

SECTION 00520

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2023, by and between The Town of Hopedale, Massachusetts, hereinafter called "OWNER," acting herein through its Water & Sewer Commission, and Statewide Aquastore, Inc., doing business as a corporation located in the Village of East Syracuse, County of Onondaga, and State of New York, hereinafter called "CONTRACTOR."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to commence and complete the project described as follows:

WATER STORAGE TANK CONSTRUCTION

hereinafter called the project, for the sum of **Two Million, Five Hundred Seventy-Five Thousand Dollars and Zero Cents (\$2,575,000.00)** and all extra work in connection therewith, under the terms as stated in the Contract Documents; and at its own proper cost and expense to furnish superintendence, labor, services, materials, equipment, plant, machinery, apparatus, appliances, tools, supplies, bailing, shoring, removal, and all other things necessary to complete the said project in accordance with the conditions and prices stated in Section 00410, FORM OF GENERAL BID, Section 00700, GENERAL CONDITIONS, Section 00800, SUPPLEMENTARY CONDITIONS, Section 00830, STATE REGULATIONS, the plans, which include all maps, plates, drawings, blue prints, and the specifications and all other contract documents therefor as prepared by Weston & Sampson Engineers, Inc., including all bid documents.

The CONTRACTOR hereby agrees to commence work under this contract on or before a date to be fixed in the written Notice to Proceed given by the OWNER to the CONTRACTOR and to fully complete the project within 365 consecutive days of the start date fixed in the Notice to Proceed. The CONTRACTOR further agrees to pay as liquidated damages the sum of \$1,000 for each consecutive calendar day thereafter during which the work has not been fully completed, as provided in the Liquidated Damages provisions of Section 00800 SUPPLEMENTARY CONDITIONS.

The fair share goals for disadvantaged business enterprise (DBE) participation for this contract are a minimum of 8% DBE participation, applicable to the total dollar amount paid for the construction contract. The CONTRACTOR shall take all affirmative steps necessary to achieve this goal and shall provide reports documenting the portion of contract and subcontract dollars paid to DBEs, and its efforts to achieve the goals, with each invoice submitted or at such greater intervals as specified by the Town of Hopedale. The CONTRACTOR shall require similar reports from its subcontractors.

The CONTRACTOR shall not discriminate against or exclude any person from participation herein on grounds of race, color, religious creed, national origin, sex, sexual orientation, ancestry, or age; and that it shall take affirmative actions to insure that applicants are employed, and that employees

are treated during their employment, without regard to race, color, religious creed, national origin, sex, sexual orientation, ancestry, age, or handicapped status.

The CONTRACTOR shall not participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue Code of 1986, as amended, or engage in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws.

Applicable provisions of Massachusetts General Laws and Regulations and/or the United States Code and Code of Federal Regulations govern this Agreement and any provision in violation of the foregoing shall be deemed null, void and of no effect. Where conflict between Federal and State Laws and Regulations exists, the more stringent requirement shall apply.

Subject to G.L. c.30, sec. 39K and/or sec. 39G and G.L. c.30, sec. 39F, as applicable, the OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Agreement, subject to additions and deductions, as provided in Section 00700, GENERAL CONDITIONS, and to make payments on account thereof as provided in Section 00700, GENERAL CONDITIONS and Section 00800, SUPPLEMENTARY CONDITIONS

In accordance with the requirements of G.L. c.149, §27B, the Contractor shall submit, and shall require all of its subcontractors required to keep a record of hours and wages paid to laborers employed on the project to submit, to the awarding authority on a weekly basis, copies of such records. All such weekly submissions shall be accompanied by the following certification:

The undersigned contractor hereby certifies, under the pains and penalties of perjury, that the foregoing payroll records are true and accurate records of the wages paid to laborers employed on the project for the period stated and said wages are in an amount no less than the prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development. The undersigned contractor agrees, in addition to any other remedies available to the awarding authority, to indemnify the awarding authority for, from and against any loss, expense, damages, actions or claims, including any expense incurred in connection with any delay or stoppage of the project work, arising out of or as a result of (1) the contractor's failure to pay laborers employed on the project the said applicable prevailing wage rates; (2) the failure of the foregoing payroll records to accurately state the said applicable prevailing wage rates; or (3) the failure of the foregoing payroll records to accurately represent the wages actually paid to laborers employed on the project.

The Agreed upon DIRECT LABOR MARKUP (percentage) for Change Orders on this project shall be 24.65 percent.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in four (4) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

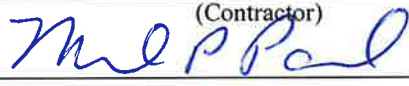
AGREED:

Town of Hopedale, Massachusetts
(Owner)

By _____

Edward J. Burt
(Name)

Chair, Water & Sewer Commission
(Title)

Statewide Aquastore, Inc.
(Contractor)
By 

Michael P. Parker
(Name)

President
(Title)

6010 Drott Drive
(Address)

East Syracuse, NY 13057
(City and State)

Approved as to Form:

By _____
(Owner's Counsel)

(Name)

In accordance with M.G.L. C.44, Section 31C, this is to certify that an appropriation in the amount of this Contract is available therefor and that the Water & Sewer Commission has been authorized to execute the Contract and approve all requisitions and change orders.

By _____
(Owner's Accountant)

(Name)

CERTIFICATE OF VOTE
(to be filed if Contractor is a Corporation)

I, Jeff E. Proulx, hereby certify that I am the duly qualified and acting Secretary of
(Secretary of Corporation)

Statewide Aquastore, Inc. and I further certify that a meeting of the Directors of said company,
(Name of Corporation)

duly called and held on 05/22/23, at which all members were present and voting, the
(Date of Meeting)
following vote was unanimously passed:

VOTED: To authorize and empower

Michael P. Parker, President

Anyone acting singly, to execute Forms of General Bid, Contracts or Bonds on behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or modified in any respect.

By: [Signature]
(Secretary of Corporation)

A True Copy:

Attest: Jennifer L. Schaus
(Notary Public)

My Commission Expires: 08-10-2024
(Date)



Contractor's Certification

A Contractor will not be eligible for award of a contract unless such Contractor has submitted the following certification, which is deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

Statewide Aquastore, Inc.

Name of the General Contractor

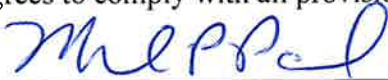
certifies that it:

1. Will not discriminate in their employment practices;
2. Intends to use the following listed construction trades in the work under the contract:

Ironworkers

and

3. Will make good faith efforts to comply with the minority employee and women employee workforce participation ratio goals and specific affirmative action steps contained herein; and
4. Is in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and
5. Will provide the provisions of the "Supplemental Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program" to each and every subcontractor employed on the Project and will incorporate the terms of this Section into all subcontracts and work orders entered into on the Project.
6. Agrees to comply with all provisions contained herein.



President

05/22/23

Signature of authorized representative of Contractor

Date


Michael P. Parker

Printed name of authorized representative of Contractor

Contractor's Certification (Continued)

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean natural person, business, partnership, corporation, committee, union, club or other organization, entity, or group of individuals.

Signature  Date 05/22/23
Michael P. Parker Statewide Aquastore, Inc.
Print Name & Title Company Name

CERTIFICATE OF TAX COMPLIANCE

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A (b), I


Michael P. Parker, authorized signatory for Statewide Aquastore, Inc.
Name of individual *Name of contractor*

do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature  Date 5/22/23

LABOR HARMONY AND OSHA TRAINING REQUIREMENTS

The undersigned certifies under penalties of perjury that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed at the work and that all employees to be employed at the worksite and in the work will have completed an OSHA-approved construction safety and health course lasting at least ten (10) hours.

Signature  Date 05/22/2023
Michael P. Parker, President Statewide Aquastore, Inc.
Print Name & Title Company Name

Contractor's Certification (Continued)

**U.S. DEPARTMENT OF THE
INTERIOR FEDERAL WATER POLLUTION CONTROL ADMINISTRATION**

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity Clause.)

The federally assisted construction Contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction Contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contract agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, transportation, housing facilities provided for employees which are segregated by explode directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction Contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.



Signature

05/22/2023

Date

Michael P. Parker, President

Name and Title of Signer (Please Type)

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

END OF SECTION

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6010 Drott Drive
East Syracuse, NY 13057-2943
Phone: 315.433.2782

CALCULATION SHEET

Date: 5/22/2023

LABOR HOURLY RATE

TAXES AND INSURANCE

F.I.C.A. / Social Security (up to the maximum required by law)

Medicare

Federal Unemployment (up to a maximum of \$56.00 per employee per year)

State Unemployment (up to 1st \$11,400 of base salary paid per employee per year)

Workers' Compensation

6.20%
1.45%
0.60%
9.900%
6.50%

Total

24.65%

SECTION 00610

PERFORMANCE BOND

KNOW EVERYONE BY THESE PRESENTS: That we Statewide Aquastore, Inc.
(Name of Contractor)
a Corporation hereinafter called "Principal" and
(Corporation, Partnership, Joint Venture, LLC or Individual)

The Ohio Casualty Insurance Company of Boston, State of MA
(Surety) (City)

hereinafter called the "Surety" and licensed by the State Division of Insurance to do business under the laws of the Commonwealth of Massachusetts, are held and firmly bound to the Town of Hopedale, Massachusetts, hereinafter called "Owner", in the penal sum of **Two Million, Five Hundred Seventy-Five Thousand Dollars and Zero Cents (\$2,575,000.00)** in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas the Principal has entered into a certain contract with the Owner (the "Contract"), dated the 16th day of June, 2023, which Contract is by reference made a part hereof, for the construction described as follows:

WATER STORAGE TANK CONSTRUCTION

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of the Contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if it shall satisfy all claims and demands incurred under the Contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise, this obligation shall remain in full force and effect.

PROVIDED, FURTHER, that the Surety's obligation under this Bond shall arise after (1) the Owner has declared the Principal in default of the Contract or any provision thereof, or (2) has declared that the Principal has failed, or is otherwise unable or unwilling, to execute the work consistent with, and in conformance to, the Contract (collectively referred to as a "Contractor Default"). The determination of a Contractor Default shall be made solely by the Owner. The Owner need not terminate the Contract to declare a Contractor Default or to invoke its rights under this Bond, and Contractor hereby agrees not to assert any claims against Surety under any indemnity or similar agreements on the grounds that Surety has interfered with the Contract by fulfilling its obligations hereunder in the absence of a termination of said Contract.

When the Surety's obligation under this Bond arises, the Surety, at its sole expense and at the consent and election of the Owner, shall promptly take one of following steps: (1) arrange for the Principal to perform and complete the work of the Contract; (2) arrange for a contractor other than the Principal to perform and complete the work of the Contract; (3) reimburse the Owner, in

a manner and at such time as the Owner shall reasonably decide, for all costs and expenses incurred by the Owner in performing and completing the work of the Contract. Surety will keep Owner reasonably informed of the progress, status and results of any investigation of any claim of the Owner.

If the Surety does not proceed as provided in this Bond with due diligence and all deliberate speed, the Surety shall be deemed to be in default of this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner.

After the Surety's obligation under this Bond arises, the Surety is obligated, to the limit of the amounts of this Bond, for (1) the correction of defective work and completion of the Contract; (2) additional design, professional services, and legal costs, including attorney's fees, resulting from the Contractor Default or from the default of the Surety under this Bond; (3) any additional work beyond the Contract made necessary by the Contractor Default or default of the Surety under this Bond; (4) indemnification obligations of the Principal, if any, as provided in the Contract; and (5) liquidated damages as provided in the Contract, or if no such damages are specified, actual damages and consequential damages resulting from the Contractor Default or any default of the Surety under this Bond.


Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction in the Commonwealth of Massachusetts.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

The Surety providing the Bond shall have a rating of A or better within Best's Key Rating Guide.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this the 16th day of June, 2023.

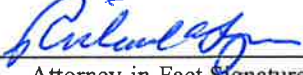
ATTEST:

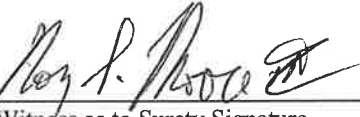
Statewide Aquastore, Inc.
Principal
By 
Signature
Michael Parker, President
Name and Title
6010 Drott Drive
Address
East Syracuse, NY 13057
City and State


Witness as to Principal Signature
Megan Pasinski PM Administrative Support
Name and Title
6010 Drott Drive
Address
East Syracuse NY 13057
City and State

(SEAL)

ATTEST:

The Ohio Casualty Insurance Company
Surety
By 
Attorney-in-Fact Signature
Richard A. Lyons, Attorney-in-Fact
Name and Title
500 Plum Street, Suite 200
Address
Syracuse, NY 13204
City and State


Witness as to Surety Signature
Roy S. Moore, III, Attorney-in-Fact
Name and Title
500 Plum Street, Suite 200
Address
Syracuse, NY 13204
City and State

(SEAL)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute Bond.

