

ERIE COUNTY WATER AUTHORITY
 AUTHORIZATION FORM
 For Approval/Execution of Documents
 (check which apply)

Contract: 19-11-07 **Project No.:** 201900091
Project Description: Sturgeon Point WTP Sludge Removal, Disposal, and Relocation.

Item Description:

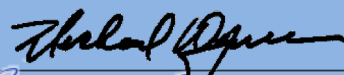

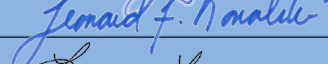




Agreement Professional Service Contract Amendment Change Order
 BCD NYSDOT Agreement Contract Documents Addendum
 Recommendation for Award of Contract Recommendation to Reject Bids
 Request for Proposals
 Other Final Pay Application and Closeout

Action Requested:


Board Authorization to Execute Legal Approval
 Board Authorization to Award Execution by the Chairman
 Board Authorization to Advertise for Bids Execution by the Secretary to the Authority
 Board Authorization to Solicit Request for Proposals
 Other Board Approval

Approvals Needed:

APPROVED AS TO CONTENT:

<input checked="" type="checkbox"/> Sr. Production Engineer	<u></u>	Date: <u>6/29/2020</u>
<input checked="" type="checkbox"/> Chief Operating Officer	<u></u>	Date: <u>6/30/2020</u>
<input checked="" type="checkbox"/> Executive Engineer	<u></u>	Date: <u>07/08/2020</u>
<input checked="" type="checkbox"/> Director of Administration	<u></u>	Date: <u>06/30/2020</u>
<input checked="" type="checkbox"/> Risk Manager	<u></u>	Date: <u>06/30/2020</u>
<input checked="" type="checkbox"/> Chief Financial Officer	<u></u>	Date: <u>06/29/2020</u>
<input checked="" type="checkbox"/> Legal	<u></u>	Date: <u>06/30/2020</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority	<u></u>	Date: <u>07/08/2020</u>
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Remarks: Amount certified for Final Payment \$24,084.41

Resolution Date: _____ **Item No:** _____



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

April 23, 2020

To: Terrence D. McCracken, Secretary to the Authority

From: David M. Patton, Senior Production Engineer *DMP*

Subject: Sturgeon Point WTP
Sludge Removal, Disposal, and Relocation
ECWA Project No. 201900091
Pay Application No. 4 & Final

Attached is the Final Payment Application for the above referenced project.

The following documents are attached:

- Blue Authorization Form - this form provides the project name and project number, the action that is being requested of the Board, and it provides a list of approvals that are required prior to being acted on by the Board.
- ECWA Final Payment Application Checklist and Packet - the check list is used to make sure that the contractor has provided all of the proper documentation to close out the contract.

The Engineering Department is recommending Final Payment be made. The Hanover Insurance Company issued Certification of Surety for the Final Payment. The Contractor has submitted and signed General Release and AIA Forms G706, G706A, and G707. MWBE Utilization Report – Part D has been attached. Lavonya Lester, Director of Administration has certified MWBE goals and approved final Certified Payrolls. The entire Final Pay Application package has to be reviewed by Risk Manager and Legal Department prior to Board action. The amount certified for Final Payment is \$24,084.41.

DMP:jmf
Attachments
cc: R.Stoll
L.Kowalski
L.Lester
SPWA-824-1901-I-186

Erie County Water Authority Final Payment Application

CHECK LIST: Items to Accompany Final Payment Application

- 1. Blue Authorization Form
- 2. Statement by Consultant, if applicable, certifying that all work was performed in general conformance to plans and specifications and recommend that Final Payment be made. If no Consultant, ECWA Engineering should recommend the Final Payment be made.
- 3. Final Payment Application. The Amount Certified for Final Payment must be written on the Blue Authorization Form.

Insurance & Bond Requirements

- 4. Evidence that Insurance is in effect for two years. This is usually evident on the Certificates of Insurance that are issued.
- 5. Certification that Performance Bond is in effect for two years and Payment Bond is in effect for one year.

Release & AIA Forms

- 6. Form 507 Release by Corporation
- 7. AIA G706, Contractor's Affidavit of Payment of Debts and Claims
- 8. AIA G706A, Contractor's Affidavit of Release of Liens
- 9. AIA G707, Consent of Surety to Final Payment

EEO Requirements

- 10. M/WBE Utilization Report – Part D
- 11. Final Certified Payrolls

DISTRIBUTION:

To Accounts Payable

- After the Final Payment Application has been approved by the ECWA Board of Commissioners, a PDF copy can be emailed to accountspayable@ECWA.org

To ECWA Engineering

- A hard copy of the entire Final Payment Application should be placed in the files.
- A PDF copy of the Final Payment Application should be saved to the appropriate project folder on the network.

EEO:

- M/WBE Part D
- Certified Payrolls

APPLICATION AND CERTIFICATE FOR PAYMENT

Invoice #: 17963

To Owner: Erie County Water Authority
295 Main Street, Room 350

Project: 19- 925- Sturgeon Point WTP Sludge
Removal, Disposal, and Relocation

Application No. : 4 *Final*

Distribution to :
 Owner
 Architect
 Contractor

Buffalo, NY 14203

Period To: 11/30/2019

From Contractor: Mark Cerrone, Inc.
PO Box 3009
Niagara Falls, NY 14304

Via Architect:

Project Nos: 201900091

Contract For: Sturgen Point WTP Sludge Remov

Contract Date: 7/18/2019

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet is attached.

