



**MEMORANDUM  
FINANCE DEPARTMENT**

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**TO:** Ed Lavallee, City Manager *8/29/17*

**THRU:** Linda Senne, Finance Director *LS*

**FROM:** Peter Boers, Procurement Manager

**DATE:** August 25, 2017

**MEETING DATE:** September 12, 2017

**SUBJECT:** Approval of Pre-Construction Contract with Magnum Builders of Sarasota, Inc. in the amount of \$66,619.50 for the Water Treatment Plant Building Improvements

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**Background:**

A Request for Qualifications (RFQ) for Construction Manager at Risk Services was distributed on February 8, 2017 via Onvia DemandStar. The RFQ included minimum criteria to participate in the process, scope of services, and scoring categories/points for final award tabulation. Five (5) proposals were received on March 3, 2017 from:

1. A2 Group, Inc.
2. Gates/Butz Institutional Construction, Inc.
3. Halfacre Construction Company
4. Magnum Builders of Sarasota, Inc.
5. Warton-Smith Construction Group, Inc.

On April 17, 2017, the evaluation committee met to discuss and evaluate the Proposals. The proposals have been analyzed and scored by the Selection Committee in accordance with the criteria stated in the RFQ, which included the following chart with points, awarded as follows:

SELECTION CRITERIA	WEIGHT %
Project team's professional qualifications, and key personnel experience.	40%
Project team experience with governments of similar size to the City.	40%
Local Business Preference	10%
Completeness of RFQ submittal	10%

The Evaluation Committee scored the Proposals in the first two criteria. Procurement scored points for Local Preference and Responsiveness.

The Proposals were ranked in the following order:

	<b>Sum of Ranks</b>	<b>Rank</b>
<b>Magnum Builders of Sarasota, Inc.</b>	<b>4</b>	<b>1</b>
A2 Group, Inc.	10	2
Halfacre Construction Construction	13	3
Warton-Smith, Inc. Construction Group	15	4
Gates Butz Institutional Construction, LLC	18	5

A Notice of Action was posted on April 18, 2017. Staff has negotiated the attached contract for Pre-Construction Services to include value engineering, cost estimates, constructability review and development of a Guaranteed Maximum Price (GMP) for the Project. An amendment to this contract to accept the GMP will be brought forward at a later date.

**Requested Action:**

Approval of Pre-Construction Contract with Magnum Builders of Sarasota, Inc. in the amount of \$66,619.50 for the Water Treatment Plant Building Improvements

**City Attorney Review:**

The City Attorney has reviewed this document and finds no legal objections.

**Risk Management Review:**

The Risk Manager has reviewed this document and finds no risk management objections.

**Funds Availability:**

Funds are available in the City's Water and Sewer Utility Fund0

Attachments

Cc: Linda Senne, Finance Director



PROCUREMENT DEPARTMENT - CITY OF VENICE, FLORIDA  
RESPONSE SHEET  
RFQ 3056-17  
DUE: March 8, 2017 @ 2:00 PM

#	Firm Name	Address	Phone #	Contact	E-mail
1	A2 Group Inc.	A2 Group, Inc. 18245 Paulson Drive, Suite 111 Port Charlotte, FL 33954	941-206-2288	Alberto G. Ribas, P.E., R.L.A. AJ Ribas	<a href="mailto:ribasaj@a2group.com">ribasaj@a2group.com</a>
2	Gates Butz Institutional Construction, LLC	Gates Butz Institutional Construction, LLC 27599 Riverview Center Blvd., Suite 205 Bonita Springs, FL 34134	239-593-3777	John Hayes, President	
3	Halfacre Construction Company	Halfacre Construction Company 70150 Professional Parkway East Sarasota, FL 34240	941-907-9099	John J. Cox III Craig Emery Reed Giasson	<a href="mailto:jackcox@halfacreco.com">jackcox@halfacreco.com</a> <a href="mailto:cemery@halfacreco.com">cemery@halfacreco.com</a> <a href="mailto:rgiasson@halfacre.com">rgiasson@halfacre.com</a>
4	Magnum Builders of Sarasota, Inc.	Magnum Builders of Sarasota, Inc. 4545 Northgate Court Sarasota, FL 34234		Clint Riley, Sr.	
5	Warton-Smith, Inc. Construction Group	Warton-Smith, Inc. Construction Group 252 West Marion Ave, Unit 1123 Punta Gorda, FL 33950	813-288-0068	Tom Iarossi	

## Summary Score Sheet

[illegible]

**RFQ 3056-17**  
**Individual Score Sheet**

	Project team's professional qualifications and key personnel experience.	Project team experience with governments of similar size to the City	Local Business Preference (scored by procurement)	Completeness of RFQ submittal	Total Points
	40 Points	40 Points	10 Points	10 Points	100 Points
A2 Group Inc.	30	20	10	10	70
Gates Butz Institutional Construction, LLC	35	25	10	8	78
Halfacre Construction Company	35	30	10	10	85
Magnum Builders of Sarasota, Inc.	35	35	10	10	90
Warton-Smith, Inc. Construction Group	25	20	10	10	65

**RFQ 3056-17**  
**Individual Score Sheet**

	Project team's professional qualifications and key personnel experience.	Project team experience with governments of similar size to the City	Local Business Preference (scored by procurement)	Completeness of RFQ submittal	Total Points
	40 Points	40 Points	10 Points	10 Points	100 Points
A2 Group Inc.	32	32	10	10	84
Gates Butz Institutional Construction, LLC	30	24	10	8	72
Halfacre Construction Company	32	24	10	10	76
Magnum Builders of Sarasota, Inc.	36	32	10	10	88
Warton-Smith, Inc. Construction Group	32	28	10	10	80

**RFQ 3056-17**  
**Individual Score Sheet**

	Project team's professional qualifications and key personnel experience.	Project team experience with governments of similar size to the City	Local Business Preference (scored by procurement)	Completeness of RFQ submittal	Total Points
	40 Points	40 Points	10 Points	10 Points	100 Points
A2 Group Inc.	35	40	10	10	95
Gates Butz Institutional Construction, LLC	30	30	10	8	78
Halfacre Construction Company	35	35	10	10	90
Magnum Builders of Sarasota, Inc.	40	38	10	10	98
Warton-Smith, Inc. Construction Group	35	30	10	10	85

**RFQ 3056-17**  
**Individual Score Sheet**

	Project team's professional qualifications and key personnel experience.	Project team experience with governments of similar size to the City	Local Business Preference (scored by procurement)	Completeness of RFQ submittal	Total Points
	40 Points	40 Points	10 Points	10 Points	100 Points
A2 Group Inc.	35	36	10	10	91
Gates Butz Institutional Construction, LLC	33	30	10	8	81
Halfacre Construction Company	35	34	10	10	89
Magnum Builders of Sarasota, Inc.	37	35	10	10	92
Warton-Smith, Inc. Construction Group	35	35	10	10	90





**CITY OF VENICE**  
401 W. Venice Avenue Venice, FL. 34285

## NOTICE OF ACTION

**REQUEST FOR POPOSALS (RFQ) # 3056-17**

**RFP TITLE:** Construction Management Services for City of Venice Water Treatment Plant Building Improvements

**SUBMITTAL DEADLINE:** March 8, 2017

**SUBJECT:** NOTICE OF RECOMMENDED AWARD

Based on Evaluation Committee's review of proposals on April 17, 2017. The City of Venice (City) has ranked proposers responding to the above referenced RFQ as follows:

Firm	Sum of Ranks	Rank
<b>Magnum Builders of Sarasota, Inc.</b>	<b>4</b>	<b>1</b>
A2 Group, Inc.	10	2
Halfacre Construction Construction	13	3
Warton-Smith, Inc. Construction Group	15	4
Gates Butz Institutional Construction, LLC	18	5

It is the City's intent to initiate contract negotiations with the top ranked firm **(in bold font above)**.

By:   
Peter A. Boers, Procurement Manager

Date: 04/18/2017

**AGREEMENT  
FOR  
CONSTRUCTION MANAGER AT RISK  
SERVICES**

**THIS AGREEMENT** for Construction Manager at Risk Services (Agreement) is made and entered into as of the date of execution by both parties, by and between CITY OF VENICE, a political subdivision of the State of Florida, hereinafter referred to as the "CITY" and Magnum Builders of Sarasota, Inc., hereinafter referred to as "CONSTRUCTION MANAGER".

**WITNESSETH**

**WHEREAS** the CITY intends to undertake the Project described as "Construction Management Services for City of Venice Water Treatment Plant Building Improvements", and employ the CONSTRUCTION MANAGER in connection with this Project; and,

**WHEREAS**, the CITY issued Request for Qualifications (RFQ) #3056-17 on February 8, 2017; and,

**WHEREAS**, the CITY evaluated and ranked the proposals received in accordance with applicable Florida statutes, CITY ordinances and policies, and found the CONSTRUCTION MANAGER qualified to perform the necessary services, and,

**WHEREAS**, the CONSTRUCTION MANAGER has reviewed the services required pursuant to the Agreement and is qualified, willing and able to provide and perform all such services in accordance with the terms of the Agreement; and,

**WHEREAS**, the services to be provided under this Agreement will be divided into two (2) or more Phases, the first of which, Phase One: Preconstruction Services, is authorized by this Agreement; and,

**WHEREAS**, subsequent Phases, if authorized, shall encompass services, as required to complete construction of the Project, as contemplated by the RFQ, and shall be authorized solely by written Amendments(s) to this Agreement.

**NOW, THEREFORE**, the CITY and the CONSTRUCTION MANAGER, in consideration of the mutual covenants contained herein, do agree as follows:

**I. RECITALS**

The above recitals are true and correct and are hereby incorporated into this Agreement.