END OF SECTION

Individual Acknowledgment

State of _____
County of _____ } ss.

On this _____ day of _____, 19 _____ before me personally came _____, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and acknowledge to me that he executed the same.

My commission expires _____
Notary Public

Firm Acknowledgment

State of _____
County of _____ } ss.

On this _____ day of _____, 19 _____ before me personally came _____, to me known, and known to me to be a member of the firm of _____ described in and who executed the foregoing instrument, and he thereupon acknowledged to me that the executed the same as and for the act and deed of said firm.

My commission expires _____
Notary Public

Corporation Acknowledgment

State of New York
County of Onondaga } ss.

On this 16th day of June, 20 23 before me personally came Michael Parker, to me known, who being by me duly sworn, did depose and say that he/she is the President of Statuacwilde Aquastore Inc. the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he/she signed his/her name thereto by like order.

My commission expires 08-10-2026
Jennifer L. Scheidt
Notary Public



Surety Acknowledgment

State of New York
County of Onondaga } ss.

On this 16th day of June, 20 23 before me personally came Richard A. Lyons, to me known, who, being by me duly sworn, did depose and say that he is an attorney-in-fact of The Ohio Casualty Insurance Company

the corporation described in and which executed the within instrument; that he knows the corporate seal of said corporation; that the seal affixed to the within instrument is such corporate seal, and that he signed the said instrument and affixed the said seal as Attorney-in-Fact by authority of the Board of Directors of said corporation and by authority of this office under the Standing Resolutions thereof.

My commission expires _____ 2026
Lisa M. Winton
Notary Public





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8200413-969347

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Richard A. Lyons; Roy S. Moore, III; Lisa M. Winton

all of the city of Syracuse state of NY each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 29th day of January, 2019.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 29th day of January, 2019 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 16th day of June, 2023.



By: Renee C. Llewellyn, Assistant Secretary

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



THE OHIO CASUALTY INSURANCE COMPANY

Financial Statement – December 31, 2022

Assets		Liabilities	
Cash and Bank Deposits	\$381,391,653	Unearned Premiums.....	\$1,621,337,313
*Bonds — U.S Government.....	624,259,230	Reserve for Claims and Claims Expense.....	4,472,582,937
*Other Bonds	4,696,075,391	Funds Held Under Reinsurance Treaties.....	0
*Stocks	123,765,396	Reserve for Dividends to Policyholders	220,687
Real Estate.....	0	Additional Statutory Reserve.....	0
Agents' Balances or Uncollected Premiums.....	936,691,175	Reserve for Commissions, Taxes and Other Liabilities.....	510,304,288
Accrued Interest and Rents.....	40,821,253	Total.....	\$6,604,445,225
Other Admitted Assets	2,318,373,499	Special Surplus Funds	\$31,311,376
Total Admitted Assets	<u>\$9,121,377,597</u>	Capital Stock	4,500,000
		Paid in Surplus	738,183,897
		Unassigned Surplus	1,742,937,099
		Surplus to Policyholders	2,516,932,372
		Total Liabilities and Surplus	<u>\$9,121,377,597</u>



* Bonds are stated at amortized or investment value; Stocks at Association Market Values.
The foregoing financial information is taken from The Ohio Casualty Insurance Company's financial statement filed with the state of Ohio Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of The Ohio Casualty Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2022, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 8th day of March 2023.

T Mikolajewski

Assistant Secretary

SECTION 00615

PAYMENT BOND

KNOW EVERYONE BY THESE PRESENTS: That we Statewide Aquastore, Inc.
(Name of Contractor)
a Corporation hereinafter called "Principal" and
(Corporation, Partnership, Joint Venture, LLC or Individual)

The Ohio Casualty Insurance Company of Boston, State of MA
(Surety) (City)

hereinafter called the "Surety" and licensed by the State Division of Insurance to do business under the laws of the Commonwealth of Massachusetts, are held and firmly bound to the Town of Hopedale, Massachusetts, hereinafter called "Owner", in the penal sum of **Two Million, Five Hundred Seventy-Five Thousand Dollars and Zero Cents (\$2,575,000.00)** in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas the Principal has entered into a certain contract with the Owner (the "Contract"), dated the 16th day of June, 2023, which Contract is by reference made a part hereof, for the construction described as follows:

WATER STORAGE TANK CONSTRUCTION


NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.


PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this Contract or to the work or to the specifications. The Surety Company providing the bond shall have a rating of A or better within the Best Key Rating Guide.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this the 16th day of June, 2023.


ATTEST:

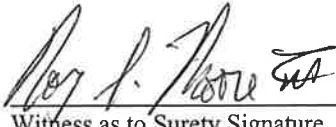
Statewide Aquastore, Inc.
Principal
By 
Signature
Michael Parker, President
Name and Title
6010 Drott Drive
Address
East Syracuse, NY 13057
City and State


Witness as to Principal Signature
Megan Pasinski PM Administrative Support
Name and Title
6010 Drott Drive
Address
East Syracuse NY 13057
City and State

(SEAL)

ATTEST:

The Ohio Casualty Insurance Company
Surety
By 
Attorney-in-Fact Signature
Richard A. Lyons, Attorney-in-Fact
Name and Title
500 Plum Street, Suite 200
Address
Syracuse, NY 13204
City and State


Witness as to Surety Signature
Roy S. Moore, III, Attorney-in-Fact
Name and Title
500 Plum Street, Suite 200
Address
Syracuse, NY 13204
City and State

(SEAL)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute Bond.

END OF SECTION

Individual Acknowledgment

State of _____
County of _____ } ss.

On this _____ day of _____, 19 _____ before me personally came _____, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and acknowledge to me that he executed the same.

My commission expires _____
Notary Public

Firm Acknowledgment

State of _____
County of _____ } ss.

On this _____ day of _____, 19 _____ before me personally came _____, to me known, and known to me to be a member of the firm of _____ described in and who executed the foregoing instrument, and he thereupon acknowledged to me that the executed the same as and for the act and deed of said firm.

My commission expires _____
Notary Public

Corporation Acknowledgment

State of New York
County of Onondaga } ss.

On this 16th day of June, 20 23 before me personally came Michael Parker, to me known, who being by me duly sworn, did depose and say that he/she is the President of Statewide Aquastore, Inc. the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he/she signed his/her name thereto by like order.

My commission expires 08-10-2026
Jennifer L. Schaus
Notary Public

Surety Acknowledgment

State of New York
County of Onondaga } ss.

On this 16th day of June, 20 23 before me personally came Richard A. Lyons, to me known, who, being by me duly sworn, did depose and say that he is an attorney-in-fact of The Ohio Casualty Insurance Company

the corporation described in and which executed the within instrument; that he knows the corporate seal of said corporation; that the seal affixed to the within instrument is such corporate seal, and that he signed the said instrument and affixed the said seal as Attorney-in-Fact by authority of the Board of Directors of said corporation and by authority of this office under the Standing Resolutions thereof.

My commission expires _____ 2026
Lisa M. Winton
Notary Public





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8200413-969347

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Richard A. Lyons; Roy S. Moore, III; Lisa M. Winton

all of the city of Syracuse state of NY each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 29th day of January, 2019.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 29th day of January, 2019 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 16th day of June, 2023.



By: Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



THE OHIO CASUALTY INSURANCE COMPANY

Financial Statement – December 31, 2022

Assets		Liabilities	
Cash and Bank Deposits	\$381,391,653	Unearned Premiums	\$1,621,337,313
*Bonds — U.S Government.....	624,259,230	Reserve for Claims and Claims Expense.....	4,472,582,937
*Other Bonds	4,696,075,391	Funds Held Under Reinsurance Treaties.....	0
*Stocks	123,765,396	Reserve for Dividends to Policyholders	220,687
Real Estate.....	0	Additional Statutory Reserve.....	0
Agents' Balances or Uncollected Premiums.....	936,691,175	Reserve for Commissions, Taxes and Other Liabilities.....	510,304,288
Accrued Interest and Rents	40,821,253	Total.....	\$6,604,445,225
Other Admitted Assets	2,318,373,499	Special Surplus Funds	\$31,311,376
Total Admitted Assets	<u>\$9,121,377,597</u>	Capital Stock	4,500,000
		Paid in Surplus	738,183,897
		Unassigned Surplus	1,742,937,099
		Surplus to Policyholders	2,516,932,372
		Total Liabilities and Surplus	<u>\$9,121,377,597</u>



* Bonds are stated at amortized or investment value; Stocks at Association Market Values.
The foregoing financial information is taken from The Ohio Casualty Insurance Company's financial statement filed with the state of Ohio Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of The Ohio Casualty Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2022, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 8th day of March 2023.

T. Mikolajewski

Assistant Secretary



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/19/2023

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 Arthur J. Gallagher Risk Management Services, LLC 285 Delaware Avenue, Suite 4000 Buffalo NY 14202	CONTACT NAME: Client Service Team PHONE (A/C, No, Ext): 800-716-8314 E-MAIL ADDRESS: GGB.SY3.CL.Srv@ajg.com	FAX (A/C, No): 855-595-5609
	INSURER(S) AFFORDING COVERAGE	
INSURED Statewide Aquastore Inc. 6010 Drott Drive East Syracuse NY 13057	INSURER A : Old Republic Ins Co 24147	
	INSURER B : Ace American Ins. Company 22667	
	INSURER C : American Alternative Ins Corp 19720	
	INSURER D : Hanover Insurance Company 22292	
	INSURER E : Travelers Casualty & Surety Co of America 31194	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 561455212 **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	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	MWZY 317086 23	3/1/2023	3/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 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 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	MWTB 317087 23	3/1/2023	3/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	Y	N10880786008 60A2FF0001926-07	3/1/2023 3/1/2023	3/1/2024 3/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 Occ \$5,000,000 \$ Agg \$5,000,000
A	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/A	MWC317085 23	3/1/2023	3/1/2024	<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 D E	Builders Risk Special Form Leased/Rented Equipment Employee Theft			RHSH654749 RHSH654749 0106956374LB	7/1/2022 7/1/2022 7/13/2022	7/1/2023 7/1/2023 7/13/2023	Blanket Limit \$2,000,000 Limit \$150,000 Per Occurrence \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Complete Named Insureds: Statewide Aquastore, Inc.; New England Tank, Inc.

The following forms apply, subject to policy terms and conditions:
General Liability Blanket Primary & Non-Contributory form CG 20 01 12 19
General Liability Blanket Additional Insured, Owners, Lessors & Contractors, Ongoing Operations form CG 20 10 12 19
General Liability Additional Insured Products, Completed Operations Coverage form CG 20 37 12 19
General Liability Additional Insured Lessor of Leased Equipment form CG 20 38 12 19
General Liability Waiver of Subrogation form CG 24 53 12 19
See Attached...