1. Original Contract Sum	\$524,740.00
2. Net Change By Change Order	-\$43,051.79
3. Contract Sum To Date	\$481,688.21
4. Total Completed and Stored To Date	\$481,688.21
5. Retainage:	
a. 0.00% of Completed Work	\$0.00
b. 0.00% of Stored Material	\$0.00
Total Retainage	\$0.00
6. Total Earned Less Retainage	\$481,688.21
7. Less Previous Certificates For Payments	\$457,603.80
8. Current Payment Due	\$24,084.41
Sales Tax (0.0000 % on 0.00)	0.00
Current Payment Due Plus Sales Tax	24,084.41
9. Balance To Finish, Plus Retainage	\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Mark Cerrone, Inc.

By:  Date: 2/13/2020

State of: New York County of: Niagara
Subscribed and sworn to before me this 13th day of February, 2020

Notary Public:  JONATHAN P. MONAGAN
My Commission expires: December 21, 2021 NOTARY PUBLIC-STATE OF NEW YORK
No. 01MO6215012
Qualified in Niagara County


ARCHITECT'S CERTIFICATE FOR PAYMENT My Commission Expires 12-21-2021

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 24,084.41

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By:  Date: 3/14/20

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$43,051.79
TOTALS	\$0.00	\$43,051.79
Net Changes By Change Order	-\$43,051.79	

CONTINUATION SHEET

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No. : 4

Application Date : 12/12/19

To: 11/30/19

Architect's Project No.: 201900091

Invoice # : 17963

Contract : 19- 925- Sturgeon Point WTP Sludge Removal, Disposal, and Relocation

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not in D or E)	G Total Completed and Stored To Date (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	I Retainage
			From Previous Application (D+E)	This Period In Place					
ACO 903	ACO #903 budget Adjustment prior to close	-43,051.79	0.00	-43,051.79	0.00	-43,051.79	100.00%	0.00	-2,152.59
01	Loading, Transportation, Testing, And Disposal Of Excavated	210,000.00	210,000.00	0.00	0.00	210,000.00	100.00%	0.00	0.00
02A	Lagoon No. 4 Cleanout Crew Labor And Equipment Relocation Of	132,000.00	264,000.00	-132,000.00	0.00	132,000.00	100.00%	0.00	-6,600.00
02B	Lagoon No. 4 Cleanout Crew Labor Relocation Of Sludge From L	38,400.00	0.00	38,400.00	0.00	38,400.00	100.00%	0.00	1,920.00
03A	For Furnishing A 30-Ton Excavator With Accessories	4,840.00	0.00	4,840.00	0.00	4,840.00	100.00%	0.00	242.00
03B	For Furnishing A 45,000-lb Wide Track Or Low Ground Pressure	2,880.00	0.00	2,880.00	0.00	2,880.00	100.00%	0.00	144.00
03C	For Furnishing A 20,000-lb Wide Track Or Low Ground Pressure	2,280.00	0.00	2,280.00	0.00	2,280.00	100.00%	0.00	114.00
03D	For Furnishing A 40-Ton Articulated Off-Road Dump Truck W/Ac	8,600.00	0.00	8,600.00	0.00	8,600.00	100.00%	0.00	430.00
03E	For Furnishing Hydraulically Driven Submersible Pump With 4-	5,520.00	5,520.00	0.00	0.00	5,520.00	100.00%	0.00	0.00
03F	For Furnishing Gasoline Driven Trash Pump With 2-inch Discha	1,800.00	0.00	1,800.00	0.00	1,800.00	100.00%	0.00	90.00
03G	For Furnishing Diesel Driven Dewatering Pump With 4-Inch Dis	3,200.00	0.00	3,200.00	0.00	3,200.00	100.00%	0.00	160.00
03H	For Furnishing An Operator At An Hourly Rate	4,360.00	0.00	4,360.00	0.00	4,360.00	100.00%	0.00	218.00
03I	For Furnishing A Dump Truck Operator/Laborer At An Hourly Ra	4,360.00	0.00	4,360.00	0.00	4,360.00	100.00%	0.00	218.00
03J	For Mobilization/Demobilization Of Large, Heavy, Off-Highway	6,500.00	0.00	6,500.00	0.00	6,500.00	100.00%	0.00	325.00
04	Cash Allowance For Site Access Security Services	25,000.00	2,168.21	22,831.79	0.00	25,000.00	100.00%	0.00	1,141.59
05	Contingency Allowance	75,000.00	0.00	75,000.00	0.00	75,000.00	100.00%	0.00	3,750.00
Grand Totals		481,688.21	481,688.21	0.00	0.00	481,688.21	100.00%	0.00	0.00

*To all to Whom these Presents Shall Come,
or may concern*

Greeting: Know Ye, That Mark Cerrone, Inc

P.O. Box 3009

Niagara Falls, NY 14304
NAME AND ADDRESS OF CORPORATION

For and in consideration of the sum of four hundred eighty one thousand six hundred
eighty eight and 21/100 *dollars (\$* 481,688.21 *)*,

lawful money of the United States of America to its duly authorized officer in hand paid by the
Erie County Water Authority,

the receipt whereof is hereby acknowledged, has remised, released, and forever discharged, and by
these presents does for itself, its successors and assigns, remise, release and forever discharge the
said Erie County Water Authority,

heirs, executors, administrators, successors and assigns, of and from all, and all manner of action
and actions cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning,
bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances,
trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in
equity, which against the said:

Mark Cerrone, Inc
(NAME OF CORPORATION)

ever had, now has or which it or its successors or assigns, hereafter can, shall or may have for, upon
or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of
the date of these presents.