## II. DEFINITIONS

- A. Administrative Agent: The Administrative Agent named below is designated to do all things necessary to properly administer the terms and conditions of this Agreement. The Administrative Agent is the CITY'S staff representative for the Project, and is responsible for issuing CITY approvals as necessitated during the Project, and receiving and dispensing materials and information relative to the Project on behalf of the CITY. The Administrative Agent will be responsible for the following tasks as related to the Project:
1. Examine reports, sketches, drawings, estimates, proposals, and other documents presented by the CONSTRUCTION MANAGER, for the purpose of issuance of those approvals necessary to support preparation and submission of invoices by the CONSTRUCTION MANAGER.
  2. Provide instructions, receipt of information, interpretation and definition of CITY policies and decisions with respect to design, construction, materials, and other matters pertinent to the work covered by this Agreement.
  3. Provide review and written confirmation of all documents and payment requests.
- B. Allowances: Generally, the term "Allowance" shall mean a particular line item or unit cost budget. .
- C. Architect: The Design Consultant for the Project is Fawley Bryant Architecture, referred to herein as Design Consultant.
- D. Construction Documents: Final working drawings and specifications (i) meeting all applicable current federal laws, state and local codes, to obtain necessary governmental approvals and permits; and (ii) as required to construct the complete and fully operational facility.
- E. Final Completion: The point in the progress of the Work when all Work related to the Project has been completed by the CONSTRUCTION MANAGER and accepted by the CITY. Warranties called for by this Agreement or by the Construction Documents shall commence on the date of issuance for the Final Completion.
- F. GMP: The Guaranteed Maximum Price shall be the sum of the Construction Manager's Cost of Work and the Construction Manager's fee for the performance and completion of all the services for the Construction Phase of the Project, including but not limited to the completion of the Work in accordance with the Construction Documents.
- G. Preconstruction Phase Fee: The sum to be paid for providing all Preconstruction Phase services, as set forth in this Agreement, and as contemplated in the RFQ.

- H. Project: The Project shall mean the City of Venice Water Treatment Plant Building Improvements located at 200 Warfield Avenue, Venice, FL 34285, including improvements as described and defined in the Construction Documents.
- I. Project Phases: The Project is divided into a Preconstruction Phase, and a Construction Phase. Project Schedule: The Project Schedule as used in this Agreement shall mean the timeline prepared by the CONSTRUCTION MANAGER and approved by the CITY'S Administrative Agent for accomplishing the Project. The Project Schedule shall include all major sequences of the preconstruction and construction work, material supplies, long-lead procurement, Design Consultant's approval of shop drawings, schedules for Change Orders and performance testing requirements.
- J. Project Team: The term Project Team, as used in this Agreement and associated Exhibits, shall include the CITY, the Project Design Consultant and the CONSTRUCTION MANAGER.
- K. Substantial Completion: The point in the progress of the Work when the Project or designated portion thereof are sufficiently complete in accordance with the Contract Documents so that the CITY is able to fully occupy and fully utilize the Site for its intended use with all certificates of occupancy obtained. Warranties called for by this Agreement or by the Construction Documents shall commence on the date of issuance for the Certificate of Final Completion.
- L. Trade Contractor: This term shall mean those contractors having a direct contract with the CONSTRUCTION MANAGER for the performance of the work.
- M. Work: This term shall mean any and all authorized and approved work, materials supplies, tools, fixtures, labor, services, equipment, construction management and contract administration services for the design phase, Project development and construction of the Project to be performed and provided by CONSTRUCTION MANAGER (and its agents, employees, Trade Contractors, Sub-consultants, Professionals, and Subcontractors) pursuant to this Agreement.

### III. CONSTRUCTION MANAGER'S SERVICES

- A. The CONSTRUCTION MANAGER agrees to diligently provide all preconstruction services for the Project and to perform the required services in the manner described in Exhibit A, Scope of Services - Preconstruction Phase, attached hereto and incorporated herein.
- B. This Agreement shall commence immediately upon the execution of this Agreement by both the CITY and the CONSTRUCTION MANAGER, and upon the CONSTRUCTION MANAGER'S receipt of the written Notice to Proceed from the CITY, and shall continue through the completion of the preconstruction services for the Project in accordance with Exhibit B, Project Schedule -

Preconstruction Phase, attached hereto and incorporated herein.

#### IV. COMPENSATION AND PAYMENT OF CONSTRUCTION MANAGER'S SERVICE

- A. The CITY shall pay the CONSTRUCTION MANAGER for the preconstruction services rendered hereunder and completed in accordance with the terms and conditions of this Agreement an amount not to exceed **sixty-six thousand six hundred nineteen dollars and 50/100's (\$66,619.50)**, as the total agreement amount for performing the tasks as set forth in Exhibit A, Scope of Services – Preconstruction Phase, and further described in Exhibit C, Fee Schedule – Preconstruction Phase, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all services as outlined in this Agreement.
- B. CONSTRUCTION MANAGER represents and warrants that wage rates and other factual unit costs supporting the compensation relative to this Agreement shall be accurate, complete, and current at the time of entering into the Agreement. The amounts set forth in this Agreement will be adjusted to exclude any significant sums by which the CITY determines the amount of any task was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such adjustments to the Agreement amount must be made within one year following the end of this Agreement.
- C. The CITY'S performance and obligation to pay under this Agreement is contingent upon an appropriation by City of Venice City Council. The CITY shall promptly notify the CONSTRUCTION MANAGER if the necessary appropriation is not made.

#### V. ADDITIONAL SERVICES

If, upon written instruction by the CITY'S Administrative Agent and written agreement by the CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER shall perform additional services, and if such services are not required as a result of error, omission or negligence of CONSTRUCTION MANAGER, then in such event the CONSTRUCTION MANAGER shall be entitled to additional compensation. The additional compensation shall be computed by the CONSTRUCTION MANAGER on a revised fee quotation proposal and submitted to the CITY'S Administrative Agent for review and approval by the CITY. The fee shall be agreed upon before commencement of any additional services or changes and shall be incorporated into this Agreement by written Amendment. Any additional service or work performed before a written Amendment to this Agreement is approved shall not be compensated by the CITY.

#### VI. METHOD OF PAYMENT

- A. The CITY shall pay the CONSTRUCTION MANAGER in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, upon receipt of the CONSTRUCTION MANAGER'S invoice and written approval of same by the CITY'S Administrative Agent indicating that services have been rendered in conformity with this Agreement. The CONSTRUCTION MANAGER

shall submit an invoice for payment to the CITY on a monthly basis for those specific services as described in Exhibit A, Scope of Services – Preconstruction Phase, (and the corresponding amount as described in Exhibit C, Fee Schedule – Preconstruction Phase) that were completed during that invoicing period.

- B. For those specific services that were partially completed, progress payments shall be paid monthly in proportion to the percentage of completed work on those specific service activities as approved in writing by the CITY'S Administrative Agent.
- C. The CONSTRUCTION MANAGER'S invoices shall be in a form satisfactory to the CITY, who shall initiate disbursements. The CONSTRUCTION MANAGER is responsible for providing all necessary documentation that may be required by the CITY.

#### VII. LIABILITY OF CONSTRUCTION MANAGER

- A. Pursuant to Section 725.06(2), Florida Statutes, the CONSTRUCTION MANAGER shall indemnify and hold harmless the CITY, its officers and employees from liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSTRUCTION MANAGER and persons employed or utilized by the CONSTRUCTION MANAGER in the performance of this Agreement.
- B. This section of the Agreement will survive the completion or termination of the Agreement.

#### VIII. CONSTRUCTION MANAGER'S INSURANCE

Before performing any work pursuant to this Agreement, CONSTRUCTION MANAGER shall procure and maintain, during the life of this Agreement unless otherwise specified, insurance as listed in Exhibit D, Insurance Specifications – Preconstruction Phase, attached hereto and incorporated herein.

#### IX. RESPONSIBILITIES OF THE CONSTRUCTION MANAGER

- A. CONSTRUCTION MANAGER accepts the relationship of trust and confidence established between CONSTRUCTION MANAGER and CITY by this Agreement. CONSTRUCTION MANAGER covenants to furnish its best skill and judgment and to cooperate with CITY and the Design Consultant during the Preconstruction Phase and to complete the Project in accordance with the Contract Documents and in an expedient and efficient manner.
- B. The CONSTRUCTION MANAGER shall be responsible for the professional quality, technical accuracy, and the coordination of all reports and other documents and data used or produced by or at the behest of the CONSTRUCTION MANAGER under this Agreement. The CONSTRUCTION MANAGER shall, without additional compensation, correct or revise any errors or deficiencies in its reports and other documents and data.

- C. If the CONSTRUCTION MANAGER is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- D. The CONSTRUCTION MANAGER warrants that he has not employed or retained any company or person (other than a bona fide employee working solely for the CONSTRUCTION MANAGER), to solicit or secure this Agreement and that he has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the CONSTRUCTION MANAGER; any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- E. The CONSTRUCTION MANAGER covenants and agrees that it and its employees shall be bound by the Standards of Conduct of Section 112.313, Florida Statutes, as it relates to work performed under this Agreement. The CONSTRUCTION MANAGER agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.
- F. CONSTRUCTION MANAGER agrees that it and its employees shall communicate with CITY employees and members of the public in a civil manner. All aspects of a CONSTRUCTION MANAGER'S performance, including complaints received from CITY employees or members of the public, may impact the CITY'S decision to renew or terminate this Agreement in accordance with the provisions contained herein.
- G. The CONSTRUCTION MANAGER shall comply with Florida Statutes, Chapter 287.133, Public Entity Crimes.
- H. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- I. The CONSTRUCTION MANAGER shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- J. The CONSTRUCTION MANAGER shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at the CONSTRUCTION MANAGER'S offices for the purpose of inspection, audit, and copying during normal business hours by the CITY. Such records shall be retained for a

minimum of three (3) years after completion of the Project.