CERTIFICATE HOLDER

CANCELLATION

Town of Hopedale 78 Hopedale Street Hopedale MA 01747	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 Arthur J. Gallagher Risk Management Services, LLC		NAMED INSURED Statewide Aquastore Inc. 6010 Drott Drive East Syracuse NY 13057	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

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

General Liability Per project aggregate form CG 25 03 05 09
 General Liability Amendment of General Aggregate Limited Endorsement \$5,000,000 form PGL 104 07 14
 General Liability Notice of cancellation to certificate holder form PIL 029 10 10
 Automobile Designated Insured Additional Insured form CA 20 48 10 13
 Automobile Primary & Non-Contributory form CA 04 49 11 16
 Automobile Waiver of Subrogation form CA 04 44 10 13
 Automobile Notice of cancellation to certificate holder form PIL 029 10 10
 Umbrella Liability Additional Insured form XS-41887a (02/18)
 Umbrella Liability Waiver of Subrogation form XS-41864 (01/14)
 Excess Liability Primary & Non-Contributory form CXE NY 11 30 03 12
 Excess Liability Automatic Additional Insured per underlying insurance form CX 00 01 04 13
 Workers Compensation Blanket Waiver of Subrogation form WC 000313 04 84
 Workers Compensation Longshore & Harbor WC Act Coverage Endorsement form WC 000106 A 04 92
 Inland Marine Blanket Loss Payee per written agreement form CE 4210 04 16

RE: Water Storage Tank Construction. Town of Hopedale & Weston & Sampson are Additional Insured per the forms listed to the extent provided therein.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

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

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

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

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
All persons or organizations when required by written contract or agreement	All locations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

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

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

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

This insurance does not apply to "bodily injury" or "property damage" occurring after:

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

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

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

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;
whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

All persons or organizations as required by written contract or agreement

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

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

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

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

1. Required by the contract or agreement; or
 2. Available under the applicable limits of insurance;
- whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
All persons or organizations when required by written contract or agreement	All completed operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

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

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

1. Required by the contract or agreement; or
 2. Available under the applicable limits of insurance;
- whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION) –
AUTOMATIC**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

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 against any person or organization, because of any payment we make under this Coverage Part, to whom the insured has waived its right of recovery in a written contract or agreement. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Project(s):

The project(s) as specified in the written contracts or agreements

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

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
 - 1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 - 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 - 3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
 - 4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF GENERAL AGGREGATE LIMIT DESIGNATED CONSTRUCTION PROJECT(S) AND DESIGNATED LOCATION(S)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

\$ 5,000,000 Ultimate General Aggregate Limit

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

If endorsement(s) CG 25 03 - Designated Construction Project(s) General Aggregate Limit and/or endorsement CG 25 04 - Designated Location(s) General Aggregate Limit is (are) made a part of the policy, the following provisions apply to the insurance provided by this policy and supercede any provision(s) to the contrary:

- A. The Designated Construction Project General Aggregate Limit (CG 25 03) and Designated Location General Aggregate Limit (CG 25 04) are subject to the Ultimate General Aggregate Limit shown in the Schedule.
- B. The Ultimate General Aggregate Limit shown in the Schedule is the most we will pay for the sum of all damages under the Designated Construction Project General Aggregate Limit and Designated Location General Aggregate Limit.
- C. **SECTION III - LIMITS OF INSURANCE** provisions not otherwise modified by this endorsement shall continue to apply as stipulated.

POLICY NUMBER:

COMMERCIAL AUTO
CA 04 44 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

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

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

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

Named Insured: Statewide Aquastore, Inc.

Endorsement Effective Date: 03/01/23

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

All persons or organizations as required by contract or agreement

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

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D.** If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF GENERAL AGGREGATE LIMIT DESIGNATED CONSTRUCTION PROJECT(S) AND DESIGNATED LOCATION(S)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

\$ 5,000,000 Ultimate General Aggregate Limit

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

If endorsement(s) CG 25 03 - Designated Construction Project(s) General Aggregate Limit and/or endorsement CG 25 04 - Designated Location(s) General Aggregate Limit is (are) made a part of the policy, the following provisions apply to the insurance provided by this policy and supercede any provision(s) to the contrary:

- A. The Designated Construction Project General Aggregate Limit (CG 25 03) and Designated Location General Aggregate Limit (CG 25 04) are subject to the Ultimate General Aggregate Limit shown in the Schedule.
- B. The Ultimate General Aggregate Limit shown in the Schedule is the most we will pay for the sum of all damages under the Designated Construction Project General Aggregate Limit and Designated Location General Aggregate Limit.
- C. **SECTION III - LIMITS OF INSURANCE** provisions not otherwise modified by this endorsement shall continue to apply as stipulated.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY –
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

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

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

- A.** The following is added to the **Other Insurance Condition** in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

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

- B.** The following is added to the **Other Insurance Condition** in the Auto Dealers Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage and General Liability Coverages are primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEW YORK PRIMARY AND NON-CONTRIBUTORY EN- DORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

SCHEDULE

Designated Additional Insured(s):

As required by written contract & provided by the "controlling underlying insurance"

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

A. This endorsement applies only to the designated additional insured(s) specifically listed in the Schedule above and for whom coverage is provided in this policy under Paragraph **1.d. Insuring Agreement of Section I – Coverages.**

B. This policy will provide coverage on a primary basis for the designated additional insured listed in the Schedule above, and will not seek contribution from any of the additional insured's other insurance policy(ies), only if you have agreed in a written contract with such entity to provide additional insured coverage on a primary and non-contributory basis. Regardless of the limits of insurance afforded under this policy, this provision applies only to the extent of the limits of insurance required by the terms of the contract and applicable to this policy. In no event will this policy pay more than the applicable limits of insurance as described in **Section II - Limits Of Insurance.**

This policy will be primary and non-contributory only if the applicable "controlling underlying insurance" provides such primary and non-contributory coverage specifically for the designated additional insured listed in the Schedule, and only once the applicable limits of "controlling underlying insurance" have been exhausted by such policy's obligation to pay judgments, settlements and other expenses as applicable.

C. With respect to the designated additional insured specifically listed in the Schedule above, and only for the coverage provided by this endorsement, paragraph **8. Other Insurance** under **Section III – Conditions** is deleted and replaced by the following:

Except for the applicable other insurance policy(ies) of the designated additional insured listed in the Schedule above in which it is listed as a named insured, this policy will be excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, we will have no duty to defend the insured or designated additional insured against any "suit" if any other insurer has a duty to defend the insured or designated additional insured against that "suit". If no other insurer defends, we may undertake to do so, but we will be entitled to the insured's or designated additional insured's rights against all those other insurers.

When this insurance is excess over the other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

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

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

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

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

Other words and phrases that appear in quotation marks in this Coverage Part have special meaning. Refer to Section IV – Definitions. Other words and phrases that are not defined under this Coverage Part but defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance".

The insurance provided under this Coverage Part will follow the same provisions, exclusions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this insurance. To the extent such provisions differ or conflict, the provisions of this Coverage Part will apply. However, the coverage provided under this Coverage Part will not be broader than that provided by the applicable "controlling underlying insurance".

There may be more than one "controlling underlying insurance" listed in the Declarations and provisions in those policies conflict, and which are not superseded by the provisions of this Coverage Part. In such a case, the provisions, exclusions and limitations of the "controlling underlying insurance" applicable to the particular "event" for which a claim is made or suit is brought will apply.

SECTION I – COVERAGES

1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which insurance provided under this Coverage Part applies.

We will have the right and duty to defend the insured against any suit seeking damages for such "injury or damage" when the applicable limits of "controlling underlying insurance" have been exhausted in accordance with the provisions of such "controlling underlying insurance".

When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other suit seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any suit seeking damages for which insurance under this policy does not apply.

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or suit, for which we have the duty to defend.

But:

- (1) The amount we will pay for "ultimate net loss" is limited as described in Section II – Limits Of Insurance; and
 - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under this Coverage Part. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of defense expenses, judgments or settlements under this Coverage Part.
- b. This insurance applies to "injury or damage" that is subject to an applicable "retained limit". If any other limit, such as, a sublimit, is specified in the "controlling underlying insurance", this insurance does not apply to "injury or damage" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "controlling underlying insurance".
 - c. If the "controlling underlying insurance" requires, for a particular claim, that the "injury or damage" occur during its policy period in order for that coverage to apply, then this insurance will only apply to that "injury or damage" if it occurs during the policy period of this Coverage Part. If the "controlling underlying insurance" requires that the "event" causing the particular "injury or damage" takes place during its policy period in order for that coverage to apply, then this insurance will apply to the claim only if the "event" causing that "injury or damage" takes place during the policy period of this Coverage Part.

- d. Any additional insured under any policy of "controlling underlying insurance" will automatically be an additional insured under this insurance. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance required by the contract, less any amounts payable by any "controlling underlying insurance".

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

2. Exclusions

The following exclusions, and any other exclusions added by endorsement, apply to this Coverage Part. In addition, the exclusions applicable to any "controlling underlying insurance" apply to this insurance unless superseded by the following exclusions, or superseded by any other exclusions added by endorsement to this Coverage Part.

Insurance provided under this Coverage Part does not apply to:

a. Medical Payments

Medical payments coverage or expenses that are provided without regard to fault, whether or not provided by the applicable "controlling underlying insurance".

b. Auto

Any loss, cost or expense payable under or resulting from any of the following auto coverages:

- (1) First-party physical damage coverage;
- (2) No-fault coverage;
- (3) Personal injury protection or auto medical payments coverage; or
- (4) Uninsured or underinsured motorists coverage.

c. Pollution

- (1) "Injury or damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants; or

- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, pollutants.

This exclusion does not apply to the extent that valid "controlling underlying insurance" for the pollution liability risks described above exists or would have existed but for the exhaustion of underlying limits for "injury or damage".

d. Workers' Compensation And Similar Laws

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

SECTION II – LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations, and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or suits brought, or number of vehicles involved;
 - c. Persons or organizations making claims or bringing suits; or
 - d. Limits available under any "controlling underlying insurance".
- 2. The Limits of Insurance of this Coverage Part will apply as follows:
 - a. This insurance only applies in excess of the "retained limit".
 - b. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss", for all "injury or damage" covered under this Coverage Part. However, this Aggregate Limit only applies to "injury or damage" that is subject to an aggregate limit of insurance under the "controlling underlying insurance".
 - c. Subject to Paragraph 2.b. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this insurance because of all "injury or damage" arising out of any one "event".
 - d. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.

3. If any "controlling underlying insurance" has a policy period that is different from the policy period of this Coverage Part then, for the purposes of this insurance, the "retained limit" will only be reduced or exhausted by payments made for "injury or damage" covered under this insurance.

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

SECTION III – CONDITIONS

The following conditions apply. In addition, the conditions applicable to any "controlling underlying insurance" are also applicable to the coverage provided under this insurance unless superseded by the following conditions.

1. Appeals

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

2. Bankruptcy

a. Bankruptcy Of Insured

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

b. Bankruptcy Of Controlling Underlying Insurer

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

However, insurance provided under this Coverage Part will not replace any "controlling underlying insurance" in the event of bankruptcy or insolvency of the "controlling underlying insurer". The insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect and recoverable.

3. Duties In The Event Of An Event, Claim Or Suit

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

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

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

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

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

- c. You and any other insured involved must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit;
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the suit; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury or damage" to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

4. First Named Insured Duties

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other Named Insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.

At our request, the first Named Insured will furnish us, as soon as practicable, with a complete copy of any "controlling underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Coverage Part.

5. Cancellation

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

6. Changes

This Coverage Part contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms of this Coverage Part with our consent. This Coverage Part's terms can be amended or waived only by endorsement.

7. Maintenance Of/Changes To Controlling Underlying Insurance

Any "controlling underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of aggregate limits in accordance with the provisions of such "controlling underlying insurance" that results from "injury or damage" to which this insurance applies.

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

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

8. Other Insurance

- a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, if no other insurer defends, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

- b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:
 - (1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and
 - (2) The total of all deductible and self-insured amounts under all that other insurance.

9. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. If this policy is auditable, the premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premium is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

10. Loss Payable

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

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

11. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a suit asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, "controlling underlying insurer" and the claimant or the claimant's legal representative.

12. Transfer Of Defense

a. Defense Transferred To Us

When the limits of "controlling underlying insurance" have been exhausted, in accordance with the provisions of "controlling underlying insurance", we may elect to have the defense transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

b. Defense Transferred By Us

When our limits of insurance have been exhausted our duty to provide a defense will cease.

We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Coverage Part of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Coverage Part, we will cooperate in the transfer of control to the insured and its designated representative.

13. When We Do Not Renew

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

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

SECTION IV – DEFINITIONS

The definitions applicable to any "controlling underlying insurance" also apply to this insurance. In addition, the following definitions apply.

1. "Controlling underlying insurance" means any policy of insurance or self-insurance listed in the Declarations under the Schedule of "controlling underlying insurance".
2. "Controlling underlying insurer" means any insurer who provides any policy of insurance listed in the Declarations under the Schedule of "controlling underlying insurance".
3. "Event" means an occurrence, offense, accident, act, or other event, to which the applicable "controlling underlying insurance" applies.
4. "Injury or damage" means any injury or damage, covered in the applicable "controlling underlying insurance" arising from an "event".
5. "Retained limit" means the available limits of "controlling underlying insurance" applicable to the claim.
6. "Ultimate net loss" means the total sum, after reduction for recoveries, or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:
 - a. Settlements, judgments, binding arbitration; or
 - b. Other binding alternate dispute resolution proceeding entered into with our consent."Ultimate net loss" includes defense expenses if the "controlling underlying insurance" specifies that limits are reduced by defense expenses.