In Presence of

in witness Whereof, the

Vice President _____ has caused its
corporate seal to be hereunto affixed, and
these presents to be signed by its duly authorized
officer this 3rd day of February _____

Two Thousand and 20 _____

George Churakos
By _____

State of New York)

County of Erie ss. Niagara

City of Niagara Falls

On this 3rd day of Februry _____, Two Thousand
and 20 _____, before me personally came George Churakos to

me personally known who, being by me duly sworn did depose and say that he/she resides in

Niagara Falls that he/she is

the Vice President of Mark Cerrone Inc, the corporation

described in and which executed the above Instrument, that he/she knows the seal of said

corporation; that it was so affixed to said Instrument is such corporate seal; that it was so affixed by

order of the Board of Directors of said corporation, and he/she signed his/her name thereto by like

order.

Jonathan P. Monagan
JONATHAN P. MONAGAN

JONATHAN P. MONAGAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MO6215012
Qualified in Niagara County
My Commission Expires 12-21-2021

AIA[®] Document G706[™] - 1994

Contractor's Affidavit of Payment of Debts and Claims

PROJECT: (Name and address)

Sturgeon Point WTP Sludge Removal, Disposal, and Relocation
722 Sturgeon Point Road
Derby, NY 14047

ARCHITECT'S PROJECT NUMBER:

201900091

OWNER:

ARCHITECT:

CONTRACTOR:

SURETY:

OTHER:

CONTRACT FOR: Sturgeon Point WTP Sludge Remov

TO OWNER: (Name and address)

Erie County Water Authority
295 Main Street, Room 350
Buffalo, NY 14203

CONTRACT DATED: 7/18/2019

STATE OF: New York

COUNTY OF: Niagara

The undersigned hereby certifies that, except as listed below, payment has been made in full and all obligations have otherwise been satisfied for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner or Owner's property might in any way be held responsible or encumbered.

EXCEPTIONS:

None

SUPPORTING DOCUMENTS ATTACHED HERETO:

1. Consent of Surety to Final Payment. Whenever Surety is involved, Consent of Surety is required. AIA Document G707, Consent of Surety, may be used for this purpose

Indicate Attachment Yes No

The following supporting documents should be attached hereto if required by the Owner:

1. Contractor's Release or Waiver of Liens, Conditional upon receipt of final Payment
2. Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.
3. Contractor's Affidavit of Release of Liens (AIA Document G706A).

CONTRACTOR: (Name and address)

Mark Cerrone, Inc.
PO Box 3009
Niagara Falls, NY 14304

BY:



(Signature of authorized representative)

George Lodick, Director of Operations
(Printed name and title)

Subscribed and sworn to before me this date:
30th day of January, 2020

Notary Public:

My Commission Expires:

1/17/24

ROXANNE FARRELL
NOTARY PUBLIC-STATE OF NEW YORK
No. 01FA6254214
Qualified in Niagara County
My Commission Expires 01-17-2024

AIA® Document G706A™ - 1994

Contractor's Affidavit of Release of Liens

PROJECT: (Name and address)

Sturgeon Point WTP Sludge Removal, Disposal, and Relocation
722 Sturgeon Point Road
Derby, NY 14047

ARCHITECT'S PROJECT NUMBER:

201900091

OWNER: ARCHITECT: CONTRACTOR: SURETY: OTHER: **CONTRACT FOR:** Sturgen Point WTP Sludge Remov**TO OWNER: (Name and address)**

Erie County Water Authority
295 Main Street, Room 350
Buffalo, NY 14203

CONTRACT DATED: 7/18/2019**STATE OF:** New York**COUNTY OF:** Niagara

The undersigned hereby certifies that to the best of the undersigned's knowledge, information and belief, except as listed below, the Releases or Waivers of Lien attached hereto include the Contractor, all Subcontractors, all suppliers of materials and equipment, and all performers of Work, labor or services who have or may have liens or encumbrances or the right to assert liens or encumbrances against any property of the Owner arising in any manner out of the performance of the Contract referenced above.

EXCEPTIONS:

None

CONTRACTOR: (Name and address)

Mark Cerrone, Inc.
PO Box 3009
Niagara Falls, NY 14304

SUPPORTING DOCUMENTS ATTACHED HERETO:

1. Contractor's Release or Waiver of Liens, Conditional upon receipt of final payment
2. Seperate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.