- K. The CONSTRUCTION MANAGER shall notify the CITY'S Administrative Agent at least three (3) days in advance of any meeting between the CONSTRUCTION MANAGER, Design Consultant and any other stakeholder, including, but not limited to, City Council, regulatory agencies or private citizens.
- L. Neither the CITY'S review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- M. The rights and remedies of the CITY provided for under this Agreement are in addition to any other rights and remedies provided by law.
- N. CONSTRUCTION MANAGER agrees to comply with Florida's public records law by keeping and maintaining public records that ordinarily and necessarily would be required by the public agency in order to perform the work under this Contract; upon the request of the City's Custodian of Public Records, by providing the City with copies of or access to public records on the same terms and conditions that City would provide the records and at a cost that does not exceed the cost provided by Florida law; by ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed excepts as authorized by law for the duration of the term of the Contract and following completion of the Contract if the CONSTRUCTION MANAGER does not transfer the records to the City; and upon completion of the Contract by transferring, at no cost, to City all public records in possession of CONSTRUCTION MANAGER or by keeping and maintaining all public records required by the City to perform the work under this Contract. If the CONSTRUCTION MANAGER transfers all public records to the City upon completion of the Contract, the CONSTRUCTION MANAGER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSTRUCTION MANAGER keeps and maintains public records upon completion of the Contract, the CONSTRUCTION MANAGER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

**IF THE CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS LORI STELZER, MMC, CITY CLERK, AT 401 W. VENICE AVENUE, VENICE,**



**X. DESIGN REVIEW SERVICES**

- A. The CONSTRUCTION MANAGER acknowledges that the Project will be completed in accordance with the established schedule included in Exhibit B and shall make recommendations to the CITY'S Administrative Agent and Design Consultant regarding the drawings and specifications to facilitate construction of the work.
- B. Design Review and Recommendations: The CONSTRUCTION MANAGER shall thoroughly familiarize itself with the Project. Where appropriate and as requested, CONSTRUCTION MANAGER shall make written recommendations with respect to the Project, foundations, selection of systems and materials and cost reducing alternatives, including assistance to the Design Consultant and the CITY'S Administrative Agent in evaluating alternative comparisons versus long-term cost effects as the CITY'S Administrative Agent deems appropriate. The CONSTRUCTION MANAGER shall call to the CITY'S Administrative Agent and Design Consultant's attention any known or perceived defects in the design, drawings and specifications or other documents that it notes, as soon as practicable after said defect is noted.

Any design errors or omissions noted by the CONSTRUCTION MANAGER during this review shall be reported promptly to the Design Consultant and the CITY'S Administrative Agent, but it is recognized that the CONSTRUCTION MANAGER's review is made in the CONSTRUCTION MANAGER's capacity as a contractor and not as a licensed design professional. The recommendations and advice of the CONSTRUCTION MANAGER concerning design alternatives shall be subject to the review and approval of the CITY.

- C. Separate Contracts Planning: The CONSTRUCTION MANAGER shall review the Construction Documents and make recommendations in writing to the CITY'S Administrative Agent with respect to dividing the work in such manner as will permit the CONSTRUCTION MANAGER to take bids and award separate construction Trade Contracts. It shall make such divisions in a manner acceptable to the CITY'S Administrative Agent, taking into consideration all factors such as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations, availability of qualified local and minority contractor participation, and any other factors pertinent to saving time and cost.
- D. Job-Site Facilities: The GMP shall be inclusive of the arrangement and supply of all job-site facilities, to include workstations equipped with telephones, desks, FAX machines, and PC equipment that are reasonably necessary to enable the members of the Project Team to perform their respective duties in the management, inspection and supervision of construction of the Project.

The CONSTRUCTION MANAGER shall provide a dedicated office on site for use by the Project Team.

- E. Market Analysis: The CONSTRUCTION MANAGER shall assess conditions in the construction market in an effort to identify factors that will or may affect costs and time for completing the project. The CONSTRUCTION MANAGER shall conduct reviews as may be reasonably necessary to: (1) determine and report on availability of labor, material, equipment, potential bidders and possible impact of any shortages or surpluses of labor or material, (2) in light of such determination, make recommendations with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction and other matters that will promote cost savings and completion within the Project Schedule.
- F. Stimulation of Bidder Interest: The CONSTRUCTION MANAGER shall be responsible to stimulate bidder interest in the local market place and identify and reasonably encourage bidding competition through various meetings, presentations, mail-outs, telephone conferences, and the like. The CONSTRUCTION MANAGER shall obtain a minimum of three (3) competitive bids for each trade, unless otherwise directed by the CITY'S Administrative Agent. The CONSTRUCTION MANAGER shall provide the CITY'S Administrative Agent with the opportunity to review and approve all such bids before their acceptance. The CONSTRUCTION MANAGER shall carry out an active program of stimulating interest of qualified local contractors, including minority contractors, in bidding on the work and of familiarizing those bidders with the requirements of this project.

#### XI. BASIS OF GUARANTEED MAXIMUM PRICE

- A. The Construction Manager shall submit to the CITY a proposed GMP as described herein, and in Exhibit A, and according to the schedule set forth in Exhibit B.
- B. The CONSTRUCTION MANAGER acknowledges and agrees that the GMP to be proposed will include:
  - The entire scope of work and services solicited under the RCMS and all exhibits, attachments, schedules and addenda thereto, and this Agreement and all exhibits, attachments, and schedules hereto, including but not limited to the Construction Documents, and any other material documents or Construction Documents which were used in preparation of the GMP. Notwithstanding the foregoing, if the Construction Documents fail to depict an item that is essential for operation, the CONSTRUCTION MANAGER is required to provide and install such essential item as part of the GMP. If the Contract Documents contain inconsistencies, discrepancies or omissions of which the CONSTRUCTION MANAGER had knowledge of or which are reasonably inferable from the Contract Documents as necessary to complete the Work in accordance with the Contract Documents, the CONSTRUCTION MANAGER shall not be entitled to an extension of the

Project Schedule or an adjustment in the GMP for such items and the CONSTRUCTION MANAGER shall nonetheless be responsible to correct and complete such items;

- A list of all allowances and the statement of their basis;
  - A list of any material clarifications and assumptions made by the CONSTRUCTION MANAGER in the preparation of the GMP necessary to supplement the information contained in the drawings and specifications;
  - A statement of the estimated cost (organized by trade categories), allowances, contingency, and other items including a list of any fees or other costs that comprise the GMP;
  - The date of substantial completion, upon which the proposed GMP is based; and
  - A schedule of the Construction Documents' issuance dates, upon which the proposed GMP is based.
- C. The CONSTRUCTION MANAGER acknowledges that the GMP includes an amount designated as the CITY's (or Owner's) Contingency. The CITY's Contingency shall be available to the CONSTRUCTION MANAGER only if the CITY issues a Change Order or Amendment to this Agreement. In such event, the Change Order or Amendment shall specify the portion of the CITY's Contingency being made available and the purpose.
- D. The CONSTRUCTION MANAGER acknowledges that the Construction Drawings may be modified by the Design Consultant, from time to time, and if presented with modified Construction Drawings from the CITY, the CONSTRUCTION MANAGER is required to complete the Project as modified, with compensation, if deemed appropriate.
- E. The proposed GMP is subject to acceptance by the CITY, at the CITY's sole discretion. If the CITY wishes to accept the proposed GMP, the CITY shall prepare an Amendment to this Agreement, incorporating the GMP as well as any other provisions the CITY deems necessary for the performance of the Construction Phase of the Project. In the event the CITY does not wish to accept the proposed GMP, the CITY's Administrative Agent shall so inform the Construction Manager in writing. Thereupon this Agreement shall terminate and neither party shall have any obligation to the other regarding the Construction Phase, of the Project.

## XII. OWNERSHIP AND USE OF WORK PRODUCTS

- A. It is understood and agreed that the work products, including reports and other documents and data developed by the CONSTRUCTION MANAGER in connection with its services shall be delivered to, and shall become the

property of the CITY as they are received by the CITY. The CONSTRUCTION MANAGER hereby assigns all its copyright and other proprietary interests in the products of this Agreement to the CITY. Specific written authority is required from the CITY'S Administrative Agent for the CONSTRUCTION MANAGER to use any of the work products of this Agreement on any non-CITY project.

- B. Notwithstanding the above, any reuse of the work products by the CITY on other projects will be at the risk of the CITY.
- C. The CITY records all land related changes and/or activities in its corporate ESRI ArcGIS 10.1 based Geographic Information System (GIS). Therefore, all GIS or Computer Aided Drafting (CAD) formatted data created or modified in support of the Project will be provided to the CITY as a Project deliverable for inclusion into the CITY's GIS, at no additional cost. GIS data files submitted in support of the Project must adhere to CITY GIS Standards, and CAD drawings submitted must adhere to CITY CAD standards.

### XIII. TIMELY PERFORMANCE OF CONSTRUCTION MANAGER'S PERSONNEL

- A. The timely performance and completion of the required services is vitally important to the interest of the CITY. The CONSTRUCTION MANAGER shall assign a Project Manager, together with such other personnel as are necessary to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Agreement. The key personnel assigned by the CONSTRUCTION MANAGER to perform the services of this Agreement shall be the same as those identified in the Response as it is defined below. The CONSTRUCTION MANAGER shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any change or substitution to the CONSTRUCTION MANAGER'S key personnel must receive the CITY'S Administrative Agent's written approval before said changes or substitution can become effective.
- B. The services to be rendered by the CONSTRUCTION MANAGER shall commence upon the CONSTRUCTION MANAGER'S receipt of written Notice to Proceed from the CITY'S Administrative Agent. The time limits set forth in Exhibit B, Project Schedule – Preconstruction Phase, shall commence to run on the date of the Notice to Proceed, the CONSTRUCTION MANAGER shall deliver to the CITY a Detailed Project Schedule with specific calendar dates in conformity with Exhibit B, Project Schedule – Preconstruction Phase. This Project Schedule shall also include the specific calendar dates for the delivery or completion of all documents, reports or other data as required by this Agreement.
- C. Time is of the essence in the performance of this Agreement. The CONSTRUCTION MANAGER specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. Force Majeure shall be deemed to

be any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the parties.