OTHER VALID AND COLLECTIBLE INSURANCE (ADDITIONAL INSURED)

Named Insured Statewide Aquastore Inc			Endorsement Number
Policy Symbol X00	Policy Number N10880786 009	Policy Period 3/1/2023 TO 3/1/2024	Effective Date of Endorsement
Issued By (Name of Insurance Company) Ace American Insurance Co			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA POLICY

THIS POLICY IS SUBJECT TO THE FOLLOWING

- With respect to:
- COVERAGE A
 - COVERAGE B
 - COVERAGE A and COVERAGE B

As respects Coverage A, it is agreed that:

With respect to any person or organization qualifying as an Additional Insured under the terms and conditions below, other insurance, as used in Section V. Conditions, Item J., Other Insurance, and defined in Section VI. Definitions, Item 10, Other Insurance, shall mean only such insurance as is provided by a Scheduled Underlying Policy. No other insurance available to the Additional Insured shall be primary to or contributory with this insurance. Rather, any such other insurance shall be considered excess of the insurance provided by this policy.

Additional Insured:

Any person or organization that you are required under a written contract to include as an additional insured on a Scheduled Underlying Policy and this policy, but only if:

1. that contract requires that the Scheduled Underlying Policy and this policy be primary to and non-contributory with any other insurance available to the Additional Insured; and
2. the Scheduled Underlying Policy provides coverage to such person or organization and specifies that such coverage is primary to a non-contributory with any other insurance available to the Additional Insured where required by written contract.

The most we will pay for loss covered under this endorsement will be:

1. the limits of insurance required under the contract to be provided under this policy; or
2. the Limits of Insurance stated in Item 4 of the Declarations;

whichever is less.

Authorized Representative

Waiver of Our Right to Recover Payment

Named Insured Statewide Aquastore Inc			Endorsement Number
Policy Symbol X00	Policy Number N10880786 009	Policy Period 3/1/2023 TO 3/1/2024	Effective Date of Endorsement
Issued By (Name of Insurance Company) Ace American Insurance Co			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS POLICY IS SUBJECT TO THE FOLLOWING

With respect to: COVERAGE A
 COVERAGE B
 COVERAGE A and COVERAGE B

SCHEDULE

Name of Person or Organization:

As required by written contract and provided by the Underlying Insurance

Section V. CONDITION K., Our Right To Recover Payment, is amended by the addition of the following: We waive any right of recovery we may have against the person or organization shown in the Schedule above because of any payment under this policy, but only at the specific written request of the named insured either before or after loss, wherein such waiver has been included before loss as part of a contractual undertaking by the named insured.

This waiver applies only to the person or organization shown in the Schedule above.

This waiver shall apply only with respect to injury or damage arising out of your ongoing operations or your work done under a specific contract with the person or organization shown above.

Authorized Representative

POLICY NUMBER: MWC 317085 23

**LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT
COVERAGE ENDORSEMENT**

This endorsement applies only to work subject to the Longshore and Harbor Workers' Compensation Act in a state shown in the Schedule. The policy applies to that work as though that state were listed in Item 3.A. of the Information Page.

General Section C. **Workers Compensation Law** is replaced by the following:

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page and the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950). It includes any amendments to those laws that are in effect during the policy period. It does not include any other federal workers or workmen's compensation law, other federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

Part Two (Employers Liability Insurance), C. Exclusions., exclusion 8, does not apply to work subject to the Longshore and Harbor Workers' Compensation Act.

This endorsement does not apply to work subject to the Defense Base Act, the Outer Continental Shelf Lands Act, or the Nonappropriated Fund Instrumentalities Act.

SCHEDULE

STATE	LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT COVERAGE PERCENTAGE
NY	75.1%

The rates for classifications with code numbers not followed by the letter "F" are rates for work not ordinarily subject to the Longshore and Harbor Workers' Compensation Act. If this policy covers work under such classifications, and if the work is subject to the Longshore and Harbor Workers' Compensation Act, those non-F classification rates will be increased by the Longshore and Harbor Workers' Compensation Act Coverage Percentage shown in the Schedule.

DATE OF ISSUE: 03-21-23

POLICY NUMBER: **MWC 317085 23**

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

SCHEDULE

**AS REQUIRED BY WRITTEN CONTRACT, TO THE EXTENT ALLOWABLE
BY LAW**

DATE OF ISSUE: **03-21-23**



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/25/2023

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 Arthur J. Gallagher Risk Management Services, LLC 285 Delaware Avenue, Suite 4000 Buffalo NY 14202	CONTACT NAME: Client Service Team	
	PHONE (A/C. No. Ext.): 800-716-8314	FAX (A/C. No.): 855-595-5609
E-MAIL ADDRESS: GGB.SY3.CL.Srv@ajg.com		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Allied World Assurance Co US Inc.		19489
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED STATE-7 Statewide Aquastore Inc.
6010 Drott Drive
East Syracuse NY 13057

COVERAGES

CERTIFICATE NUMBER: 1414021850

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	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Pollution Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	03101039	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input 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						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	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/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability Claims Made Retro Date 12/13/2021			03101039	1/1/2023	1/1/2024	Aggregate Per Claim Limit \$2,000,000 \$2,000,000

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

The following forms apply, subject to policy terms and conditions:

Pollution/Professional Liability Additional Insured per written contract form ENV-CPP 00003 (03/22)

Pollution/Professional Liability Waiver of Transfer of Rights to Recovery form ENV-CPP 00003 (03/22)

RE: Water Storage Tank Construction. Town of Hopedale & Weston & Sampson are Additional Insured per the forms listed to the extent provided therein.

CERTIFICATE HOLDER**CANCELLATION**

Town of Hopedale
78 Hopedale Street
Hopedale MA 01747

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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CONTRACTORS PROFESSIONAL AND POLLUTION LIABILITY POLICY

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- SECTION II – DEFENSE AND SETTLEMENT**
- SECTION III – EXCLUSIONS**
- SECTION IV – LIMITS OF LIABILITY AND RETENTION**
- SECTION V – CONDITIONS**
- SECTION VI – DEFINITIONS**

NOTICE: THESE POLICY FORMS AND THE APPLICABLE RATES ARE EXEMPT FROM THE FILING REQUIREMENTS OF THE NEW YORK INSURANCE LAW AND REGULATIONS. HOWEVER, THE FORMS AND RATES MUST MEET THE MINIMUM STANDARDS OF THE NEW YORK INSURANCE LAW AND REGULATIONS.

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CERTAIN COVERAGES CONTAINED WITHIN THIS POLICY ARE CLAIMS MADE AND REPORTED COVERAGE.

NOTICE: CERTAIN COVERAGE PROVIDES CLAIMS MADE AND REPORTED COVERAGE AND SUBJECT TO ITS PROVISIONS APPLIES ONLY TO CLAIMS WHICH ARE BOTH FIRST MADE BY OR AGAINST THE INSURED AND REPORTED TO US DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF APPLICABLE. DEFENSE COSTS ARE INCLUDED WITHIN THE LIMIT OF LIABILITY.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy.

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

Except for headings, words that appear in **bold print** have special meaning. See SECTION VI – DEFINITIONS.

In consideration of the payment of the premium and in reliance upon the statements and information that you or your agent provides to us in the Application or Questionnaire, or both, or other information submitted to us that forms the basis of coverage, we agree to provide coverage as shown in the Declarations and subject to the terms as follows:

SECTION I – INSURING AGREEMENTS

1. Professional Liability

a. Contractor Professional Liability

We will pay those sums that the **insured** becomes legally obligated to pay as **professional damages** because of a **claim** resulting from an actual or alleged act, error or omission in **professional services**, provided:

- (1) The **claim** arises out of **professional services** rendered on or after the professional liability **retroactive date** and prior to the expiration of the **policy period**; and
- (2) The **claim** is first made against the **insured** and first reported to us, in writing, during the **policy period** or within the extended reporting period; and
- (3) Such **claim** is not covered under SECTION I - INSURING AGREEMENTS, 2. Contractors Pollution Liability.

b. Mitigation Expense:

We will pay **mitigation expense** on behalf of the **insured** resulting from an actual act, error or omission in **professional services** rendered by the **insured**, provided:

- (1) The **professional services** are rendered during the **policy period** or on or after the

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mitigation expense **retroactive date**, and

- (2) The **insured**, during the **policy period**, provides the Company with immediate written notice of the act, error or omission in **professional services** and the proposed mitigation action, if any, prior to incurring any **mitigation expense**, and
- (3) All **mitigation expense** must be approved by the Company prior to being incurred by the **insured** and must not be covered under INSURING AGREEMENT 2. Contractors Pollution Liability.

2. **Contractors Pollution Liability**

a. **Contractors Operations Pollution Liability**

We will pay those sums that the **insured** becomes legally obligated to pay as **damages** arising out of **bodily injury, property damage or environmental damage** that occur during the **policy period** and are caused by an **occurrence**, provided:

- (1) There is a claim for **bodily injury, property damage or environmental damage** caused by a **pollution incident** from **your work, completed operations, transportation or a non-owned site**; or
- (2) **Clean-up costs or emergency clean-up costs** are caused by a **pollution incident** from **your work or transportation** by you, where:
 - a. Such **pollution incident** first occurs on or after the first day of the **policy period**; and
 - b. **Discovery** of such **pollution incident** first occurs during the **policy period**; and
 - c. You report that **pollution incident** to us, in writing, as soon as practicable during the **policy period** or extended reporting period, if applicable.

b. **Time Element - Your Insured Location Liability**

We will pay those sums that the **insured** becomes legally obligated to pay as **damages** arising out of **bodily injury, property damage or environmental damage** that occur during the **policy period** and are caused an **occurrence**, provided:

- (1) There is a claim for **bodily injury, property damage or environmental damage** caused by a **pollution incident** on, at, under or migrating beyond the legal boundaries of **your insured location**; or
- (2) That **clean-up costs or emergency clean-up costs** caused by a **pollution incident** on, at, under or migrating beyond the legal boundaries of **your insured location** result in **environmental damage**, but only to the extent:
 - (a) As required by **environmental law**; or
 - (b) In the absence of (a) directly above, to the extent recommended by an **environmental professional**.

It is condition precedent to coverage under this INSURING AGREEMENT, 2.b., Time Element – Your Insured Location Liability, that:

- (1) **Discovery** of such **pollution incident** first occurs during the **policy period**; and
- (2) The **pollution incident** originates at **your insured location**; and

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- (3) The **pollution incident** first commences during the **policy period** at an identifiable time and place; and
 - (4) The **pollution incident** ceases fully within ten (10) days of its commencement.
- c. Progressive, indivisible **bodily injury, property damage or environmental damage**, including any continuation, change or resumption, over any period of extended time caused by the same or related **pollution incident** shall be deemed to have occurred only on the date of first exposure to such **pollution incident** and only the policy in force on the date of first exposure will apply.

In the event that the date of first exposure to such **pollution incident** is before the inception date of the first policy providing contractor pollution liability and issued to you by us, or cannot be determined, but the progressive, indivisible **bodily injury, property damage or environmental damage**, including any change or resumption, continues to exist during the **policy period** such **pollution incident** will be deemed to have occurred on the inception date of the first policy providing contractor pollution liability issued to you by us.

In the event that the date of first exposure to such **pollution incident** occurs during this **policy period** and continues to exist during subsequent policies providing contractor pollution liability issued by us, then the following applies:

- (1) All such **bodily injury, property damage and environmental damage** shall be deemed to have taken place only during this **policy period**; and
- (2) All **damages** arising from all such **bodily injury, property damage or environmental damage** shall be deemed to have arisen from one **occurrence** and shall be subject to the Each Pollution Incident Limit listed in Item 4(2.a.) of the Declarations.

SECTION II – DEFENSE AND SETTLEMENT

We will have the right and duty to defend any **claim** made against any **insured** seeking sums payable under this policy. We shall undertake and manage the defense of such **claim** even if such **claim** is groundless, false or fraudulent. **Claim expense** reduces the Limits of Liability and is included within the applicable Retentions stated in the Declarations. Our duty to defend ends once the Limits of Liability are exhausted or tendered into a court of applicable jurisdiction or once the **insured** refuses a settlement offer as provided in the paragraph below.

The **insured** will not assume or admit liability, make any payment, consent to any judgment, settle any **claim** or incur any **claim expense** without the prior written consent of us. We will not be liable for any payment, settlement, consent to judgment or admission made by the **insured** to which we have not consented.