BY:

(Signature of authorized representative)

George Lodick, Director of Operations

(Printed name and title)

Subscribed and sworn to before me this date:

3rd day of February, 2020

Notary Public:



My Commission Expires:

1/17/24

ROXANNE FARRELL
NOTARY PUBLIC-STATE OF NEW YORK
No. 01FA6254214
Qualified in Niagara County
My Commission Expires 01-17-2024

CONSENT OF SURETY TO FINAL PAYMENT

AIA Document G707 Executed in Triplicate
in Conjunction with Bond #1073621

OWNER
ARCHITECT
CONTRACTOR
SURETY
OTHER

TO OWNER:
(Name and address)

ERIE COUNTY WATER AUTHORITY
295 Main Street, Room 350
Buffalo, New York 14203

ARCHITECT'S PROJECT NO.: 201900091

CONTRACT FOR: Sludge Removal

CONTRACT DATED: July 11, 2019

PROJECT:
(Name and address)

Erie County Water Authority, Sturgeon Point WTP
Sludge Removal, Disposal, and Relocation

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the
(Insert name and address of Surety)

THE HANOVER INSURANCE COMPANY
440 Lincoln Street
Worcester, Massachusetts 01653-0002

, SURETY,

MARK CERRONE, INC.
2368 Maryland Avenue,
Niagara Falls, New York 14305-7301

, CONTRACTOR,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety
of any of its obligations to

(Insert name and address of Owner)


ERIE COUNTY WATER AUTHORITY
295 Main Street, Room 350
Buffalo, New York 14203

, OWNER,

as set forth in said surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: February 18, 2020
(Insert in writing the month followed by the numeric date and year.)

THE HANOVER INSURANCE COMPANY
(Surety)


(Signature of authorized representative)

Candace J. Casey-Wnek, Attorney-in-Fact
(Printed name and title)

Attest:
(Seal):



THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

POWER OF ATTORNEY

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.

KNOW ALL PERSONS BY THESE PRESENTS:

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,

Candace J. Casey-Wnek, JoAnn Bayne, Andrew J. Tokasz, April A. Adams, Michael Dean, Anthony Biagiotti, Cynthia A. Scharf, Lauren Bordonaro and/or Lawrence DiGiulio

Of Key Insurance & Benefits Services, Inc. of Buffalo, NY each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

Any such obligations in the United States, not to exceed Seventy Million and No/100 (\$70,000,000) in any single instance

That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 – The Hanover Insurance Company; Adopted April 14, 1982 – Massachusetts Bay Insurance Company; Adopted September 7, 2001 – Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 26th day of September, 2018.

The Hanover Insurance Company
Massachusetts Bay Insurance Company
Citizens Insurance Company of America

John C. Roche, EVP and President

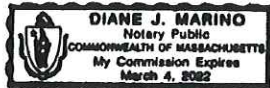


The Hanover Insurance Company
Massachusetts Bay Insurance Company
Citizens Insurance Company of America

James H. Kawiecki, Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this 26th day of September, 2018 before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.


Diane J. Marino, Notary Public
My Commission Expires March 4, 2022

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 18th day of February, 2020

CERTIFIED COPY

Theodore G. Martinez, Vice President

MINORITY BUSINESS ENTERPRISE UTILIZATION REPORT - PART D

FINAL CERTIFICATION OF EXPENDITURES TO MBE's

(to be completed by the prime CONTRACTOR and submitted with the request for final payment)

CONTRACTOR: Mark Cerrone

CONTRACT: 201900091

MBE	TOTAL AMOUNT EXPENDED
Executive Investigation Svcs 1660 Kensington Ave Cheektowaga, NY 14215 (MBE)	\$ 20,649.6
Dig It of New York 3529 Broadway Cheektowaga, NY 14227 (MBE)	\$ 68,000.00

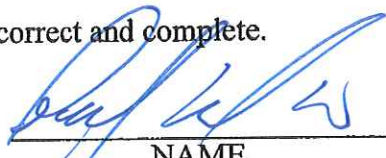
TOTAL OF ALL MBE SUB-CONTRACTS \$ 70,064.96

AMOUNT OF CONTRACT 481,688.21

FINAL MBE PERCENTAGE 14.545

I, George Lodick, as an official representative of MARK Cerrone Inc.,

do hereby certify that the information listed above is correct and complete.



 NAME
Director of Operations

 TITLE
2/19/20

 DATE



MARKCER-03

DSTETLER

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/13/2019

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 License # BR-632443 Lawley Construction Solutions 361 Delaware Avenue Buffalo, NY 14202	CONTACT NAME: PHONE (A/C, No, Ext): 1 (716) 849-8618 FAX (A/C, No): 1 (716) 849-8291 E-MAIL ADDRESS: <table style="width: 100%;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A : Zurich American Insurance Co</td> <td>16535</td> </tr> <tr> <td>INSURER B : Merchants Mutual Ins Co</td> <td>23329</td> </tr> <tr> <td>INSURER C : American Zurich Insurance Co</td> <td>40142</td> </tr> <tr> <td>INSURER D : Allied World Assurance Co</td> <td>19489</td> </tr> <tr> <td>INSURER E : Hanover Insurance Company</td> <td>22292</td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Zurich American Insurance Co	16535	INSURER B : Merchants Mutual Ins Co	23329	INSURER C : American Zurich Insurance Co	40142	INSURER D : Allied World Assurance Co	19489	INSURER E : Hanover Insurance Company	22292	INSURER F :	
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INSURED Mark Cerrone Inc PO Box 3009 Niagara Falls, NY 14304															