- D. The CONSTRUCTION MANAGER agrees to provide to the CITY'S Administrative Agent, monthly written progress reports concerning the status of the Project. Written progress reports will accompany each monthly invoice. The CITY'S Administrative Agent may determine the format for this progress report. The CITY shall be entitled at all times to be advised at its request, and in writing, as to the status of work to be performed by the CONSTRUCTION MANAGER.
- E. In the event unreasonable delays occur on the part of the CITY or regulatory agencies as to the approval of any plans, permits, reports or other documents submitted by the CONSTRUCTION MANAGER which delay the Project Schedule completion date, the CITY'S Administrative Agent shall not unreasonably withhold the granting of an extension of the Project Schedule time limitation equal to the aforementioned delay.

In the event the Project Schedule completion date is delayed beyond the date stated in Exhibit B, the CONSTRUCTION MANAGER shall continue its efforts hereunder in full force and effect until otherwise directed by the CITY's Administrative Agent.

Should the Project be suspended or delayed by the CITY for a period exceeding six (6) months, the CITY and the CONSTRUCTION MANAGER may negotiate fair and equitable compensation for the CONSTRUCTION MANAGER's continued service hereunder, and amend this Agreement accordingly.

#### XIV. OBLIGATIONS OF CITY

- A. The CITY'S Administrative Agent is designated to serve as project coordinator and to do all things necessary to properly administer the terms and conditions of this Agreement. The responsibility of the CITY'S Administrative Agent shall include:
  - 1. Examination of all reports, sketches, drawings, estimates, proposals, and other documents presented by the CONSTRUCTION MANAGER, and render in writing, decisions pertaining thereto within a reasonable time.
  - 2. Transmission of instructions, receipt of information, interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
  - 3. Review for approval or rejection all of the CONSTRUCTION MANAGER'S documents and payment requests.
- B. The CITY shall, upon request, furnish the CONSTRUCTION MANAGER with all existing data, plans, studies and other information in the CITY'S possession which may be useful in connection with the work of this Project, all of which shall be and remain the property of the CITY and shall be returned to the

CITY'S Administrative Agent upon completion of the services to be performed by the CONSTRUCTION MANAGER.

- C. The CITY'S Administrative Agent shall conduct periodic reviews of the work of the CONSTRUCTION MANAGER necessary, for the completion of the CONSTRUCTION MANAGER'S services during the period of this Agreement and may make other CITY personnel available, where required and necessary to assist the CONSTRUCTION MANAGER. The availability and necessity of said personnel to assist the CONSTRUCTION MANAGER shall be determined solely within the discretion of the CITY.
- D. The CITY shall not provide any services to the CONSTRUCTION MANAGER in connection with any claim brought on behalf of or against the CONSTRUCTION MANAGER.

#### XV. TERMINATION

- A. The CITY shall have the right at any time upon thirty (30) calendar days written notice to the CONSTRUCTION MANAGER to terminate the services of the CONSTRUCTION MANAGER and, in that event, the CONSTRUCTION MANAGER shall cease work and shall deliver to the CITY all documents, (including reports, designs, specifications, and all other data) prepared or obtained by the CONSTRUCTION MANAGER in connection with its services. The CITY shall, upon receipt of the aforesaid documents, pay to the CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER shall accept as full payment for its services, a sum of money equal to (1) the fee for each completed and accepted task as shown in Exhibit A, Scope of Services – Preconstruction Phase, and Exhibit C, Fee Schedule – Preconstruction Phase, plus (2) the percentage of the work completed in any commenced but uncompleted task shown in Exhibit A, Scope of Services – Preconstruction Phase and Exhibit C, Fee Schedule – Preconstruction Phase, less (3) all previous payment made.
- B. In the event that the CONSTRUCTION MANAGER has abandoned performance under this Agreement, then the CITY may terminate this Agreement upon three (3) calendar days written notice to the CONSTRUCTION MANAGER indicating its intention to do so. Payment for work performed prior to the CONSTRUCTION MANAGER'S abandonment shall be as stated above.
- C. The CONSTRUCTION MANAGER shall have the right to terminate services only in the event of the CITY failing to pay the CONSTRUCTION MANAGER'S properly documented and submitted invoice within ninety (90) calendar days of the approval by the CITY'S Administrative Agent, or if the Project is suspended by the CITY for a period greater than twelve (12) months.
- D. The CITY reserves the right to terminate and cancel this Agreement in the event the CONSTRUCTION MANAGER shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors.
- E. After written Notice is provided to the CONSTRUCTION MANAGER providing a

reasonable opportunity to cure, and after consultation with the Design Consultant, the CITY shall have the right to refuse to make payment, in whole or part, and if necessary, may demand the return of a portion or all of the amount previously paid to the CONSTRUCTION MANAGER due to:

1. The quality of a portion, or all, of the CONSTRUCTION MANAGER'S work not performed in accordance with the requirements of this Agreement;
  2. The quantity of the CONSTRUCTION MANAGER'S work not delivered or performed as represented in the CONSTRUCTION MANAGER'S Payment Request, or otherwise;
  3. The CONSTRUCTION MANAGER'S rate of progress being such that in the CITY'S opinion, substantial or final completion, or both may be inexcusably delayed;
  4. The CONSTRUCTION MANAGER'S failure to use the Agreement funds, previously paid the CONSTRUCTION MANAGER by the CITY, to pay CONSTRUCTION MANAGER'S Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
  5. Claims made, or likely to be made, against the CITY, or its property;
  6. Loss caused by the CONSTRUCTION MANAGER;
  7. The CONSTRUCTION MANAGER'S failure or refusal to perform any of the obligations to the CITY after written Notice and a reasonable opportunity to cure as set forth above.
- F. In the event the CITY makes written demand upon the CONSTRUCTION MANAGER for amounts previously paid by the CITY as contemplated in this subsection, the CONSTRUCTION MANAGER shall promptly comply with such demand. The CITY'S rights hereunder survive the term of this Agreement and are not waived by final payment or acceptance and are in addition to the CONSTRUCTION MANAGER'S obligations stated in Exhibit A, Scope of Services – Preconstruction Phase.

## XVI. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties agree to enter into mediation in Sarasota County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.

- C. The venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement shall be in the Twelfth Judicial Circuit in and for Sarasota County, Florida, which shall have subject matter jurisdiction and personal jurisdiction over each of the parties to the Agreement.
- D. The parties agree to waive all rights to trial by jury for any litigation undertaken concerning this Agreement.
- E. This Agreement and the rights and obligations of the Parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- F. Unless otherwise agreed in writing, the CONSTRUCTION MANAGER shall be required to continue its services and all other obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.

#### XVII. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all agreements between them, whether oral or written with respect to the subject matter. No Amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. For any material change in the Scope of Services or any increase in the compensation for the services, the City of Venice City Council and the duly authorized representative for the CONSTRUCTION MANAGER shall agree in writing to this change. For all other changes, the CITY'S Administrative Agent and the CONSTRUCTION MANAGER'S representative shall agree in writing to the change.
- B. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.
- C. The CONSTRUCTION MANAGER shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without the prior written consent of the CITY, except that claims for the money due or to become due the CONSTRUCTION MANAGER from the CITY under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the CITY. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the CITY.
- D. Time is of the essence with regard to each and every aspect of the CONSTRUCTION MANAGER's performance under this Agreement.
- E. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- F. The parties covenant and agree that each is duly authorized to enter into and



perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.

- G. The language of this Agreement shall be construed, in all cases, according to its fair meaning and not for or against any party hereto.
- H. The parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any third party.
- I. Any notices, invoices, reports, or any other type of documentation required by this Agreement shall be sufficient if sent by the parties via United States mail, postage paid, to the addresses listed below:

CONSTRUCTION MANAGER'S  
Representative:

Name:	Michael L Baltzer
Title:	President
Address:	4545 Northgate Ct Sarasota, FL 34234
Telephone:	941-351-5560 x102
Facsimile:	941-358-9318
E-mail:	mbaltzer@ magnumbuilders.com

CITY'S Administrative Agent:

Name:	Edward Lavallee, MPA
Title:	City Manager
Address:	401 W. Venice Ave. Venice, FL 34285
Telephone:	941-486-2626
Facsimile:	941-486-2790
E-Mail:	elavallee@venicegov.com

- J. Any change in administrative agents will require prompt notification by the party making the change.
- K. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- L. The CITY'S RFQ #3056-17 and all attachments are hereby incorporated in the Agreement by reference.
- M. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
1. Agreement
  2. CITY's RFQ
  3. CITY's Purchase Order

**IN WITNESS WHEREOF**, the parties have executed the Agreement as of the date last below written.

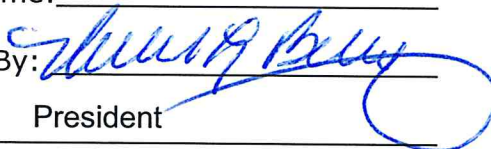
WITNESS:

**MAGNUM BUILDERS OF SARASOTA, INC.**

Print Name: Clint A. Riley ,Sr.