We have the right to investigate, conduct negotiations concerning, and with the **insured's** written consent, such consent not to be unreasonably withheld, settle, any **claim** or **damages** as we deem expedient. If the **insured** refuses to consent to the settlement or compromise recommended by us in writing and acceptable to the claimant and elect to further contest such **claim**, our liability for such **claim** shall not exceed the amount for which such **claim** could have been settled, including **claim expense** incurred, up to the date of such refusal, plus fifty (50) percent of such **damages, professional damages, clean-up costs** or other coverage afforded under this policy in excess of the settlement amount recommended. It is a condition that our Limits of Liability under this policy with respect to such **claim** will be reduced to the amount for which the **claim** could have been settled, including all **claim expenses** incurred up to the time we made our recommendation to the **insured**. It is a condition of this insurance that the remaining fifty (50) percent of such **damages, professional damages, clean-up costs** or other

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coverage afforded under this policy excess of the settlement amount shall be borne by the insured at your own risk, and are uninsured. Notwithstanding the foregoing, this paragraph shall not apply

until the settlement amount exceeds the applicable Retention stated in the Declarations or applicable endorsement.

In addition, if we recommend a settlement of a **claim** to which this insurance applies within the policy's applicable Limit of Liability that is acceptable to the claimant, and the **insured** consents to such settlement, then your applicable Retention for such **claim** shall be retroactively reduced by ten (10) percent. It shall be a condition to such reduction that you must consent to the settlement amount within thirty (30) days after the date we recommend to the **insured** such settlement amount, or in the case of a settlement amount which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after we recommend to the **insured** such settlement offer. If the **insured** does not consent to the settlement within the time prescribed above, the applicable Retention shall remain the respective amount set forth in the Declarations or applicable endorsement, even if consent is given to a subsequent settlement.

We will have no obligation to pay any **claim**, **damages** or **professional damages** under this policy including **claim expense**, or to defend, continue to defend, or indemnify the **insured** after the Limits of Liability has been exhausted by any payment, including **claim expense**, or any deposit or tender of the Limits of Liability into court.

We shall have the right to select counsel for the investigation, adjustment and defense of **claims** to which this insurance applies. If more than one **insured** is involved in a **claim** to which this insurance applies, we may, in our sole discretion, appoint separate counsel for one or more of such **insureds** if there is a material (actual or potential) conflict of interest among any such **insureds**.

In the event the **insured** is entitled by law to select independent counsel to defend a **claim** at our expense, we will pay the reasonable attorney fees and all other reasonable litigation costs and expenses. However, we will not pay an hourly rate above what is reasonable in the geographic area where the **claim** is pending.

Additionally, we may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency including experience in defending **claims** similar to the one pending against the **insured** and to require such counsel have errors and omissions insurance coverage. As respects any such counsel, the **insured** agrees that counsel will timely respond to our requests for information regarding the **claim**, except with regard to information that is confidential or privileged, or both, or that affects insurance coverage for the **claim**.

Furthermore, the **insured** may at any time, by the **insured's** signed consent, freely and fully waive the right to select independent counsel.

SECTION III – EXCLUSIONS

This insurance does not apply to any **claim**, **professional damages**, **mitigation expense**, **pollution incident**, **damages**, **clean-up costs** or **emergency clean-up costs**:

1. **Contractual Liability**

Arising from the **insured's**;

- a. Assumption of other's liability in a contract or agreement; or
- b. Breach of contract or agreement.

This exclusion does not apply to liability: (1) That the **insured** would have in the absence of the contract or agreement; (2) as respects 1.b. above, for actual or alleged act, error or omission in **professional services**; or (3) Solely with regard to SECTION I - INSURING AGREEMENTS, 2.a. Contractors Operations Pollution Liability, liability assumed by the **named insured** in a contract or agreement that is

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an **insured contract**, provided the **bodily injury, property damage, or environmental damage** occurs subsequent to the execution of the contract or agreement.

2. **Criminal Fines**

Arising from any criminal fines, criminal penalties or criminal assessments imposed by law directly against an **insured**.

3. **Damage to Property**

Arising from loss of use, physical injury, or destruction of:

- a. Real property owned by the **named insured** or rented, leased or loaned to the **named insured**; or
- b. Personal Property in the care, custody control of the **named insured** used to perform **your work**.

This exclusion does not apply to: (1) real or personal property owned or leased by or in the care, custody or control of the **client**, or (2) **environmental damage to your insured location**.

4. **Dishonest Acts/ Intentional Non-Compliance**

Arising from any:

- a. Dishonest, fraudulent, criminal, intentional or malicious act, error or omission or those of a knowingly wrongful nature committed by or at the direction of any **insured**, however, this exclusion will not apply to an **insured** who did not commit, participate in, or have knowledge of such conduct; or
- b. Intentional disregard of or deliberate willful or dishonest non-compliance with any statute, regulation, ordinance, order, administrative complaint, notice of violation, notice letter, or instruction by or on behalf of any government agency or representative or other federal, state, local or other applicable legal requirement by or at the direction of any **responsible manager** or an agent of an **insured**.

This exclusion does not apply to intentional disregard of or deliberate willful non-compliance with any law or regulation: (1) that results from the **insured's** good faith reliance upon the written advice of qualified outside counsel received in advance of such compliance; or (2) that results from the **insured's** good faith efforts at mitigation of **environmental damage**.

5. **Discrimination**

Based upon or arising out of actual or alleged discrimination by an **insured** including but not limited to discrimination on the basis of race, creed, national origin, disability, age, marital status, sex, or sexual orientation unless a **claim** is based upon or arises out of the failure to make reasonable accommodations for a disability in violation of the American with Disabilities Act, 42.u.s.c. 112101, et seq., as amended.

6. **Divested Location**

Based upon or arising out of a **pollution incident** that first commences after **your insured location** has been divested, sold, abandoned, given away, taken by eminent domain or condemned.

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7. **Electronic Services**

Arising from any failure to prevent unauthorized access to or use of an electronic system or program, unless such unauthorized access arises out of an act, error or omission in the rendering of or failure to render **professional services** by you.

8. **Employer's Liability**

Arising from any injury to:

- a. An employee, including **leased worker** and a **temporary worker**, of the **insured**, arising out of and in the course of:
 - (1) Employment by the **insured**; or
 - (2) Performing duties related to the conduct of the **insured's** business
- b. The spouse, child, parent, brother or sister or any relation of that employee, including **leased worker** and a **temporary worker**, who has a right to make a claim against an **insured** as a consequence of paragraph (1) above.

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

This exclusion does not apply to liability assumed by the **insured** under an **insured contract** executed prior to the date such injury occurs as a result of **your work** for such contract.

9. **Faulty Work/Own Work**

Solely with regard to Coverage 2.a., Contractors Operations Pollution Liability, arising out of the cost to repair or replace faulty workmanship in any construction, erection, fabrication, installation, assembly or manufacturing process performed or provided by the named **insured** or anyone for whom any **insured** is legally responsible or any organization or affiliate that controls, manages or holds more than a twenty-five percent (25%) ownership interest in an **insured**, including materials, parts or equipment furnished in connection therewith, including any workmanship which is not in accordance with the drawings and specifications with respect to any construction, erection, fabrication, installation, assembly or manufacturing process.

10. **Hostile Acts**

War, invasion, act of foreign enemy, hostilities (whether war be declared or not), covert military action, civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot, civil commotion or terrorism. This exclusion however, shall not apply to any **damages** or losses arising directly or indirectly as a result of or in connection with any act which is certified by the United States Secretary of the Treasury as an "act of terrorism", as defined by the Terrorism Risk Insurance Act of 2002 or any amendment thereto.

11. **Insured Versus Insured**

- a. Arising from any **claim** made by any **insured** against any other **insured**; or

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- b. Any **claim** brought against any person or entity or its subrogees or assignees: (1) that wholly or partially owns or operates you; or (2) in which your ownership interest exceeds twenty-five percent (25%); or (3) that is controlled or operated by you; or (4) in which you are an officer or director.

This exclusion does not apply to a **claim** by an entity that is an **insured** solely by the definition in SECTION VI - DEFINITIONS, 15.d.

12. **Non-Disclosed Known Conditions**

Based upon or arising out of a **pollution incident** or an actual or alleged act, error or omission in **professional services** in existence prior to the inception date of the policy or prior to the effective date of an endorsement to this policy and known by or reported to a **responsible manager**.

However this exclusion shall not apply to:

- a. With respect to a **project site**, a **pollution incident** in existence prior to you first performing **your work** or **professional services** at such **project site**; or
- b. The exacerbation of a **pollution incident** at a **project site** as a result of **your work** provided: (1) Such **pollution incident** was in existence prior to the **insured** first performing **your work**; and (2) Such exacerbation was not known or reported to a **responsible manager** prior to the inception date of the policy or prior to the effective date of an endorsement to this policy; or
- c. Any **pollution incident** that is expressly disclosed to us and scheduled under this policy or by endorsement as an Accepted Known Condition. Such **pollution incident** shall be deemed to have been first discovered on the inception date or the effective date of the applicable endorsement.

13. **Use of Your Insured Location**

Based upon or arising out of:

- a. Any material change in use or operations at **your insured location** from the use or operations stated by you in the Application or Questionnaire, or both, or other information submitted to us that forms the basis of coverage; or
- b. The operation of a waste transfer, storage, treatment, or disposal facility or landfill at **your insured location** unless such location is approved by us and listed in Your Location Schedule endorsed on to this policy.

14. **Prior Claims or Incidents**

Based upon or arising from a **claim**, **professional damages**, **mitigation expense**, **damages**, **cleanup costs** or **emergency clean-up costs** or actual or alleged act, error or omission in **professional services** or other circumstances reported by you under any prior policy that was not issued by us or any entity affiliated with the Company or that was known by a **responsible manager** prior to the inception of the **policy period**.

15. **Products**

Arising from any goods, materials, products or equipment designed, manufactured, sold, handled, distributed or disposed by the **insured** or others trading under the **insured's** name, after possession of such goods, materials, products or equipment have been relinquished by the **insured** or others trading under its name, unless such **claim**, **damages**, **clean-up costs** or **emergency clean-up costs** or any other coverage afforded under this policy arises out of the assembly, fabrication or installation of such products as part of **your work**.

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This exclusion does not apply to such products while within the boundaries of **your insured location** or during **transportation**.

16. **Nuclear**

Based upon or arising out of radioactive, toxic or explosive properties of Source Materials, Special Nuclear Materials or By-Product Materials as defined in the Atomic Energy Act and for which the United State Department of Energy or any other government authority or agency has indemnified the **insured** or for which the Price Anderson Act provides protection for the **insured**.

17. **Related Entities**

Based upon or arising out of a **claim** by an entity or individual that: a) is an affiliate of an **insured**; b) an **insured** controls, manages, operates or holds more than twenty-five percent (25%) ownership interest in, or which controls; c) manages, operates or holds more than a twenty-five percent (25%) ownership interest in an **insured**; or d) is controlled or managed by an **insured**.

18. **Underground Storage Tanks**

Based upon or arising out of a **pollution incident** resulting from an **underground storage tank** whose existence is known by you as of the inception of policy and which is located at **your insured location**, unless such **underground storage tank** is scheduled on the policy by endorsement. However, this exclusion does not apply to any **underground storage tank** that is:

- a. An **underground storage tank** which has been closed in place or removed prior to the inception date of this policy in compliance with all applicable Federal, State, Local or Provincial regulations in effect during such closure or removal; or
- b. A process tank, including septic tanks and oil/water separators, located partially in the ground; or
- c. Located on or above the floor of structures built below the ground surface such as vaults or subsurface floors of buildings.

19. **Transportation**

Based upon or arising out of **property damage** to any **conveyance** utilized during **transportation**. This exclusion does not apply to claims made by third-party carriers for such **property damage** arising from the **insured's** negligence.

20. **Warranty/Guarantee**

Based upon or arising out of any express warranty or guarantee unless liability would have attached by law to the **insured** in the absence of such warranty or guarantee.

This exclusion does not apply to any warranty or guaranty by the **insured** that the **insured's professional services** or **your work** are in conformity with the generally accepted standard of care or a legal obligation that would be applicable in the absence of such warranty or guaranty.

21. **Workers Compensation**

Based upon or arising out of any obligation for which any **insured** or any insurance carrier will be liable under any worker's compensation, unemployment compensation, employer's liability, disability benefits law or under any similar law.

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22. **Your Insured Location – Asbestos and Lead-Based Paint**

Based upon or arising out of the existence of, required removal or abatement of asbestos or lead-based paint in any form including but not limited to asbestos containing materials, products containing asbestos, asbestos fibers and asbestos dust.

This exclusion does not apply to **your work**, including any unintentional disturbance by you or your subcontractor of asbestos or lead-based paint, **completed operations, transportation or a non-owned site**.