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

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

INSR LTR	TYPE OF INSURANCE	ADDL. SUBR. INSD. WVD.	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	X X	GLO450358307	05/01/2019	05/01/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X X	BAP450358407	05/01/2019	05/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	X X	CUP0001363	05/01/2019	05/01/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N N/A	WC450358207	05/01/2019	05/01/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Pollution Liability	X X	03095669	05/01/2019	05/01/2020	6,000,000
E	Installation/BR		RHSD552538	05/01/2019	05/01/2020	Ded \$1000 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Project: Sturgeon Point WTP Sludge Removal, Disposal and Relocation #201900091 (MCI Job #19-925)

Erie County Water Authority, its officers, agents and employees are additional insured on a primary & non-contributory basis with respects to the general liability, automobile, umbrella and pollution as required by executed written contract. A waiver of subrogation applies in their favor as required by executed written contract under the general liability, automobile, umbrella and pollution.

CERTIFICATE HOLDER**CANCELLATION**

Erie County Water Authority 295 Main Street, Suite 350 Buffalo, NY 14203	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
---	---

David Patton

From: Debbie Stetler <DStetler@lawleyinsurance.com>
Sent: Monday, March 30, 2020 3:30 PM
To: David Patton
Cc: Roxanne Farrell; mount@markcerrone.com
Subject: FW: MCI Issues with Insurance to Erie County Water Authority
Attachments: 0700-17_Part 5.04-B.7.pdf; ECWA Job #19-925.pdf

This message was sent securely using Zix®

Hello David,

I am the agent for Mark Cerrone and am responding to your request regarding continuing insurance coverage. Mark Cerrone is aware of the contract requirement that they keep coverage in place for two years after final payment.

I cannot evidence policy terms that have not been bound at this time, Cerrone will provide renewal certificates to the ECWA at the 4/1/2020 and 4/1/2021 renewal.

If you have any further questions please let me know.

Debbie

Debra Stetler, ACSR, CRIS | *Senior Account Manager - Construction Insurance & Bonds*
Lawley | [INSURANCE](#) | [EMPLOYEE BENEFITS](#)
p 716.849.8654 | f 716.849.8291
dstetler@lawleyinsurance.com
[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [News](#)
361 Delaware Ave, Buffalo, New York 14202

For information and resources from Lawley regarding COVID-19, please [click here](#)



From: Roxanne Farrell [mailto:rstroke@markcerrone.com]
Sent: Monday, March 30, 2020 12:08 PM
To: Debbie Stetler
Subject: MCI Issues with Insurance to Erie County Water Authority

Hi Debbie, please review below email stating our insurance certs (attached) don't have the correct language for 2 years of coverage after completion of work per attached requirements.

Thanks,

Roxanne Farrell

Contract Administrator

Mark Cerrone, Inc.
716-282-5244
rfarrell@markcerrone.com

From: Lori Mount <lmount@markcerrone.com>
Sent: Monday, March 30, 2020 11:57 AM
To: Roxanne Farrell <rstroke@markcerrone.com>
Subject: FW: 19- 925- Executed AIA APP #4 Final and paperwork - 23 | VP: IVDPNV5E3U

Happy Monday to you
Is this something you would handle?
If not please let me know
Thanks
Lori

From: David Patton [<mailto:dpatton@ecwa.org>]
Sent: Monday, March 30, 2020 10:25 AM
To: Lori Mount <lmount@markcerrone.com>
Cc: James Larcara <JLarcara@markcerrone.com>; Joe Nye <jnye@markcerrone.com>; David Patton <dpatton@ecwa.org>
Subject: RE: 19- 925- Executed AIA APP #4 Final and paperwork - 23 | VP: IVDPNV5E3U

CAUTION: This email originated from outside of Mark Cerrone! Do not click links or open attachments unless you recognize the sender and know the content is safe! If you are unsure, verify with the sender by phone.

Lori,

Hope all is well and healthy.

I have been told that you are missing the insurance certificate indicating coverage for an additional 2-yr from Final Payment. See attached requirement as shown Section 0700, page 17.

Please provide copy showing coverage extending until April 2022.

Thanks for you help.

David Patton, PE
Sr. Production Engineer
Erie County Water Authority
3030 Union Road
Buffalo, New York 14227-1097
Phone: (716) 685.8229
mobile: (716) 984.8397
email: dpatton@ecwa.org



Providing Water You Can Trust.

From: lmount@markcerrone.com <lmount@markcerrone.com>
Sent: Thursday, March 12, 2020 4:41 PM
To: David Patton <dpatton@ecwa.org>
Cc: jlarcara@markcerrone.com; jnye@markcerrone.com
Subject: 19- 925- Executed AIA APP #4 Final and paperwork - 23 | VP: IVDPNV5E3U

Attached is a copy of MCI's current executed payment application and final paperwork you requested. Hard copies will be sent via US Mail. If you have any questions or concerns please contact the Project Team.

Thank You,

Lori A. Mount

MARKCERRONE, INC

Main Office

2368 Maryland Avenue
Niagara Falls, NY 14305

Mailing Address

P.O. Box 3009
Niagara Falls, NY 14304
Office:(716) 282-5244 X 112
Fax:(716) 282-5245

www.markcerrone.com

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 06/13/2019

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.