Print Name: Michael L Baltzer

Signed By: 

Signed By: 

Date: 9/1/2017

Title: President

Date: 9/1/2017

**CITY OF VENICE**

ATTESTED TO:

BY: John Holic, MAYOR

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Lori Stelzer, CITY CLERK

Approved as to form and correctness:

BY: \_\_\_\_\_  
David Persson, CITY ATTORNEY

## **EXHIBIT "A"**

### **SCOPE OF WORK**

#### **Project Description**

The Pre-construction (Phase I) services by the CONSTRUCTION MANAGER will include the following:

- prepare the overall project schedule and provide periodic detailed updates;
- obtain CITY approval on all formats and reporting structures;
- provide detailed cost estimating and knowledge of marketplace conditions;
- provide project planning and scheduling for both design and construction phases;
- provide for construction phasing and scheduling that will minimize interruption to site operations by means of a comprehensive logistics plan;
- provide a site utilization plan for all construction activities;
- develop a scheduling process as requested by the CITY; provide scheduling analysis throughout the Project; provide a schedule of values prior to finalization of the GMP; provide alternate systems evaluation and constructability;
- advise the Project Team of ways to gain efficiencies in project delivery and reduce overall delivery time;
- provide long-lead procurement recommendations and, subject to the CITY'S authorization, initiate procurement of long-lead items; identify items that have the potential to be procured by the CITY; Provide, upon request, copies of bids and quotations solicited from prospective subcontractors, suppliers and sub-trades
- participate in regularly-scheduled project coordination meetings;
- participate in constructability reviews at various levels of design;
- assist in the permitting processes;
- provide value engineering throughout Project;
- continually evaluate the project for quality, safety, and environmental factors;
- review final plans and specification for completeness;
- provide preliminary and detailed scheduling analysis for the Project construction, including a Schedule of Values identifying prospective subcontractors, suppliers and sub-trades;
- submit GMP for review and negotiation;
- review architectural drawings to ensure coordination between disciplines;
- establish, implement and maintain quality control standards.

## **EXHIBIT "A"**

### **SCOPE OF WORK**

The CONSTRUCTION MANAGER at Risk shall perform the following:

#### **1.0 Meetings and Reporting (Task 1)**

**Kickoff Meeting:** The CONSTRUCTION MANAGER shall attend one (1) meeting with the CITY personnel to review project objectives, work plan and schedule.

**Progress Reporting:** The CONSTRUCTION MANAGER shall provide three (3) written Preconstruction Progress Reports to the CITY Administrative Agent at regular intervals.

**Progress Meetings:** The CONSTRUCTION MANAGER shall attend and participate in three (3) project coordination meetings.

#### **2.0 Due Diligence and Analysis of Existing Conditions (Task 2)**

The CONSTRUCTION MANAGER shall investigate the project site and ascertain the site conditions and determine the accessibility and general character of the building.

The CONSTRUCTION MANAGER will participate in the field investigations by the DESIGN CONSULTANT and provide input on the findings with respect to potential constructability issues.

**TASK DELIVERABLE:** The CONSTRUCTION MANAGER will provide written feedback to the CITY and the DESIGN CONSULTANT regarding all findings, especially as they relate to constructability issues.

#### **3.0 Review, Analysis and Budgeting of 100% Design Plans (Task 3)**

**Invitation to Bid (ITB):** The CONSTRUCTION MANAGER will develop and distribute an Invitation to Bid (ITB) and will manage the distribution of plans and specifications for the project to subcontractors.

**Note:** Unless otherwise determined, the CONSTRUCTION MANAGER shall procure three (3) bidders for each trade that CONSTRUCTION MANAGER intends to subcontract.

**ITB Management:** The CONSTRUCTION MANAGER will be the point of contact and will manage the bidding process including subcontractor questions, RFI's, and bid tracking.

**Bid Evaluation:** The CONSTRUCTION MANAGER will evaluate the subcontractor bids with respect to price, qualifications, completeness, and overall responsiveness.

## **EXHIBIT "A"**

### **SCOPE OF WORK**

**Budget Development:** The CONSTRUCTION MANAGER will develop a tabulation of the bids (Bid Tab), project budget with a full schedule of values, and also an analysis of local subcontractor participation for CITY's review and approval.

**Schedule Development:** The CONSTRUCTION MANAGER will develop a project schedule incorporation input from the building tenants, subcontractors, and project phasing and for the CITY to review and approve.

**TASK DELIVERABLE:** The CONSTRUCTION MANAGER will deliver and review the Bid Tab, project budget and schedule to the CITY's Administrative Agent.

#### **4.0 Project GMP and Schedule (Task 4)**

Based on the project phasing plan and scope of work as determined by the CITY, the CONSTRUCTION MANAGER will develop the following:

- Guaranteed Maximum Price (GMP)
- Construction phasing plan
- Project schedule
- Subcontractor list

**TASK DELIVERABLE:** The CONSTRUCTION MANAGER will deliver the GMP, construction schedule and the subcontractor list to the CITY for approval.

**EXHIBIT "B"**  
**PROJECT SCHEDULE - PRECONSTRUCTION PHASE**

<u>Description of Milestone - Preconstruction Phase</u>	<u>Calendar days From PO to Completion of Milestone</u>
Notice To Proceed – Issued by CITY Purchase Order	10
Task One: Kickoff Meetings and Reporting	20
Task Two:  Due Diligence and Analysis of Existing Conditions – Soil Borings, Testing, Pot-Hole Discovery, Survey Work	60
Task Three: Review, Analysis and Budgeting of 90% Design Plans Redesign/Engineering Allowance time for Architect	90
Task Four: Project GMP and Schedule	60

## EXHIBIT C FEE SCHEDULE

### FEES FOR SERVICES

The Total Lump Sum Fee for services described in Exhibit "A", Scope of Services is not to exceed **sixty-six thousand six hundred nineteen dollars and 50/100's (\$66,619.50)**.

### PHASE 1 Preconstruction Services

Preliminary Project Meetings (1 each), Architect/Engineer meetings for establishing scope and value engineering targets (3 each), repricing of project with added VE and Scope Options, investigative soil borings and Ground Penetrating Radar mapping, prepare cost option reports, present initial results to Owner for further direction.

Phase 1 Preconstruction Services - VE				
<u>ITEM</u>	<u>QTY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
Project Executive Hours	12	HRS	\$ 115.00	\$ 1,380.00
Project Manager and Estimator Hours	12	HRS	\$ 95.00	\$ 11,400.00
Field Superintendent (for testing and GPR	32	HRS	\$ 75.00	\$ 2,400.00
Administrative Manager Report Preparation	8	HRS	\$ 45.00	\$ 360.00
Overheads, Liability Insurance, Fees	1	LS	\$ 2,331.00	\$ 2,331.00
Total - Phase 1 Preconstruction				\$ 17,871.00

### PHASE 2 Preconstruction Services

Using CITY direction from results of Phase 1, coordinate any scope revisions and VE elements to develop a new conforming bid document. Develop Bidding Scope Packages by trade and supplier that is complimentary to the project size, post the project to bid systems and make direct contact to subcontract bidders and suppliers to develop interest in the project. Develop a project schedule inclusive of preconstruction milestones and proposed GMP establishment dates. Provide a preliminary construction phase schedule for use in obtaining bids and contractor commitments. Conduct a pre-bid meeting for interested bidders, gather bids from qualified subcontractors and suppliers, and assemble into total project bid costs for analysis. Contact apparent low bidders to confirm completeness of proposals, confirm schedule acceptance and scheduled delivery concerns. Meet with CITY and Architect to review bid proposals and to determine alternate pricing proposals to be included in GMP. Develop a final GMP for presentation to CITY. Apply for Building Permits prior to GMP at CITY's discretion.

## EXHIBIT C FEE SCHEDULE

Phase 2 Preconstruction Services - Bidding, Permitting and				
<u>ITEM</u>	<u>QTY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
Project Executive Hours	14	HRS	\$ 115.00	\$ 1,610.00
Project Manager and Estimator Hours	160	HRS	\$ 95.00	\$ 15,200.00
Field Superintendent (for pre-bid meeting)	4	HRS	\$ 75.00	\$ 300.00
Administrative Manager Report Preparation	16	HRS	\$ 45.00	\$ 720.00
Permit Fees (By CITY)	1	LS	\$ -	\$ -
Overheads, Liability Insurance, Fees	1	LS	\$ 2,674.50	\$ 2,674.50
Total - Phase 2 Preconstruction				\$ 20,504.50

### Other Reimbursable Items:

Hard Cost Reimbursable Items - Soils Testing, Ground Penetrating				
<u>ITEM</u>	<u>QTY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
Independent Testing Service for Soil Borings	1	LS	\$ 8,000.00	\$ 8,000.00
GPR Mapping of Work Area	1	ALLOW	\$ 2,000.00	\$ 2,000.00
Survey Locations of Foundation System	1	ALLOW	\$ 6000.00	\$ 6,000.00
Pot-hole excavation at Conflicts	1	ALLOW	\$ 4,560.00	\$ 4,560.00
Reimbursable Printing Charges (Incl Permit	1	ALLOW	\$ 3,200.00	\$ 3,200.00
Reimbursable Printing Charges	1	ALLOW	\$ 800.00	\$ 800.00
Overheads, Liability Insurance, Fees	1	LS	\$ 3,684.00	\$ 3,684.00
Total - Hard Cost Reimburseables				\$ 28,244.00

Upon completion of Phase 2 and acceptance of GMP, the CITY may move forward with a CM at Risk Contract with CONTRACTOR for the agreed Price and Scope.



**EXHIBIT "D"**  
**INSURANCE REQUIREMENTS – PRECONSTRUCTION PHASE**

Before performing any work, the CONSTRUCTION MANAGER shall procure and maintain, during the life of the Contract, insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the Insurance Department in the State of Florida and meet a minimum financial AM Best and Company rating of no less than A: VII. No changes are to be made to these specifications without prior written specific approval by the City.