SECTION IV – LIMITS OF LIABILITY AND RETENTION

1. **Limits of Liability**

The Limits of Liability shown in the Declarations and the rules below fix the most we will pay regardless of the number of: a) **Insureds, your insured location(s), or non-owned location(s)**; b) **Claims** made or suits brought; c) Persons or organizations making **claims** or bringing suits; d) Acts, errors or omissions; or e) **Pollution incidents or claims**.

2. **Aggregate Limit of Liability**

- a. The Policy Aggregate Limit of Liability as set forth in ITEM 3. of the Declarations is the most we will pay for the sum of all **professional damages, mitigation expense, damages, clean-up costs and emergency clean-up costs** and any other amounts for which insurance is afforded under this policy.
- b. Subject to SECTION IV. 2.a. above, SECTION I - INSURING AGREEMENTS, 1. Professional Liability Aggregate Limit of Liability set forth in ITEM 4. (1) of the Declarations is the most the Company will pay for all **professional damages and mitigation expense** for which insurance is afforded under Insuring Agreement 1. Professional Liability.
- c. Subject to SECTION IV – LIMITS OF LIABILITY AND RETENTION, 2.a. above, SECTION I - INSURING AGREEMENTS, 2. Contractors Pollution Legal Liability Aggregate Limit of Liability set forth in ITEM 4. (2) of the Declarations is the most the Company will pay for all **damages, cleanup costs or emergency clean-up costs** for which insurance is afforded under Insuring Agreement 2. Contractors Pollution Liability.

3. **Professional Liability Limits of Liability**

- a. Subject to SECTION IV – LIMITS OF LIABILITY AND RETENTION, 2.a. and SECTION IV – LIMITS OF LIABILITY AND RETENTION, 2.b. above, the SECTION I - INSURING AGREEMENT, 1. Professional Liability Limit for Each Act, Error or Omission set forth in ITEM 4.(1.) of the Declarations is the most the Company will pay for all **professional damages and mitigation expense** arising out of a single act, error or omission in rendering or failure to render **professional services**.
- b. Subject to SECTION IV – LIMITS OF LIABILITY AND RETENTION, 3.a. above, the Professional Damages Aggregate Limit of Liability set forth in ITEM 4.(1a.) of the Declarations is the most the Company will pay for the sum of all **professional damages** for which insurance is afforded under this policy. Subject to the preceding sentence, the Professional Damages Limit of Liability for Each

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Act, Error or Omission set forth in ITEM 4.(1a.) of the Declarations is the most the Company will pay for all **professional damages** arising out of a single act, error or omission in rendering or failure to render **professional services**.

- c. Subject to SECTION IV – LIMITS OF LIABILITY AND RETENTION, 3.a. above, the Mitigation Expense Aggregate Limit of Liability set forth in ITEM 4.(1b.) of the Declarations is the most the Company will pay for the sum of all **mitigation expense** for which insurance is afforded under this policy. Subject to the preceding sentence, the Mitigation Expense Limit of Liability for Each Act, Error or Omission set forth in ITEM 4.(1b.) of the Declarations is the most the Company will pay for all **mitigation expense** arising out of a single act, error or omission in rendering or failure to render **professional services**.
- d. All **professional damages** or **mitigation expense**, or both, arising out of the same, related, repeated or continuous acts, errors or omissions in rendering or failure to render **professional services** is deemed to arise out of a single act, error or omission and subject to the rules set forth in SECTION IV – LIMITS OF LIABILITY AND RETENTION, 3.a., SECTION IV – LIMITS OF LIABILITY AND RETENTION, 3.b. and SECTION IV – LIMITS OF LIABILITY AND RETENTION, 3.c. above, for **professional damages** or **mitigation expense**, or both, arising out of a single act, error or omission in rendering or failure to render **professional services**.

4. **Contractors Pollution Liability**

- a. Subject to SECTION IV – LIMITS OF LIABILITY AND RETENTION, 2.a. and SECTION IV – LIMITS OF LIABILITY AND RETENTION, 2.c. above, the SECTION I - INSURING AGREEMENTS, 2. Contractors Pollution Legal Liability Aggregate Limit of Liability for each **pollution incident** set forth in ITEM 4.(2.) of the Declarations is the most the Company will pay for all **damages, clean-up costs** or **emergency clean-up costs** arising out of a single **pollution incident**.
- b. Subject to SECTION IV – LIMITS OF LIABILITY AND RETENTION, 4.a. above, the Contractors Occurrence Pollution Liability Aggregate Limit of Liability set forth in ITEM 4.(2.a.) of the Declarations is the most the Company will pay for the sum of all **damages, clean-up costs** or **emergency clean-up costs** for which insurance is afforded under this policy. Subject to the preceding sentence, the Contractors Occurrence Pollution Liability Limit of Liability for each **pollution incident** set forth in ITEM.4.(2a.) of the Declarations is the most the Company will pay under SECTION I - INSURING AGREEMENTS, 2. Contractors Pollution Liability for all **damages, clean-up costs** or **emergency clean-up costs** arising out of a single **pollution incident**.
- c. Subject to SECTION IV – LIMITS OF LIABILITY AND RETENTION, 4.a. above, the Time Element – Your Insured Location Liability Coverage Aggregate Limit of Liability set forth in ITEM 4.(2.b.) of the Declarations is the most the Company will pay for the sum of all **damages** or **clean-up costs** for which insurance is afforded under this policy. Subject to the preceding sentence, the Time Element – Your Insured Location Liability Coverage Aggregate Limit of Liability for each **pollution incident** set forth in ITEM.4.(2b.) of the Declarations is the most the Company will pay under SECTION I - INSURING AGREEMENTS, 2. Contractors Pollution Liability for all **damages** or **clean-up costs** arising out of a single **pollution incident**.
- d. All **damages, clean-up costs** or **emergency clean-up costs** arising out of the same, related or repeated or continuous **pollution incidents** is deemed to arise out of a single **pollution incident** and subject to the rules set forth in SECTION IV – LIMITS OF LIABILITY AND RETENTION, 4.a., SECTION IV – LIMITS OF LIABILITY AND RETENTION, 4.b., SECTION IV – LIMITS OF LIABILITY AND RETENTION, 4.c. above; for **damages, clean-up costs** or **emergency clean-up costs** arising out of a single **pollution incident**.

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5. **Retention**

- a. Subject to the Limits of Liability set forth in ITEM 3. and ITEM 4. of the Declarations, the Company is liable only for that portion of coverage provided under this policy in excess of the applicable Retention, if any. In the event multiple insuring agreements or coverage parts apply, only one Retention will apply which shall be the highest Retention amount of the applicable coverage parts. These respective Retentions shall be paid by the **named insured** and remain uninsured. We may pay any part or all of the Retention amount to effect settlement of any **claim** or suit, or to pay **clean-up costs** or **emergency clean-up costs** which may be covered under this policy, and upon notification of the action taken, you shall promptly reimburse us for such part of the Retention amount as has been paid by us.

SECTION V – CONDITIONS

1. **Audit and Inspection**

We will be permitted upon reasonable prior notice to audit, monitor and inspect on a continuing basis any of the **insured's** books and records at any time during the **policy period** and within three years after the final termination of this policy, as far as they relate to the subject matter of this policy. We will also be permitted upon reasonable prior notice to inspect, sample and monitor on a continuing basis the **insured's** operations. Neither our right to make inspections, sample and monitor nor the actual undertaking thereof nor any report thereon will constitute an undertaking, on behalf of us or others, to determine or warrant that operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation.

We may modify, amend or delete any of the terms and conditions of this policy including the right to charge additional premium and the right to cancel, rescind or void this policy, if our examination, audit, monitoring or inspection reveals any material risk, hazard or condition that was not previously disclosed by any **insured** in the Application or supplemental materials, or which deviates from the information disclosed in the Application or supplemental materials.

2. **Subrogation**

In the event of any payment under this policy, we will be subrogated to all the **insured's** rights of recovery thereof and the **insured** will execute and deliver all instruments and papers and do whatever else is necessary to secure such rights. The **insured** will do nothing to waive or prejudice such rights. Any amounts recovered in excess of our total payment will be paid to the **insured**, less the cost to us of recovery. However, it is agreed that we waive our rights of subrogation under this policy against clients of the **named insured** to the extent the client's written contract with the **named insured** requires such a waiver of subrogation, but only:

- a. To the extent required by such contract; and
- b. When such contract has been executed prior to any event, work or professional services that would give rise to coverage under this policy.

3. **Changes**

Notices to any agent or knowledge possessed by any agent will not effect a waiver or a change in any part of this policy or prevent us from asserting any rights under the terms of this policy, nor will the terms of this policy be waived or changed, unless endorsed hereon by us.

4. **Assignment**

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It is agreed that the insurance provided herein cannot be transferred or assigned to another party without the express written consent of us. Assignment of interest under this policy shall not bind us until our consent, which shall not be unreasonably withheld, is endorsed thereon.

5. Cancellation

- a. This policy may only be cancelled by us for any of the following reasons:
- (1) Non-payment of any premium or Retention amount; or
 - (2) A material misrepresentation or concealment of facts which affects the Company's assessment of the risks insured by this policy; or
 - (3) A material breach of or failure to comply with any provision of, or obligation under this policy.

If this policy is cancelled by us, notice of cancellation will be sent in writing to the **named insured**, at the address indicated on the Declarations. We will provide such written notice at least ninety (90) days or ten (10) days for non-payment of premium prior to the date such cancellation is to take effect.

The effective date and hour of cancellation will be stated in such notice. Cancellation by us also cancels the Automatic Extended Reporting Period and Extended Reporting Period. Both the **policy period** and the Automatic Extended Reporting Period and Extended Reporting Period will end on that date. If we cancel for the reason specified in subparagraph (1) there will be no return premium. If we cancel for reasons stated in subparagraphs (2) or (3), the earned premium will be computed pro-rata of the policy term premium. Payment of any return premium will not be a condition of cancellation.

- b. This policy may be cancelled by the **named insured** for any reason. In the event that the **named insured** cancels the policy, the earned premium will be computed short-rate of the policy term premium.
- c. In the event the policy has a minimum earned premium, the premium returnable after the minimum earned is retained by us will be computed utilizing the customary short rate or pro-rate tables, whichever is applicable. If the minimum earned is one hundred percent (100%), you are not entitled to any return premium regardless of the reason for cancellation. In the event of a loss under this policy, the premium will be deemed one hundred percent (100%) earned and you are not entitled to any return premium.
- d. In the event of cancellation by us by reason of sub-section a.(3) above, you will have sixty (60) days from the date of notice of cancellation to remedy each breach and each failure that is a ground for cancellation, but only as to each and every breach and failure that are capable of being remedied. If your remedial efforts are completed within such sixty (60) day period and are satisfactory to us, the Company will rescind such Notice of Cancellation with a written confirmation to the **named insured**.

6. 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 **damages** from an **insured**; or
- b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an **insured**; but we will not be liable for **damages** that are not payable under the terms of this policy or that are in excess of the applicable 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.

7. Bankruptcy

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The named insured's bankruptcy or insolvency will not relieve us of our obligations under this

policy.

8. Service of Suit

In the event of our failure to pay any amount claimed to be due hereunder, we, at your request, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of our rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon counsel, Legal Department, Allied World Assurance Company (U.S.) Inc., 199 Water Street, 24th Floor, New York, NY 10038 or his or her representative, and that in any suit instituted against us upon this policy, we will abide by the final decision of such court or of any appellate court in the event of an appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, we hereby designate the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successors in office, as its true and lawful agent upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on your behalf or any beneficiary hereunder arising out of this policy of insurance and hereby designates the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

9. Severability

If any material provision or clause of this policy is declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, that provision will immediately become null and void, leaving the remainder of this policy in full force and effect.

Except with respect to the Limits of Liability and retention amounts, Exclusion 11. Insured Versus Insured, and any rights or duties specifically assigned in this policy to the **named insured**, this insurance applies: (i) as if each **named insured** were the only **named insured**; and (ii) separately to each **insured** against whom a **claim** is made.

Any misrepresentation, act or omission that is in violation of a term, duty or condition under this policy by one **insured** shall not prejudice another **insured** under this policy. This condition shall not apply to an **insured** who is a parent, subsidiary or affiliate of the **insured** which committed the misrepresentation, act or omission referenced above

10. Sole Agent

If there is more than one **insured** named in this policy, the first **named insured** shall act on behalf of all **insureds** for all purposes, including but not limited to the payment or return of premium, payment of any applicable Retention, receipt and acceptance of any endorsement issued to form a part of this policy, complying with all applicable **claims** provisions, giving and receiving notice of cancellation or nonrenewal, reimbursement to us of any Retention advanced and the exercise of the rights provided in the Extended Reporting Period or Subrogation provisions of this policy.