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.

Table with 2 main sections: PRODUCER (License # BR-632443, Lawley Construction Solutions) and INSURED (Mark Cerrone Inc). Includes contact info for Zurich American Insurance Co and other insurers.

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

Main table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liability, Workers Compensation, Pollution Liability, and Installation/BR.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Project: Sturgeon Point WTP Sludge Removal, Disposal and Relocation #201900091 (MCI Job #19-925) Erie County Water Authority, its officers, agents and employees are additional insured on a primary & non-contributory basis with respects to the general liability, automobile, umbrella and pollution as required by executed written contract.

Table with 2 columns: CERTIFICATE HOLDER (Erie County Water Authority) and CANCELLATION (Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions). Includes an authorized representative signature.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

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 this endorsement.

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

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

<p>Named Insured: MARK CERRONE, INC.</p> <p>Endorsement Effective Date:</p>

SCHEDULE

<p>Name Of Person(s) Or Organization(s): ANY PERSON OR ORGANIZATION TO WHOM OR TO WHICH YOU ARE REQUIRED TO PROVIDE ADDITIONAL INSURED STATUS OR ADDITIONAL INSURED STATUS ON A PRIMARY, NON-CONTRIBUTORY BASIS, IN WRITTEN CONTRACT OR WRITTEN AGREEMENT EXECUTED PRIOR TO LOSS, EXCEPT WHERE SUCH CONTRACT OR AGREEMENT IS PROHIBITED BY LAW</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.



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Coverage Extension Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
BAP 4503584 07	5/01/2019	5/01/2020				

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Business Auto Coverage Form
Motor Carrier Coverage Form

A. Amended Who Is An Insured

1. The following is added to the **Who Is An Insured** Provision in **Section II – Liability Coverage**:

The following are also "insureds":

- a. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you.
- b. Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- c. Anyone else who furnishes an "auto" referenced in Paragraphs **a.** and **b.** above.
- d. Any person(s) or organization(s) where required by written contract or written agreement executed prior to any "accident" provided the "accident" arises out of operations contemplated by such contract or agreement.

2. The following is added to the **Other Insurance** Provision in the **Conditions** Section:

Coverage for any person(s) or organization(s) where required by written contract or written agreement executed prior to any "accident" will apply on a primary basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the coverage form.

B. Amendment – Supplementary Payments

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Liability Coverage** are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

C. Fellow Employee Coverage

The **Fellow Employee** Exclusion contained in **Section II – Liability Coverage** does not apply.

D. Driver Safety Program Physical Damage Coverage

The following is added to Paragraph **2.** in the **Exclusions** of **Section III – Physical Damage Coverage** of the Business Auto Coverage Form and Paragraph **2.b.** in the **Exclusions** of **Section IV – Physical Damage Coverage** of the Motor Carrier Coverage Form:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

E. Towing and Labor

The following is added to Paragraph **A.2.** of the **Physical Damage Coverage** Section:

We will pay up to \$75 for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

F. Extended Glass Coverage

The following is added to Paragraph **A.3.a.** of the **Physical Damage Coverage** Section:

If glass must be replaced, the deductible will be \$100 or the deductible shown in the Declarations, whichever is less. If glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

G. Hired Auto Physical Damage – Increased Loss of Use Expenses

The **Loss Of Use Expenses** Provision of the **Physical Damage Coverage** Section is replaced by the following:

Loss Of Use Expenses

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

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

However, the most we will pay for any expenses for loss of use is \$100 per day, to a maximum of \$3000.

H. Personal Effects Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

Personal Effects Coverage

a. We will pay up to \$750 for "loss" to personal effects which are:

- (1) Personal property owned by an "insured"; and
- (2) In or on a covered "auto".

b. Subject to Paragraph **a.** above, the amount to be paid for "loss" to personal effects will be based on the lesser of:

- (1) The reasonable cost to replace; or
- (2) The actual cash value.

c. The coverage provided in Paragraphs **a.** and **b.** above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:

- (1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.
- (2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.
- (3) Paintings, statuary and other works of art.
- (4) Contraband or property in the course of illegal transportation or trade.
- (5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

I. Tapes, Records and Discs Coverage

1. The Exclusion in Paragraph **B.4.a.** of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph **B.2.c.** of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form do not apply.
2. The following is added to Paragraph **1.a. Comprehensive Coverage** under the **Coverage** Provision of the **Physical Damage Coverage** Section:

We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

- (a) Are the property of an "insured"; and
- (b) Are in a covered "auto" at the time of "loss".

The most we will pay for such "loss" to tapes, records, discs or other similar devices is \$500. The **Physical Damage Coverage Deductible** Provision does not apply to such "loss".

J. Airbag Coverage

The Exclusion in Paragraph **B.3.a.** of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph **B.3.a.** of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form do not apply to the accidental discharge of an airbag.

K. Two or More Deductibles

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

If an accident is covered both by this policy or coverage form and by another policy or coverage form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

1. If the deductible on this policy or coverage form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible on this policy or coverage form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

The final deductible will always be in compliance with Section 3411(k) of New York insurance law.