1. The City of Venice is to be specifically included as an **ADDITIONAL INSURED** (with regards to General Liability and Business Auto).
2. The City of Venice shall be named as Certificate Holder. ***Please Note that the Certificate Holder should read as follows:***

The City of Venice  
401 W. Venice Avenue  
Venice, FL 34285

No City Division, Department, or individual name should appear on the certificate.  
**NO OTHER FORMAT WILL BE ACCEPTABLE.**

3. The "Acord" certification of insurance form should be used.
4. Required Coverage
  - a) **Commercial General Liability:** including but not limited to bodily injury, property damage, contractual liability, products and completed operations, and personal injury with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate covering all work performed under this Contract. Include broad form property damage (provide insurance for damage to property under the care custody and control of the CONSTRUCTION MANAGER)
  - b) **Business Auto Policy:** including bodily injury and property damage for all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$1,000,000 combined single limit covering all work performed under this Contract.
  - c) **Workers Compensation:** CONSTRUCTION MANAGER will provide Workers Compensation Insurance on behalf of all employees, including sub-contractors, who are to provide a service under this Contract, as required under Florida Law, Chapter 440, and Employers Liability with limits of not less than \$100,000 per employee per accident; \$500,000 disease aggregate; and \$100,000 per employee per disease.
  - d) **Installation Floater/Installation Builders' Risk-Property Coverage:** Policy to cover direct physical loss or damage to materials, supplies, machinery, and equipment being installed, constructed or rigged by the CONSTRUCTION MANAGER in conjunction with its installation or construction. All items involved in the project including drainage/water sewer pipes, etc. (as included in description of project) need to be insured for the total completed replacement value. Coverage should include perils of fire, theft, vandalism, windstorm/hail, collapse and transit, sewer backup, testing,

**EXHIBIT "D"**  
**INSURANCE REQUIREMENTS – PRECONSTRUCTION PHASE**

equipment breakdown, waterborne property. Coverage shall start when the items to be installed are transported to City premises and remain in place until the interest of the CONSTRUCTION MANAGER ceases or the City accepts possession whichever comes first. Coverage should apply to owned property and non-owned property in the CONSTRUCTION MANAGER's care, custody and control. The installation coverage forms shall provide coverage for building materials and supplies at the construction site, in transit to the site and similar property intended for the construction project at other locations as necessary or because of lack of storage space at the construction site. Coverage should apply on a Primary basis and should include a Waiver of Subrogation. CONSTRUCTION MANAGER should be responsible for any deductibles.

When applicable, a special form coverage shall include, but not be limited to:

- Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project
- Theft coverage
- Waiver of Occupancy Clause endorsement, which will enable the City to occupy the facility under construction/renovation during such activity
- Limits of insurance to equal 100% of the insurable completed contract amount of such addition(s), building(s) or structure(s), on an agreed amount/replacement cost basis, and
- Maximum deductible clause of \$10,000 each claim

**5. Policy Form:**

- a) All policies required by this Contract, with the exception of Workers Compensation, or unless specific approval is given by the City, are to be written on an occurrence basis, shall name the City of Venice, its Elected Officials, Officers, Agents, Employees as additional insured as their interest may appear under this Contract. Insurer(s), with the exception of Workers Compensation, shall agree to waive all rights of subrogation against the City of Venice, its Elected Officials, Officers, Agents, and Employees.
- b) Insurance requirements itemized in this Contract, and required of the CONSTRUCTION MANAGER, shall be provided on behalf of all subcontractors to cover their operations performed under this Contract. The CONSTRUCTION MANAGER shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.
- c) Each insurance policy required by this Contract shall:
  - (1) apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability;
  - (2) be endorsed to state that coverage shall not be suspended, voided or canceled by either party except after thirty (30) calendar days' prior written notice by certified mail, return receipt requested, has been given to the City of Venice's Director of Administrative Services.
- d) The City shall retain the right to review, at any time, coverage form, and

**EXHIBIT "D"**  
**INSURANCE REQUIREMENTS – PRECONSTRUCTION PHASE**

amount of insurance.

- e) The procuring of required policies of insurance shall not be construed to limit CONSTRUCTION MANAGER's liability or to fulfill the indemnification provisions and requirements of this Contract.
- f) The CONSTRUCTION MANAGER shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Contract and shall be solely responsible for the payment of any deductible and/or retention to which such policies are subject, whether or not the City is an insured under the policy. In the event that claims in excess of the insured amounts provided herein are filed by reason of operations under the contract, the amount excess of such claims, or any portion thereof, may be withheld from any payment due or to become due to the CONSTRUCTION MANAGER until such time the CONSTRUCTION MANAGER shall furnish additional security covering such claims as may be determined by the City.
- g) Claims Made Policies will be accepted for professional and hazardous materials and such other risks as are authorized by the City. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two years. If provided as an option, the CONSTRUCTION MANAGER agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.
- h) Certificates of Insurance evidencing Claims Made or Occurrence form coverage and conditions to this Contract, as well as the City's Bid Number and description of work, are to be furnished to the City's Director of Administrative Services, 401 West Venice Avenue, Venice, FL 34285, ten (10) business days prior to commencement of work and a minimum of thirty (30) calendar days prior to expiration of the insurance policy.
- i) Notices of Accidents and Notices of Claims associated with work being performed under this Contract, shall be provided to the CONSTRUCTION MANAGER's insurance company and the City's Director of Administrative Services, as soon as practicable after notice to the insured.
- j) All property losses shall be payable to, and adjusted with, the City.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/1/2017

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

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

PRODUCER InSource Partners, LLC 7264 Kyle Court  Sarasota FL 34240	CONTACT NAME: Carol McManus PHONE (A/C, No. Ext): 941-999-1903 E-MAIL ADDRESS: carol.mcmanus@gh-fl.com FAX (A/C, No): 941-306-2002
INSURED Magnum Builders of Sarasota, Inc. 4545 Northgate Court  Sarasota FL 34234	INSURER(S) AFFORDING COVERAGE INSURER A: National Trust Insurance Co. (FCCI) NAIC # 20141 INSURER B: FCCI Insurance Company 10178 INSURER C: INSURER D: INSURER E: INSURER F:

**COVERAGES**

CERTIFICATE NUMBER: CL1722815948

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X	Y	GL0017576	3/10/2017	3/10/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	Y	CA100011375	3/10/2017	3/10/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			UMB0020463	3/10/2017	3/10/2018	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	001-WC17A-73205	3/10/2017	3/10/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Leased/Rented Equipment			CM0008536	3/10/2017	3/10/2018	Limit: \$25,000 Deductible: \$500

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

Re: RFQ #3056-17 Construction Management Services for City of Venice Water Treatment Plant Building Improvements. The City of Venice, its Elected Officials, Officers, Agents, and Employees are included as Additional Insureds for General Liability and Auto Liability and Waiver of Subrogation is afforded them for General Liability and Auto Liability. Thirty days notice of cancellation will be provided.

**CERTIFICATE HOLDER****CANCELLATION**

City of Venice 401 W. Venice Avenue Venice, FL 34285	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 Christine Papa/MCMANU <i>Christine A. Papa</i>
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –  
AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION  
AGREEMENT WITH YOU – ONGOING OPERATIONS AND  
PRODUCTS-COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

**SCHEDULE (OPTIONAL)**

<b>Name of Additional Insured Persons or Organizations</b>
(As required by written contract or agreement per Paragraph A. below.)

<b>Locations of Covered Operations</b>
(As per the written contract or agreement, provided the location is within the "coverage territory".)

(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:

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 in effect during the term of this policy 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; and
3. The particular person or organization, if any, scheduled 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" occurring after the execution of the contract or agreement described in Paragraph 1. above and caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf in the performance of your ongoing operations for the additional insured; or
3. Your work" performed for the additional insured and included in the "products-completed operations hazard" if such coverage is specifically required in the written contract or agreement.

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

1. Only applies to the extent permitted by law;
  2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured;
  3. Will not be broader than that which is afforded to you under this policy; and
  4. Nothing herein shall extend the term of this policy.
- B. The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  2. Supervisory, inspection, architectural or engineering activities.
- C. This insurance is excess over any other valid and collectible insurance available to the additional insured whether on a primary, excess, contingent or any other basis; unless the written contract or agreement requires that this insurance be primary and non-contributory, in which case this insurance will be primary and non-contributory relative to insurance on which the additional insured is a Named Insured.
- D. 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.

- E. **Section IV – Commercial General Liability Conditions** is amended as follows:

The Duties In The Event of Occurrence, Offense, Claim or Suit condition is amended to add the following additional conditions applicable to the additional insured:

An additional insured under this endorsement must as soon as practicable:

1. Give us written notice of an "occurrence" or an offense which may result in a claim or "suit" under this insurance, and of any claim or "suit" that does result;
2. Send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions; and
3. Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover under this endorsement and agree to make available all such other insurance. However, this condition does not affect Paragraph C. above.

We have no duty to defend or indemnify an additional insured under this endorsement until we receive from the additional insured written notice of a claim or "suit".

- F. This endorsement does not apply to any additional insured or project that is specifically identified in any other additional insured endorsement attached to the Commercial General Liability Coverage Form.

# FIRST CHOICE CONTRACTORS LIABILITY ENDORSEMENT

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## FIRST CHOICE CONTRACTORS LIABILITY ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

NOTE: The following are additions, replacements and amendments to the Commercial General Liability Coverage Form, and will apply unless excluded by separate endorsement(s) to the Commercial General Liability Coverage Form.

The **COMMERCIAL GENERAL LIABILITY COVERAGE FORM** is amended as follows:

**SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE** is amended as follows:

**1. Extended "Property Damage"**

Exclusion 2.a., Expected or Intended Injury, is replaced with the following:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**2. Non-owned Watercraft**

Exclusion 2.g. (2) (a) is replaced with the following:

- (a) Less than 51 feet long; and

**3. Property Damage Liability – Borrowed Equipment**

The following is added to Exclusion 2.j. (4):

Paragraph (4) of this exclusion does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations. The most we will pay for "property damage" to any one borrowed equipment item under this coverage is \$25,000 per "occurrence". The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

**4. Limited Electronic Data Liability**

Exclusion 2.p. is replaced with the following:

- p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

The most we will pay under Coverage A for "property damage" because of all loss of "electronic data" arising out of any one "occurrence" is \$10,000.

We have no duty to investigate or defend claims or "suits" covered by this Limited Electronic Data Liability coverage.

The following definition is added to **SECTION V – DEFINITIONS** of the Coverage Form:

"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.

For purposes of this **Limited Electronic Data Liability** coverage, the definition of "Property Damage" in **SECTION V – DEFINITIONS** of the Coverage Form is replaced by the following:

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it;
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For purposes of this insurance, "electronic data" is not tangible property.

**SECTION I – COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** is amended as follows:

Paragraph 2.e. Exclusions – the Contractual Liability Exclusion is deleted.