11. Other Insurance

If there is other valid and collectible insurance, our obligations are as follows:

- a. With regard to Coverage 1 – Professional Liability, as set forth in SECTION I - Insuring Agreements, this insurance is excess over any other valid and collectible insurance, whether such

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other insurance is stated to be primary, contributory, excess, contingent or otherwise;

- b. This insurance is excess over any other valid and collectible insurance under a project specific insurance policy, contractor controlled insurance program, owner controlled insurance program, consolidated (wrap-up) insurance program or any other similar insurance or program, whether such other insurance or program is stated to be primary, contributory, excess, contingent or otherwise.
- c. Where other valid and collectible insurance is available and is also primary, our obligation to the **insured** is as follows:
 - (1) If other primary insurance permits contribution by equal shares, we will also follow this method. Under this method, each insurer contributes equal amounts until it has paid the applicable Limit of Liability or none of the loss remains, whichever comes first; or
 - (2) If any other insurance does not permit contribution by equal shares, we will contribute pro-rata by limits. Under this method, each Insurer's share is based on the ratio of its applicable Limit of Liability to the total applicable Limit of Liability of all primary insurers.
- d. With regard to **restoration costs**, this insurance is excess over any other valid and collectible insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

12. Multiple Claims

Two or more **claims** arising out of a single act, error, omission, incident or **pollution incident**, or arising out of a series of acts, errors, omissions or incidents related to each other, will be considered a single **claim** subject to the respective single Each Loss Limit of Liability and one Retention, and will not operate to increase our Limits of Liability. All such **claims**, whenever made, will be considered first made during the **policy period** of the earliest **claim** that was first made.

13. Notice of Possible Claim

- a. If during the **policy period**, the **insured** becomes aware of an act, error or omission in **professional services** or **pollution incident** which may be expected to give rise to a **claim** (hereafter referred to as a "possible claim") under the policy, the **insured** must provide written notice to us during the **policy period** containing all the information listed under paragraph b. below. Any possible claim that subsequently becomes a **claim** shall be deemed to have been first made and reported during the **policy period** of this policy. Such **claim** shall be subject to the terms, conditions and limits of coverage of the policy under which the possible claim was reported.
- b. It is a condition precedent to the rights afforded the **insured** under this Condition 13. and any possible coverage afforded by this policy that such written notice under paragraph a. directly above contain all of the following information:
 - (1) The circumstances and date of the actual or alleged errors or omissions in **professional services** and the specific nature, date and extent of any injury or **professional damages** which are the subject of the possible claim;
 - (2) The date and details of the **pollution incident** and related services or work that may have caused such condition;

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(3) Copies of any contract executed by the **insured** that is related to such possible claim;

(4) The circumstances by which the **insured** first became aware of the possible claim.

14. **Extended Reporting Period for Contractor Professional Liability Insuring Agreement (Insuring Agreement 1.a.)**

The **named insured** shall be entitled to an Automatic Extended Reporting Period, and (with certain exceptions as described in Paragraph b. of this section) be entitled to purchase an Optional Extended Reporting Period for SECTION I - INSURING AGREEMENTS, 1. Professional Liability, upon termination of coverage as defined in paragraph b.(3) of this section. Neither the Automatic nor the Optional Extended Reporting Period shall reinstate or increase any of the limits of liability of this policy.

a. Automatic Extended Reporting Period

Provided that the **named insured** has not purchased any other insurance to replace this insurance and the **claim** is otherwise covered hereunder, the **named insured** shall have the right to the following: a period of ninety (90) days following the effective date of such termination of coverage in which to provide written notice to the Company of **claims** first made and reported within the Automatic Extended Reporting Period. A **claim** first made and reported within the Automatic Extended Reporting Period will be deemed to have been made on the last day of the **policy period**, provided that the **claim** arises from an actual or alleged act, error or omission in the performance of **your professional services** rendered on or after the **professional liability retroactive date** and prior to the end of the **policy period** and is otherwise covered by this policy. No part of the Automatic Extended Reporting Period shall apply if the Optional Extended Reporting Period is purchased.

b. Optional Extended Reporting Period

The **named insured** shall be entitled to purchase an Optional Extended Reporting Period upon termination of coverage as defined herein (except in the event of nonpayment of premium), as follows:

(1) A **claim** first made and reported within the Optional Extended Reporting Period, if purchased in accordance with the provisions contained in paragraph (2) below, will be deemed to have been made on the last day of the **policy period**, provided that the **claim** arises from an actual or alleged act, error or omission in the performance of **your professional services** rendered on or after the **professional liability retroactive date** and prior to the end of the Policy Period and is otherwise covered by this policy;

(2) The Company shall issue an endorsement providing an Optional Extended Reporting Period of up to thirty-six (36) months from termination of coverage hereunder, provided that the **named insured**:

- (a) Makes a written request for such endorsement which the Company receives within thirty (30) days after termination of coverage as defined herein; and
- (b) Pays the additional premium when due. If that additional premium is paid when due, the Company may choose not to cancel the Extended Reporting Period, provided that all other terms and conditions of the policy are met, such determination to be made at the Company's sole discretion.

(3) Termination of coverage occurs at the time of cancellation or nonrenewal of this policy by the **named insured** or by the Company.

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- (4) The Optional Extended Reporting Period is available to the **named insured** for not more than 200% of the full policy premium stated in the Declarations.

15. Currency

All reimbursement shall be made in United States currency at the rate of exchange prevailing on: (i) The date of judgment if judgment is rendered; or, (ii) The date of settlement if settlement is agreed upon with our written consent; or (iii) The date legal expenses are paid.

16. Declarations and Representations

By acceptance of this policy, you agree that the statements and information contained in the Application or Questionnaire, or both, and other supplemental materials submitted to us are: a) true and correct; b) such statements and information are material to our underwriting of this policy; and c) that this policy has been issued by us in reliance upon the truth and correctness of such statements and information.

17. Duties in the Event of Claim or Pollution Incident

a. Claim for Professional Damage

You must see to it that we are notified in writing as soon as practicable within the **policy period** or extended reporting period when you become aware of an act, error or omission which may be expected to give rise to a **claim for professional damages**. To the extent possible, notice should include:

- (1) The time, place and explanation of the act, error or omission including how you first became aware of the act, error or omission; and
- (2) The names and addresses of any injured persons and witnesses and **claim for professional damages** which have or may result from such act, error or omission; and
- (3) Any and all investigative or engineering reports, data or information about the act, error or omission, or **claim for professional damages**; and
- (4) Copies of any relevant contracts between you and your client for **professional services**.

The **insured** shall take reasonable measures to protect their interests. We shall not be liable for **professional damages** or any other coverage afforded under this Policy admitted by the **insured** without our prior written consent.

b. Pollution Incident or Claim for Damages

You must see to it that we are notified in writing as soon as practicable of discovery of a **pollution incident** which may result in a **claim**, or receipt of a **claim**. To the extent possible, notice should include:

- (1) How, when and where the **pollution incident** took place; and
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or **damages** arising out of the **pollution incident**.

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The **insured** shall take reasonable measures to protect their interests. We shall not be liable for **damages** or any other coverage afforded under this policy admitted by the **insured** without our prior written consent.

The **insured** shall have the right and duty to retain an **environmental professional**, subject to our consent, to perform the investigation or remediation of any **pollution incident** covered by this insurance after **discovery** or you are notified of the existence of such **pollution incident**. We have the right, but not the duty, to review and approve all aspects of any such investigation or clean-up. Except for **emergency clean-up costs**, any costs incurred without our consent will not be covered under this policy or credited against the retention.

c. **Cooperation**

You and any other involved **insured** must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim** for **professional damages** or suit; and
- (2) Authorize us to obtain records and other information; and
- (3) Cooperate with us in the investigation or settlement of the **claim** for **professional damages** or defense against the suit; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the **insured** because of injury or **damages** to which this policy may also apply; and
- (5) Take reasonable measures to protect their interests.

If we are prohibited under applicable law from investigating, defending or settling any such **claim** or suit, the **insured** shall, under our supervision, arrange for such investigation and defense thereof as is reasonably necessary, and subject to our prior authorization, shall effect such settlement thereof.

d. **Voluntary Payment**

No **insured** will, except at that **insured's** own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our prior written consent.

If we are prohibited under applicable law from investigating, defending or settling any such **claim** or suit, the **insured** shall, under our supervision, arrange for such investigation and defense thereof as is reasonably necessary, and subject to our prior authorization, shall effect such settlement thereof.

e. **Clean-Up Costs**

When any **insured** becomes obligated to pay **clean-up costs** to which this policy applies, the **insured** must:

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1. Attempt to minimize and mitigate such costs as reasonably and necessary; and
2. Obtain our prior written approval for any costs, charges or expenses incurred by the **insured** for materials supplied or services performed by the **insured**; and
3. Submit, for our approval, all proposed work prior to submittal to any regulatory agency; and
4. Submit, for our approval, all bids and contracts for **clean-up costs** prior to execution or issuance; and
5. Forward progress submittals regarding **clean-up costs** at reasonable intervals and always prior to submittal to any regulatory agency that is authorized to review and approve such submittals.

We have the right, but not the duty, to review and approve all aspects of any such investigation or **clean-up costs**. In addition, we shall have the right, but not the duty to assume direct control of such **clean-up costs**, including investigation or remediation of such **pollution incident**, on behalf of the insured. Any **clean-up costs** incurred by us shall be applied against the applicable Retention and applicable Limit of Liability shown in the Declarations of this policy.

f. **Emergency Clean-Up Costs**

In the event of **emergency clean-up costs**, the **insured** may select an **environmental professional** without our prior consent. Except for **emergency clean-up costs**, any costs incurred without our consent will not be covered under this policy or credited against the Retention.

As a condition precedent for coverage of **emergency clean-up costs** under this policy, we must be notified by the **insured** as soon as practicable of such **emergency clean-up costs**. When **emergency clean-up costs** have been incurred, the **insured** shall forward to us within seven (7) consecutive days of the commencement of the **pollution incident** for which the **emergency clean-up costs** have been incurred all information including but not limited to: the cause and location of the **pollution incident**, technical reports, laboratory data, field notes, expert reports, investigations, data collected, invoices, regulatory correspondence or any other documents relating to such **emergency clean-up costs**. We retain the right to determine which **emergency clean-up costs** are deemed reasonable and necessary.

18. **Economic and Trade Sanctions**

If coverage for a **claim** or suit under this policy is in violation of any United States of America economic or trade sanctions, including but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), then coverage for that **claim** or suit will be null and void.

19. **Policy Territory**

This policy shall only apply to a **claim** arising out of your operations or services covered under this Policy and conducted worldwide, provided the **claim** is first brought in the United States, or its territory or possessions or anywhere else in the world, provided the insured's responsibility to pay is determined in a) a proceeding on the merits in the United States of America (including its territories and possessions), Puerto Rico and Canada, or b) a settlement agreed to by us.

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20. **Headings**

The descriptions in the headings and sub-headings of this policy are inserted solely for convenience and do not constitute any part of the terms or conditions of this policy.

SECTION VI – DEFINITIONS

1.

Bodily injury means bodily injury, physical injury, sickness, building-related illness, mental anguish, emotional distress, shock, or disease sustained by a person, including death and medical monitoring and environmental monitoring of a person resulting from any of the foregoing.

2. **Claim** means demand, notice or assertion of a legal right seeking a remedy or alleging liability or responsibility on the part of the **insured**.

3. **Claim expense** means expenses we incur to investigate, settle or defend any **claim** or suit; or expenses to investigate or adjust **clean-up costs**, including:

- a. All reasonable expenses incurred, at our request, by the **insured** to assist us in the investigation or defense of the **claim** or suit, including an **insured's** actual loss of earnings up to \$500 a day because of time off from work;
- b. All court costs taxed against the **insured** in the suit. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the **insured**;
- c. Prejudgment interest awarded against the **insured** on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Liability, we will not pay any prejudgment interest based on that period of time after the offer; and
- d. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Liability.

Claim expense does not include: (1) Fees and expenses of counsel retained by the **insured** unless approved in writing by us, prior to the retention of such counsel; or (2) salary charges of our employees; or (3) **Emergency clean-up costs**; or (4) **Mitigation expense**.

4. **Client** means the individual or entity who hires the **named insured** to perform **your work**.

5. **Clean-up costs** means reasonable and necessary expenses, including legal expenses and **restoration costs**, resulting from **environmental damage** incurred to investigate, abate, contain, treat, remove, remediate, monitor, or dispose of soil, surface water, groundwater or other contaminated media.