L. Physical Damage – Comprehensive Coverage – Deductible

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

Regardless of the number of covered "autos" damaged or stolen, the maximum deductible that will be applied to Comprehensive Coverage for all "loss" from any one cause is \$5,000.

M. Temporary Substitute Autos – Physical Damage

1. The following is added to **Section I – Covered Autos**:

Temporary Substitute Autos – Physical Damage

If Physical Damage Coverage is provided by this coverage form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

1. Breakdown;
2. Repair;
3. Servicing;
4. "Loss"; or
5. Destruction.

2. The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

Temporary Substitute Autos – Physical Damage

We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

N. Amended Duties In The Event Of Accident, Claim, Suit Or Loss

Paragraph **a.** of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition is replaced by the following:

- a.** In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative notice of the "accident", claim, "suit" or "loss" as soon as reasonably possible. However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as reasonably possible:

- (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

O. Waiver of Transfer Of Rights Of Recovery Against Others To Us

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

P. Employee Hired Autos – Physical Damage

Paragraph **b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **f.** of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

Q. Unintentional Failure to Disclose Hazards

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this coverage form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this coverage form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

R. Hired Auto – World Wide Coverage

Paragraph **e.(1)** of the **Policy Period, Coverage Territory** Condition is replaced by the following:

(1) A covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less; and

S. Bodily Injury Redefined

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

All other terms and conditions of this policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

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

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

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

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

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

This insurance does not apply to:

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

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

2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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

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

1. Required by the contract or agreement described in Paragraph **A.1.**; or

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

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



ZURICH[®]

Additional Insured – Automatic – Owners, Lessees Or Contractors

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO 4503583 07	5/01/2019	5/01/2020		48712000	INCL	

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured:

Address (including ZIP Code):

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

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

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, the insurance afforded to such additional insured:

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

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

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

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

C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – Commercial General Liability Conditions:

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section IV – Commercial General Liability Conditions:

Primary and Noncontributory insurance

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

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – Commercial General Liability Conditions:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – Limits Of Insurance:

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

1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

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

All other terms and conditions of this policy remain unchanged.

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
AS REQUIRED BY WRITTEN CONTRACT WITH THE INSURED	
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 shown in the Declarations;
- whichever is less.

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

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):

A GENERAL AGGREGATE LIMIT APPLIES TO EACH CONSTRUCTION PROJECT WHERE THE NAMED INSURED IS PERFORMING OPERATIONS, HOWEVER, A GENERAL AGGREGATE LIMIT DOES NOT APPLY TO ANY CONSTRUCTION PROJECT WHERE THE NAMED INSURED IS PERFORMING OPERATIONS THAT ARE INSURED UNDER A WRAP UP OR ANY OTHER CONSOLIDATED OR SIMILAR INSURANCE PROGRAM.

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.

- 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.

Waiver Of Subrogation (Blanket) Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
GLO 4503583 07	5/01/2019	5/01/2020		48712000	\$ INCL	\$

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us Condition**:

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery. This waiver of rights shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest.

Endorsement No: 8
This endorsement, effective: 5/01/2019
(at 12:01 A.M. standard time at the address of the Named Insured as shown in Item 1. of the Declarations)
forms a part of Policy No: 0309-5669
Issued to: Mark Cerrone, Inc.
by: Allied World Assurance Company (U.S.) Inc.

OTHER INSURANCE AMENDMENT

It is hereby agreed that **SECTION V – CONDITIONS, 11. Other Insurance**, is deleted in its entirety and replaced with the following:

11. 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 other insurance is stated to be primary, contributory, excess, contingent or otherwise.
 - b. With regard to Coverage 2 - Contractors Pollution Liability, as set forth in SECTION I – INSURING AGREEMENTS, this insurance is primary except as otherwise provided below.
 - c. Solely with regard to insurance afforded under SECTION I - INSURING AGREEMENTS, 2.Contractors Pollution Liability, a. Contractors Operations Pollution Liability, when this insurance is primary, this insurance is also non-contributory if the **named insured** and **client** have so agreed in a written contract executed prior to the commencement of **your work** for the **client** under such written contract.
 - d. Notwithstanding anything in this endorsement to the contrary, 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.
 - e. When this insurance is primary and there is other valid and collectible insurance that is also primary, our obligation to the **insured** is as follows:
 - (i) 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

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.

Class Code: 2-14055

- (ii) 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.

However, this paragraph e. does not apply if the insurance afforded under SECTION I - INSURING AGREEMENTS, 2. Contractors Pollution Liability, a. Contractors Operations Pollution Liability is primary and non-contributory in accordance with the terms of paragraph c. above.

- f. Notwithstanding anything in this endorsement to the contrary, 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.

All other terms and conditions of this policy remain unchanged.



By:

Joseph Cellura

Title:

President, North American Casualty Division

Date:

5/01/2019



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.

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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 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 effective date of this policy; 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
 - (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 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 an **insured contract**, provided the **bodily injury, property damage, environmental damage or emergency response expense** 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) to the **insured's** good faith reliance upon the written advice of qualified outside counsel received in advance of such compliance or; (2) good faith efforts at mitigation of **emergency response expense**.

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**

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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.