**SECTION I – COVERAGES, the following coverages are added:**

**COVERAGE D. VOLUNTARY PROPERTY DAMAGE**

**1. Insuring Agreement**

We will pay, at your request, for "property damage" caused by an "occurrence", to property of others caused by you, or while in your possession, arising out of your business operations. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

**2. Exclusions**

This insurance does not apply to:

"Property Damage" to:

- a. Property at premises owned, rented, leased or occupied by you;
- b. Property while in transit;
- c. Property owned by, rented to, leased to, loaned to, borrowed by, or used by you;

- d. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;
- e. Property caused by or arising out of the "products-completed operations hazard";
- f. Motor vehicles;
- g. "Your product" arising out of it or any part of it; or
- h. "Your work" arising out of it or any part of it.

### **3. Deductible**

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. We will then pay the amount of loss in excess of \$250 up to the applicable limit of insurance.

### **4. Cost Factor**

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance afforded under COVERAGE D is excess over any other valid and collectible property or inland marine insurance (including the deductible applicable to the property or inland marine coverage) available to you whether primary, excess, contingent or any other basis.

Coverage D covers unintentional damage or destruction, but does not cover disappearance, theft, or loss of use.

The insurance under COVERAGE D does not apply if a loss is paid under COVERAGE E.

## **COVERAGE E. CARE, CUSTODY OR CONTROL**

### **1. Insuring Agreement**

We will pay those sums that the insured becomes legally obligated to pay as damages because of "property damage" caused by an "occurrence", to property of others while in your care, custody, or control or property of others as to which you are exercising physical control if the "property damage" arises out of your business operations. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

### **2. Exclusions**

This insurance does not apply to:

"Property Damage" to:

- a. Property at premises owned, rented, leased or occupied by you;
- b. Property while in transit;
- c. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;
- d. Property caused by or arising out of the "products-completed operations hazard";

- e. Motor vehicles;
- f. "Your product" arising out of it or any part of it; or
- g. "Your work" arising out of it or any part of it.

### **3. Deductible**

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. We will then pay the amount of loss in excess of \$250 up to the applicable limit of insurance.

### **4. Cost Factor**

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance afforded under COVERAGE E is excess over any other valid and collectible property or inland marine insurance (including the deductible applicable to the property or inland marine coverage) available to you whether primary, excess, contingent or any other basis.

The insurance under COVERAGE E does not apply if a loss is paid under COVERAGE D.

## **COVERAGE F. LIMITED PRODUCT WITHDRAWAL EXPENSE**

### **1. Insuring Agreement**

- a. If you are a "seller", we will reimburse you for "product withdrawal expenses" associated with "your product" incurred because of a "product withdrawal" to which this insurance applies.

The amount of such reimbursement is limited as described in SECTION III - LIMITS OF INSURANCE. No other obligation or liability to pay sums or perform acts or services is covered.

- a. This insurance applies to a "product withdrawal" only if the "product withdrawal" is initiated in the "coverage territory" during the policy period because:

(1) You determine that the "product withdrawal" is necessary; or

(2) An authorized government entity has ordered you to conduct a "product withdrawal".

- c. We will reimburse only those "product withdrawal expenses" which are incurred and reported to us within one year of the date the "product withdrawal" was initiated.

- d. The initiation of a "product withdrawal" will be deemed to have been made only at the earliest of the following times:

(1) When you have announced, in any manner, to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to conduct a "product withdrawal" This applies regardless of whether the determination to conduct a "product withdrawal" is made by you or is requested by a third party;

(2) When you received, either orally or in writing, notification of an order from an authorized government entity to conduct a "product withdrawal"; or

- (3) When a third party has initiated a "product withdrawal" and you communicate agreement with the "product withdrawal", or you announce to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to participate in the "product withdrawal", whichever comes first.

e. "Product withdrawal expenses" incurred to withdraw "your products" which contain:

- (1) The same "defect" will be deemed to have arisen out of the same "product withdrawal"; or
- (2) A different "defect" will be deemed to have arisen out of a separate "product withdrawal" if newly determined or ordered in accordance with paragraph 1.b of this coverage.

## 2. Exclusions

This insurance does not apply to "product withdrawal" expenses" arising out of:

a. Any "product withdrawal" initiated due to:

- (1) The failure of "your products" to accomplish their intended purpose, including any breach of warranty of fitness, whether written or implied. This exclusion does not apply if such failure has caused or is reasonably expected to cause "bodily injury" or physical damage to tangible property.
- (2) Copyright, patent, trade secret or trademark infringements;
- (3) Transformation of a chemical nature, deterioration or decomposition of "your product", except if it is caused by:
  - (a) An error in manufacturing, design, processing or transportation of "your product"; or
  - (b) "Product tampering".
- (4) Expiration of the designated shelf life of "your product".

b. A "product withdrawal", initiated because of a "defect" in "your product" known to exist by the Named Insured or the Named Insured's "executive officers", prior to the inception date of this Coverage Part or prior to the time "your product" leaves your control or possession.

c. Recall of any specific products for which "bodily injury" or "property damage" is excluded under Coverage A - Bodily Injury And Property Damage Liability by endorsement.

d. Recall of "your products" which have been banned from the market by an authorized government entity prior to the policy period.

e. The defense of a claim or "suit" against you for "product withdrawal expenses".

## 3. For the purposes of the insurance afforded under COVERAGE F, the following is added to 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition under SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

e. Duties In The Event Of A "Defect" Or A "Product Withdrawal"

- (1) You must see to it that we are notified as soon as practicable of any actual, suspected or threatened "defect" in "your products", or any governmental investigation, that may result in a "product withdrawal". To the extent possible, notice should include:

- (a) How, when and where the "defect" was discovered;
  - (b) The names and addresses of any injured persons and witnesses; and
  - (c) The nature, location and circumstances of any injury or damage arising out of use or consumption of "your product".
- (2) If a "product withdrawal" is initiated, you must:
  - (a) Immediately record the specifics of the "product withdrawal" and the date it was initiated;
  - (b) Send us written notice of the "product withdrawal" as soon as practicable; and
  - (c) Not release, consign, ship or distribute by any other method, any product, or like or similar products, with an actual, suspected or threatened defect.
- (3) You and any other involved insured must:
  - (a) Immediately send us copies of pertinent correspondence received in connection with the "product withdrawal";
  - (b) Authorize us to obtain records and other information; and
  - (c) Cooperate with us in our investigation of the "product withdrawal".
- 4. For the purposes of this Coverage F, the following definitions are added to the Definitions Section:
  - a. "Defect" means a defect, deficiency or inadequacy that creates a dangerous condition.
  - b. "Product tampering" is an act of intentional alteration of "your product" which may cause or has caused "bodily injury" or physical injury to tangible property.

When "product tampering" is known, suspected or threatened, a "product withdrawal" will not be limited to those batches of "your product" which are known or suspected to have been tampered with.
  - c. "Product withdrawal" means the recall or withdrawal of "your products", or products which contain "your products", from the market or from use, by any other person or organization, because of a known or suspected "defect" in "your product", or a known or suspected "product tampering", which has caused or is reasonably expected to cause "bodily injury" or physical injury to tangible property.
  - d. "Product withdrawal expenses" means those reasonable and necessary extra expenses, listed below paid and directly related to a "product withdrawal":
    - (1) Costs of notification;
    - (2) Costs of stationery, envelopes, production of announcements and postage or facsimiles;
    - (3) Costs of overtime paid to your regular non-salaried employees and costs incurred by your employees, including costs of transportation and accommodations;
    - (4) Costs of computer time;
    - (5) Costs of hiring independent contractors and other temporary employees;
    - (6) Costs of transportation, shipping or packaging;

- (7) Costs of warehouse or storage space; or
- (8) Costs of proper disposal of "your products", or products that contain "your products", that cannot be reused, not exceeding your purchase price or your cost to produce the products; but "product withdrawal expenses" does not include costs of the replacement, repair or redesign of "your product", or the costs of regaining your market share, goodwill, revenue or profit.
- e. "Seller" means a person or organization that manufactures, sells or distributes goods or products. "Seller" does not include a "contractor" as defined elsewhere in this endorsement.

The insurance under COVERAGE F does not apply if a loss is paid under COVERAGE G.

## **COVERAGE G. CONTRACTORS ERRORS AND OMISSIONS**

### **1. Insuring Agreement**

If you are a "contractor", we will pay those sums that you become legally obligated to pay as damages because of "property damage" to "your product", "your work" or "impaired property", due to faulty workmanship, material or design, or products including consequential loss, to which this insurance applies. The damages must have resulted from your negligent act, error or omission while acting in your business capacity as a contractor or subcontractor or from a defect in material or a product sold or installed by you while acting in this capacity. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

We have no duty to investigate or defend claims or "suits" covered by this Contractors Errors or Omissions coverage.

This coverage applies only if the "property damage" occurs in the "coverage territory" during the policy period.

This coverage does not apply to additional insureds, if any.

Supplementary Payments – Coverage A and B do not apply to Coverage G. Contractors Errors and Omissions.

### **2. Exclusions**

This insurance does not apply to:

- a. "Bodily injury" or "personal and advertising injury".
- b. Liability or penalties arising from a delay or failure to complete a contract or project, or to complete a contract or project on time.
- c. Liability because of an error or omission:
  - (1) In the preparation of estimates or job costs;
  - (2) Where cost estimates are exceeded;
  - (3) In the preparation of estimates of profit or return on capital;
  - (4) In advising or failure to advise on financing of the work or project; or
  - (5) In advising or failing to advise on any legal work, title checks, form of insurance or suretyship.