6. **Completed operations** means **your work** that has been completed.

Your work is deemed complete at the earliest of the following times:

- a. **Your work** to be performed under a contract is completed; or
- b. **Your work** to be performed at a **project site** has been completed; or
- c. When a portion of **your work** has been put to its intended use.

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Completed operations do not include **your work** that has been abandoned.

7. **Conveyance** means only motor vehicle, trailer or semi-trailer, rollingstock, watercraft or aircraft operated by you or a third-party carrier, provided you or such third-party carrier are properly permitted and licensed to transport such goods, materials, product or waste. **Conveyance** does not include pipelines.

8. **Damages** means:

- a. Monetary judgment, award or settlement of compensatory damages for **bodily injury, property damage, environmental damage or clean-up costs**;
- b. **Clean-up costs** including **emergency clean-up costs**;
- c. Punitive, exemplary or multiplied damages for which the **insured** is legally liable, but only where insurance coverage for such fines and penalties is allowable by law;
- d. Civil fines and penalties assessed against a client for which the **named insured** is legally liable, but only where insurance coverage for such fines and penalties is allowable by law;
- e. Civil fines and penalties, assessed against the **insured**, but only where insurance coverage for such fines and penalties is allowable by law;
- f. **Restoration costs**; and
- g. **Claim expense** associated with items a. through f. referenced above.

Damages does not include: (1) injunctive or equitable relief; or (2) the return of fees or charges for services rendered.

9. **Discovery** means when an **insured** first has knowledge of a **pollution incident**.

10. **Emergency clean-up costs** mean **clean-up costs** incurred by the **named insured** in response to a **pollution incident** that:

- a. Presents an imminent and substantial threat to human health or the environment, or both; or
- b. Requires an immediate response in order to mitigate or reduce potential **damages**.

You must see to it that we are notified as soon as practicable of a **pollution incident** which may result in or required **emergency clean-up costs** under this policy. When **emergency clean-up costs** have been incurred, the **named insured** shall forward to us within seven (7) days of the commencement of the **pollution incident** for which the **emergency clean-up costs** have been incurred all information including but not limited to: the cause and location of the **pollution incident**, technical reports, laboratory data, field notes, expert reports, investigations, data collected, invoices, regulatory correspondence or any other documents relating to such **emergency clean-up costs**. Such expenses must be deemed reasonable and necessary by the Company.

11. **Environmental damage** means physical damage to soil, any water course or body of water including groundwater, atmosphere including indoor air, plant or animal life, or to buildings or other structures caused by a **pollution incident** and resulting in remediation activities. **Environmental damage** does not include **property damage**.

12. **Environmental law** means any federal, state, provincial, municipal or other local laws, statutes, ordinances, rules, guidance documents, regulations, administrative orders and directives and all amendments thereto, including state voluntary clean-up or risk-based corrective action guidance.

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13. **Environmental professional** means an individual or entity approved by us in writing that is licensed and certified to provide environmental services. We shall consult with you in conjunction with the selection of the **environmental professional**.
14. **Fungi** means any of numerous eukaryotic organisms of the kingdom Fungi, which lack chlorophyll and vascular tissue and range in form from a single cell to a body mass of branched filamentous hyphae that produce specialized fruiting bodies.
15. **Insured(s)** means:
- a. The **named insured**;
 - b. Any present or former partner, director, officer, manager, member or employee, including a **leased worker** and a **temporary worker**, of the **named insured** solely while acting on behalf of the **named insured**;
 - c. Any **insured** with regard to its participation in a legal entity including a joint venture, but solely for the **insured's** legal liability for its performance of **professional services** or **your work** under the respective legal entity or joint venture. **Insured** does not include the legal entity itself, the joint venture itself or any other entity that is part of either the legal entity or joint venture, except as respects liability assumed by the **insured** for a **pollution incident**;
 - d. With regard to SECTION I - INSURING AGREEMENTS, 2. Contractors Pollution Liability only, any client of the **named insured** that the **named insured** has agreed by written contract to name as an additional **insured** on this policy, but only with respect to covered **damages** caused by **your work**;
 - e. Any entity which is specifically referenced as an **insured** by endorsement;
 - f. The estate, heirs, executors, administrators or legal representatives of an **insured** in the event of such **insured's** death, incapacity or bankruptcy but only to the extent such **insured** would otherwise be provided coverage under this policy;
 - g. Any entity newly formed or acquired by the **named insured** during the **policy period** in which the **named insured** has more than fifty percent (50%) legal or beneficial interest. However:
 - (1) Coverage will only be provided for **claims** arising out **professional services** or **your work** performed on or after the date of formation or acquisition; and
 - (2) This coverage will expire within ninety (90) days of such formation or acquisition or the end of the **policy period**, whichever is earlier, unless the **named insured** provides written details of such newly formed or acquired entity to us and pays the additional premium requested by us, if any.
16. **Insured contract** means that part of any written contract or written agreement under which the **named insured** assumes the tort liability of another party to pay compensatory damages for **bodily injury**, **property damage**, or **environmental damage** to a third person or organization, provided that such written contract or written agreement is signed by the **named insured** prior to the **bodily injury**, **property damage**, or **environmental damage**. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
17. **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**.
18. **Location** means premises involving the same or connecting lots, or premises whose connection is

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interrupted only by a street, roadway, waterway or right-of-way of a railroad.

19. **Microbial matter** means **fungi, mold, bacteria** or viruses which reproduce through the splitting of cells, the release of spores or by any other means, whether or not such **microbial matter** is living.
20. **Misdelivery** means the delivery of any liquid product into a wrong receptacle or to a wrong address or the erroneous delivery of one liquid product for another.
21. **Mitigation Expense** means the cost and expense incurred by the **insured** in connection with an act, error or omission in the performance of or failure to perform **professional services**:
 - a. That is deemed by the Company to be reasonable and necessary to prevent **professional damages**; and
 - b. That reduce or avoids the **insured's** potential liability to third parties for **professional damages** covered under Insuring Agreement 1.a. of this policy; and
 - c. That includes, but is not limited to, third-party consultation regarding disputed design flaws, additional reviews and inspections, forensic analysis of designs, and any other costs to remedy the deficiency; and
 - d. Which in the sole discretion of the Company will prevent a future **claim**.

Mitigation Expense does not include: overhead, mark-up, profit or cost or expense incurred by the **insured** for materials supplied or services performed by the **insured**, unless such costs, charges or expenses are incurred with our prior written consent.

22. **Mold** means any of the various **fungi** responsible for the disintegration of organic or inorganic matter, or the growth of such **fungi**.
23. **Named insured** means the person or entity named in ITEM 1. of the Declarations and is responsible for acting on behalf of all other **insureds**, if any, under this policy as described SECTION V – Conditions, 10. Sole Agent.
24. **Natural resource damage** means physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), any state, local or provincial government, any foreign government, any Native American tribe, or, if such resources are subject to a trust restriction on alienation, any member of a Native American tribe.
25. **Non-owned site** means any site or location used by the **insured** for the purpose of treatment, storage, disposal, recycling or processing of waste or material provided that:
 - a. The site or location is not owned, leased, managed or operated by the **insured**; and
 - b. The waste or material was generated from **your work** during the **policy period**.

Non-owned site does not include: (1) Any site or location which is not licensed by the appropriate state or federal authority to perform storage, disposal, processing or treatment of waste from your operations or **your work** in compliance with **environmental law**; or (2) Any site or **location** or any part thereof that

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has been subject to a consent order or corrective action under **environmental law** or is listed or proposed to be listed on the National Priorities List (NPL) prior to waste from your operations or **your**

work being legally consigned for delivery or delivered for storage, disposal, processing or treatment.

26. **Occurrence** means an event or circumstance, including the continuous or repeated exposure to substantially the same general conditions, that precipitates and results in a **pollution incident**.
27. **Policy period** means the period of time as shown in ITEM 2. of the Declarations, however, if the policy is cancelled in accordance with SECTION V – CONDITIONS, 5. Cancellation, of this policy, the **policy period** ends on the effective date of such cancellation.
28. **Pollution incident** means:
- a. The discharge, emission, seepage, migration, dispersal, release or escape of any **pollutants** into or upon land, or any structure on land, the atmosphere including indoor air or any watercourse or body of water including groundwater, provided such conditions are not naturally present in the environment in the concentration or amounts discovered;
 - b. The presence of **microbial matter** on, at or within buildings or structures;
 - c. **Misdelivery**; and
 - d. The presence of **pollutants** that have been illegally disposed of or abandoned at **your insured location** or at a **project site** by parties other than the **insured** provided such disposal or abandonment are unknown to the **insured**.

29. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including: smoke, vapors, soot, fumes, acids, alkalis, chemicals, hazardous substances, petroleum hydrocarbons; low level radioactive waste and material; **Microbial matter**; legionella pneumophila; medical, infectious and pathological waste; waste materials; and electromagnetic fields.

30. **Professional damages** means:

- a. Monetary judgment, award or settlement of compensatory damages;
- b. Punitive, exemplary or multiplied damages for which the **insured** is legally liable but only where insurance coverage for such fines and penalties is allowable by law;
- c. Civil fines and penalties, assessed against a third party other than the **insured** for which the **insured** is legally liable but only where insurance coverage for such fines and penalties is allowable by law;
- d. Civil fines and penalties assessed against the **insured** but only where insurance coverage for such fines and penalties is allowable by law; and
- e. **Claim expense** associated with items a. through d. above.

Professional damages do not include: (1) injunctive or equitable relief; (2) the return of fees or charges for services rendered; (3) costs and expenses incurred by the **insured** to redo, change, supplement or fix the **insured's** work or services, including costs of redesign; or (4) any of the **insured's** overhead, mark-up or profit.

31. **Professional services** mean those services and activities shown in ITEM 6. of the Declarations or specifically defined by endorsement that are rendered by or on behalf of the **named insured**.

Professional services include ordinary technology services provided for others in the course of rendering **professional services** described above. Such technology services include the design,

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development, programming, analysis, training, use, hosting, management, support and maintenance of any building information management, software, database, internet service, or website.

32. **Project site** means:

- a. The **location** where **your work** is performed; or
- b. A site that is rented or leased by you or loaned to you and utilized in direct support of **your work** for a specific contract or project.

Project site does not include **your insured location** or a **non-owned site**.

33. **Property damage** means:

- a. Physical injury to or destruction of tangible property, other than the **insured's**, including the resulting loss of use and diminished value of that property;
- b. Loss of use or diminished value of tangible property of parties, other than the **insured's**, that has not been physically injured or destroyed or;
- c. **Natural resource damage**.

Property damage does not include **clean-up costs** or **environmental damage**.

For the purpose of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

34. **Responsible manager** means any of your officers, directors, partners or managers, your manager or supervisor responsible for health and safety or environmental affairs, control or compliance or any other employee authorized by you to give or receive notice of an **occurrence** or **claim**.

35. **Restoration costs** means reasonable and necessary expenses incurred by an **insured**, with our written consent, to repair or replace damaged real or personal property to substantially the same condition it was in prior to being damaged because of **clean-up costs**. If repair or replacement results in kind or quality exceeding that of the real or personal property before it was damaged, whether at your option or not, we will not pay for the amount of the betterment.

36. **Retroactive date** means the applicable coverage section date set forth in ITEM 7. of the Declarations and from which coverage as provided herein first begins.

37. **Temporary worker** means a person who is furnished to you to substitute for a permanent worker on leave or to meet seasonal or short-term workload conditions.

38. **Transportation** means the movement, via a **conveyance**, of goods, materials, product, or waste which is a result of work or operations insured under this policy. **Transportation** includes the movement from the point of origin until the final destination and any loading and unloading of such goods, materials, product or waste into, onto or from such **conveyance**.

39. **Underground storage tank** means any tank that has at least ten percent (10%) of its volume below ground at inception of the **policy period** or installed thereafter including associated underground piping and apparatus connected to the tank.

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40. **Your work** means:

- a. Contracting services, work or operations as stated in the application or by endorsement performed by the **insured** or on behalf of the **insured** at a **project site**; and
- b. Goods, materials, products or equipment furnished in connection with such work or operations.

41. **Your insured location** means any real property or location owned, leased or rented by the **named insured** and disclosed in the Application (in Section IV. Additional Coverage Information, 1. Your Owned Location Liability Coverage Information) or Questionnaire, or both, or other information submitted to us that forms the basis of coverage, or a location approved by us and listed in the Your Location Schedule endorsed on to this policy. **Your Insured location** does not include **project site**.

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