$20 per day to a maximum of \$600 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

- b. **Loss Of Use Expenses**

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

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

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

#### B. Exclusions

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or

event that contributes concurrently or in any sequence to the "loss".

**a. Nuclear Hazard**

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

**b. War Or Military Action**

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

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunt activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.

3. We will not pay for "loss" due and confined to:

- a. Wear and tear, freezing, mechanical or electrical breakdown.
- b. Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

4. We will not pay for "loss" to any of the following:

- a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
- b. Any device designed or used to detect speed-measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed-measurement equipment.
- c. Any electronic equipment, without regard to whether this equipment is permanently

installed, that reproduces, receives or transmits audio, visual or data signals.

- d. Any accessories used with the electronic equipment described in Paragraph c. above.
5. 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:
- a. Permanently installed in or upon the covered "auto";
  - b. Removable from a housing unit which is permanently installed in or upon the covered "auto";
  - c. An integral part of the same unit housing any electronic equipment described in Paragraphs a. and b. above; or
  - d. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.
6. We will not pay for "loss" to a covered "auto" due to "diminution in value".

**C. Limit Of Insurance**

- 1. The most we will pay for "loss" in any one "accident" is the lesser of:
  - a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
  - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
- 2. \$1,000 is the most we will pay for "loss" in any one "accident" to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:
  - a. 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;
  - b. Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
  - c. An integral part of such equipment.
- 3. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".

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

### D. Deductible

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

## SECTION IV – BUSINESS AUTO CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

### A. Loss Conditions

#### 1. Appraisal For Physical Damage Loss

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

#### 2. Duties In The Event Of Accident, Claim, Suit Or Loss

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:
  - (1) How, when and where the "accident" or "loss" occurred;
  - (2) The "insured's" name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.
- b. Additionally, you and any other involved "insured" must:

- (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.

- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".

- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".

- (4) Authorize us to obtain medical records or other pertinent information.

- (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.

- c. If there is "loss" to a covered "auto" or its equipment you must also do the following:

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.

- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.

- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.

- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

#### 3. Legal Action Against Us

No one may bring a legal action against us under this coverage form until:

- a. There has been full compliance with all the terms of this coverage form; and
- b. Under Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

#### 4. Loss Payment – Physical Damage Coverages

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;

- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

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

If any person or organization to or for whom we make payment under this coverage form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

**B. General Conditions**

**1. Bankruptcy**

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this coverage form.

**2. Concealment, Misrepresentation Or Fraud**

This coverage form is void in any case of fraud by you at any time as it relates to this coverage form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This coverage form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this coverage form.

**3. Liberalization**

If we revise this coverage form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

**4. No Benefit To Bailee – Physical Damage Coverages**

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this coverage form.

**5. Other Insurance**

- a. For any covered "auto" you own, this coverage form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this coverage form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this coverage form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own.
- (2) Primary while it is connected to a covered "auto" you own.

- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

- c. Regardless of the provisions of Paragraph a. above, this coverage form's Liability Coverage is primary for any liability assumed under an "insured contract".

- d. When this coverage form and any other coverage form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our coverage form bears to the total of the limits of all the coverage forms and policies covering on the same basis.

**6. Premium Audit**

- a. The estimated premium for this coverage form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

- b. If this policy is issued for more than one year, the premium for this coverage form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

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### 7. Policy Period, Coverage Territory

Under this coverage form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;
- (4) Canada; and
- (5) Anywhere in the world if:
  - (a) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and
  - (b) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, 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.

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

### 8. Two Or More Coverage Forms Or Policies Issued By Us

If this coverage form and any other coverage form or policy issued to you by us or any company affiliated with us applies to the same "accident", the aggregate maximum Limit of Insurance under all the coverage forms or policies shall not exceed the highest applicable Limit of Insurance under any one coverage form or policy. This condition does not apply to any coverage form or policy issued by us or an affiliated company specifically to apply as excess insurance over this coverage form.

## SECTION V – DEFINITIONS

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B. "Auto" means:
  1. A land motor vehicle, "trailer" or semitrailer designed for travel on public roads; or

2. 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".

- C. "Bodily Injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these.
- D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

"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":

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



lar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed 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 Paragraph 6.b. or 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 a covered "auto" 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 a covered "auto"; and
- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- E. "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- F. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- G. "Insured" means any person or organization qualifying as an insured in the Who is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.
- H. "Insured contract" means:
  1. A lease of premises;
  2. A sidetrack agreement;
  3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- b. That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
- c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
- I. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- J. "Loss" means direct and accidental loss or damage.
- K. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
  1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

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2. Vehicles maintained for use solely on or next to premises you own or rent;
  3. Vehicles that travel on crawler treads;
  4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - a. Power cranes, shovels, loaders, diggers or drills; or
    - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
  5. Vehicles not described in Paragraph 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
    - b. Cherry pickers and similar devices used to raise or lower workers; or
  6. Vehicles not described in Paragraph 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
    - a. Equipment designed primarily for:
      - (1) Snow removal;
      - (2) Road maintenance, but not construction or resurfacing; or
      - (3) Street cleaning;
    - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
    - c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well-servicing equipment.
- However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".
- L. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
  - M. "Property damage" means damage to or loss of use of tangible property.
  - N. "Suit" means a civil proceeding in which:
    1. Damages because of "bodily injury" or "property damage"; or
    2. A "covered pollution cost or expense"; to which this insurance applies, are alleged."Suit" includes:
    - a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
    - b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.
  - O. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
  - P. "Trailer" includes semitrailer.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET WAIVER OF SUBROGATION**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

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

Paragraph 5. **Transfer of Rights Of Recovery Against Others To Us** of the CONDITIONS section is replaced by the following:

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

We waive any right of recovery we may have against any person or organization to the extent

required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

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