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**

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- a. Arising from any **claims** made by any **insured** against any other **insured**; or
- b. Any **claims** brought against any individual or entity or its subrogees or assignees: (1) That wholly or partially owns or operates you; or (2) In which you have an ownership interest in excess of 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, clean-up 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**.

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.

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, clean-up 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 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**.

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**

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.

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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**

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 the retention amounts, Exclusion 11. Insured verses 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 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** 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;
- (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.
- (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**.

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:

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.

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, disease, including death resulting therefore or mental anguish, emotional distress or shock sustained by any person and associated medical and environmental monitoring for such person.
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 expense 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:
- Your work** to be performed under a contract is completed; or
 - Your work** to be performed at a **project site** has been completed; or
 - When a portion of **your work** has been put to its intended use.
- 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:
- Monetary judgment, awards or settlement of compensatory damages for **bodily injury, property damage, environmental damage or clean-up costs**;
 - Clean-up costs** including **emergency clean-up costs**;
 - 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;
 - 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;
 - Civil fines, penalties, assessed against the **insured**, but only where insurance coverage for such fines and penalties is allowable by law;
 - Restoration costs**; and
 - 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** means **clean-up costs** incurred by the **named insured** in response to a **pollution incident** that:
- Presents an imminent and substantial threat to human health or the environment, or both; or
 - 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.
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, environmental damage or emergency response expense**, 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, environmental damage or emergency response expense**. 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 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**:
- That is deemed by the Company, to be reasonable and necessary to prevent **professional damages**; and
 - 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
 - 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
 - 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

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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 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, awards 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 , 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 does 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 redesign; or; (4) Any of the **insured's** overhead, mark-up or profit.

31. **Professional services** means 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, 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**.

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.
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**.

Merchants Mutual Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Primary and Non-Contributing Insurance

(Third Party)

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein. (The following information is required only when this endorsement is issued subsequent to preparation of the Policy.)

INSURED: MARK CERRONE INC

ENDORSEMENT EFFECTIVE: 5/01/2019

(12:01 a.m.)

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

Section IV Conditions, item 5, Other Insurance and all sub-parts thereof, is deleted and replaced with the following as respects the Additional Insured shown below:

Section IV - Conditions

5. Other Insurance

With respect to the Additional Insured shown below, the insurance provided by this policy is excess only over such coverage as is provided the Additional Insured by "underlying insurance" listed in the schedule of "underlying insurance" of this 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.

The Third Party to whom this endorsement applies is:

AS REQUIRED BY WRITTEN CONTRACT AND PROVIDED BY THE UNDERLYING INSURANCE.

Absence of a specifically named Third Party above means that the provisions of this endorsement apply as required by written contractual agreement with any Third Party for whom you are performing work.

All other terms and conditions of this policy remain the same.

MERCHANTS MUTUAL INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY FOLLOW FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

The following supersedes any provisions to the contrary.

It is agreed that with respect to Commercial General Liability, this insurance does not apply unless the liability is covered:

- A.** By valid and collectible underlying insurance as shown in the Schedule of Underlying Insurance; and
- B.** Only for such hazards which are covered by the underlying Commercial General Liability Insurance.

THIS ENDORSEMENT ~~CHANGES~~ CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
FOLLOW FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

This insurance applies to:

PER PROJECT AGGREGATE

SECTION III-LIMITS OF INSURANCE IS AMENDED AS FOLLOWS:

THE AGGREGATE LIMIT AS DESCRIBED IN PARAGRAPH 2 APPLIES

SEPARATELY TO EACH OF YOUR PROJECTS AWAY FROM PREMISES OWNED

BY OR RENTED TO YOU.

Coverage is provided only if valid "underlying insurance" for the above listed coverage exists or would have existed but for the exhaustion of the underlying limits for "bodily injury", "property damage", and "personal injury". Coverage provided will follow the provisions, exclusions and limitations of the "underlying insurance".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

AS REQUIRED BY WRITTEN CONTRACT AND PROVIDED BY THE UNDERLYING
INSURANCE .

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

The **Transfer Of Rights Of Recovery Against Others To Us** Condition under **Section IV - Conditions** 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 payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

From: [Lavonya Lester](#)
To: [David Patton](#)
Subject: RE: Mark Cerrone Final Pay App
Date: Monday, April 13, 2020 8:38:12 AM

Ok for final payment.

Thanks

Lavonya

From: David Patton <dpatton@ecwa.org>
Sent: Thursday, April 9, 2020 8:12 AM
To: Lavonya Lester <llester@ecwa.org>
Cc: Justyna M. Falkowski <jfalkowski@ecwa.org>
Subject: Mark Cerrone Final Pay App

Lavonya,

Please find attached final payment application for Mark Cerrone for Sturgeon Point Sludge Removal, Project No. 201900091 (i.e. Contract No. 19-11-07) and is for the retainage held during the project, of which includes their final MWBE forms (i.e. Part D, page 9/59) that require your approval.

I assume no issues as this is for the retainage held from previously approved payment applications, correct?

Please let me know.

Thanks for your help.

David Patton, PE

Sr. Production Engineer

Erie County Water Authority

3030 Union Road

Buffalo, New York 14227-1097

Phone: (716) 685.8229

mobile: (716) 984.8397

email: dpatton@ecwa.org



Providing Water You Can Trust.