- d. Any liability which arises out of any actual or alleged infringement of copyright or trademark or trade dress or patent, unfair competition or piracy, or theft or wrongful taking of concepts or intellectual property.
- e. Any liability for damages:
  - (1) From the intentional dishonest, fraudulent, malicious or criminal acts of the Named Insured, or by any partner, member of a limited liability company, or executive officer, or at the direction of any of them; or
  - (2) Which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually expected or intended.
- f. Any liability arising out of manufacturer's warranties or guarantees whether express or implied.
- g. Any liability arising from "property damage" to property owned by, rented or leased to the insured.
- h. Any liability incurred or "property damage" which occurs, in whole or in part, before you have completed "your work." "Your work" will be deemed completed at the earliest of the following times:
  - (1) When all of the work called for in your contract or work order has been completed;
  - (2) When all the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
  - (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service or maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as complete.
- i. Any liability arising from "property damage" to products that are still in your physical possession.
- j. Any liability arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
  - (1) Providing engineering, architectural or surveying services to others; and
  - (2) Providing or hiring independent professionals to provide engineering, architectural or surveying services in connection with construction work you perform.

Professional services include the preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications. Professional services also include supervisory or inspection activities performed as part of any related architectural or engineering activities.

But, professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with construction work you perform.
- k. Your loss of profit or expected profit and any liability arising therefrom.
- l. "Property damage" to property other than "your product," "your work" or "impaired property."
- m. Any liability arising from claims or "suits" where the right of action against the insured has been relinquished or waived.



- n. Any liability for "property damage" to "your work" if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
- o. Any liability arising from the substitution of a material or product for one specified on blueprints, work orders, contracts or engineering specifications unless there has been written authorization, or unless the blueprints, work orders, contracts or engineering specifications were written by you, and you have authorized the changes.
- p. Liability of others assumed by the insured under any contract or agreement, whether oral or in writing. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

**3. For the purposes of Coverage G, the following definition is added to the Definitions section:**

- a. "Contractor" means a person or organization engaged in activities of building, clearing, filing, excavating or improvement in the size, use or appearance of any structure or land. "Contractor" does not include a "seller" as defined elsewhere in this endorsement.

**4. Deductible**

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. The limits of insurance will not be reduced by the application of the deductible amount.

We may pay any part or all of the deductible amount to effect settlement of any claim or "suit", and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**5. Cost Factor**

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance under COVERAGE G does not apply if a loss is paid under COVERAGE F.

**EXPANDED COVERAGE FOR TENANT'S PROPERTY AND PREMISES RENTED TO YOU**

The first paragraph after subparagraph (6) in Exclusion j., Damage to Property is amended to read as follows:

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

**SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGE A and B is amended as follows:**

All references to SUPPLEMENTARY PAYMENTS – COVERAGES A and B are amended to SUPPLEMENTARY PAYMENTS – COVERAGES A, B, D, E, and G.

**1. Cost of Bail Bonds**

Paragraph 1.b. is replaced with the following:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

## **2. Loss of Earnings**

Paragraph 1.d. is replaced with the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

## **SECTION II – WHO IS AN INSURED is amended as follows:**

### **1. Incidental Malpractice**

Paragraph 2.a.(1)(d) is replaced with the following:

- (d) Arising out of his or her providing or failing to provide professional health care services. However, this exclusion does not apply to a nurse, emergency medical technician or paramedic employed by you to provide medical services, unless:
  - (i) You are engaged in the occupation or business of providing or offering medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction; or
  - (ii) The "employee" has another insurance that would also cover claims arising under this provision, whether the other insurance is primary, excess, contingent or on any other basis.

### **2. Broadened Who Is An Insured**

The following are added to Paragraph 2.:

#### **Subsidiaries**

e. Your subsidiaries if:

- (1) They are legally incorporated entities; and
- (2) You own more than 50% of the voting stock in such subsidiaries as of the effective date of this policy. If such subsidiaries are not shown in the Declarations, you must report them to us within 180 days of the inception of your original policy.

#### **Additional Insureds**

- f. Any person or organization described in paragraphs g. through k. below whom you are required to add as an additional insured on this policy under a written contract or agreement in effect during the term of this policy, provided the written contract or agreement was executed prior to the "bodily injury", "property damage" or "personal and advertising injury" for which the additional insured seeks coverage.

However, the insurance afforded to such additional insured(s):

- (1) Only applies to the extent permitted by law;
- (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured;
- (3) Will not be broader than that which is afforded to you under this policy;
- (4) Is subject to the conditions described in paragraphs g. through k. below; and

(5) Nothing herein shall extend the term of this policy.

g. Owner, Lessor or Manager of Premises

If the additional insured is an owner, lessor or manager of premises, such person or organization shall be covered only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you and subject to the following additional exclusions:

- (1) Any "occurrence" that takes place after you cease to occupy those premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

h. State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations

If the additional insured is the state or any political subdivision, the state or political subdivision shall be covered only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit or authorization. This insurance does not apply to:

- (1) "Bodily injury", "property damage", or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

i. Lessor of Leased Equipment

If the additional insured is a lessor of leased equipment, such lessor shall be covered only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s). With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

j. Mortgagee, Assignee, or Receiver

If the additional Insured is a mortgagee, assignee, or receiver of premises, such mortgagee, assignee or receiver of premises is an additional insured only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

k. Vendor

If the additional insured is a vendor, such vendor is an additional insured only with respect to "bodily injury" or "property damage" caused by "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

- (1) The insurance afforded to the vendor does not apply to:
  - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in absence of the contract or agreement.
  - (b) Any express warranty unauthorized by you;

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

- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

### **3. Newly Formed or Acquired Organizations**

Paragraph 3. is amended as follows:

- a. Coverage under this provision is afforded until the end of the policy period.
- d. Coverage A does not apply to product recall expense arising out of any withdrawal or recall that occurred before you acquired or formed the organization.

## **SECTION III – LIMITS OF INSURANCE is amended as follows:**

### **1. Paragraph 2. is replaced with the following:**

- 2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of “bodily injury” or “property damage” included in the “products-completed operations hazard”;
  - c. Damages under Coverage B;
  - d. Voluntary “property damage” payments under Coverage D; and
  - e. Care, Custody or Control damages under Coverage E.

**2. Paragraph 5. is replaced with the following:**

5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A;
  - b. Medical expenses under Coverage C;
  - c. Voluntary "property damage" payments under Coverage D;
  - d. Care, Custody or Control damages under Coverage E;
  - e. Limited Product Withdrawal Expense under Coverage F; and
  - f. Contractors Errors and Omissions under Coverage G.

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

**3. Paragraph 6. is replaced with the following:**

6. Subject to Paragraph 5. above the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire or explosion, while rented to you or temporarily occupied by you with permission of the owner.

The Damage to Premises Rented to You Limit is the higher of the Each Occurrence Limit shown in the Declarations or the amount shown in the Declarations as Damage To Premises Rented To You Limit.

**4. Paragraph 7. is replaced with the following:**

7. Subject to Paragraph 5. above, the higher of \$10,000 or the Medical Expense Limit shown in the Declarations is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

**5. Paragraph 8. is added as follows:**

8. Subject to Paragraph 5. above, the most we will pay under Coverage D. Voluntary Property Damage for loss arising out of any one "occurrence" is \$1,500. The most we will pay in any one-policy period, regardless of the number of claims made or suits brought, is \$3,000.

**6. Paragraph 9. is added as follows:**

9. Subject to Paragraph 5. above, the most we will pay under Coverage E. Care, Custody or Control for "property damage" arising out of any one "occurrence" is \$1,000. The most we will pay in any one-policy period, regardless of the number of claims made or suits brought, is \$5,000.

**7. Paragraph 10. is added as follows:**

10. Subject to Paragraph 5. above, the most we will pay under Coverage F. Limited Product Withdrawal Expense for "product withdrawal expenses" in any one-policy period, regardless of the number of insureds, "product withdrawals" initiated or number of "your products" withdrawn is \$10,000.

**8. Paragraph 11. is added as follows:**

11. Subject to Paragraph 5. above, the most we will pay under Coverage G. Contractors Errors and Omissions for damage in any one-policy period, regardless of the number of insureds, claims or "suits" brought, or persons or organizations making claim or bringing "suits" is \$10,000.

For errors in contract or job specifications or in recommendations of products or materials to be used, this policy will not pay for additional costs of products and materials to be used that would not have been incurred had the correct recommendations or specifications been made.

**9. Paragraph 12. is added as follows:**

12. The General Aggregate Limit applies separately to:

- a. Each of your projects away from premises owned by or rented to you; or
- b. Each "location" owned by or rented to you.

"Location" as used in this paragraph 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.

**10. Paragraph 13. is added as follows:**

13. With respect to the insurance afforded to any additional insured provided coverage under this endorsement:

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:

- a. Required by the contract or agreement; or
- b. 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.

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:**

**1. Subparagraph 2.a. of Duties In The Event Of Occurrence, Offense, Claim, or Suit is replaced with the following:**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. This requirement applies only when the "occurrence" or offense is known to the following:
  - (1) An individual who is the sole owner;
  - (2) A partner, if you are a partnership or joint venture;
  - (3) An "executive officer" or insurance manager, if you are a corporation;
  - (4) A manager, if you are a limited liability company;

- (5) A person or organization having proper temporary custody of your property if you die;
- (6) The legal representative of you if you die; or
- (7) A person (other than an "employee") or an organization while acting as your real estate manager.

To the extent possible, notice should include:

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

**2. The following is added to Subparagraph 2.b. of Duties In The Event Of Occurrence, Offense, Claim, or Suit:**

The requirement in 2.b.applies only when the "occurrence" or offense is known to the following:

- (1) An individual who is the sole owner;
- (2) A partner or insurance manager, if you are a partnership or joint venture;
- (3) An "executive officer" or insurance manager, if you are a corporation;
- (4) A manager or insurance manager, if you are a limited liability company;
- (5) Your officials, trustees, board members or insurance manager, if you are a not-for-profit organization;
- (6) A person or organization having proper temporary custody of your property if you die;
- (7) The legal representative of you if you die; or
- (8) A person (other than an "employee") or an organization while acting as your real estate manager.

**3. The following is added to paragraph 2. of Duties in the Event of Occurrence, Offense, Claim or Suit:**

- e. If you report an "occurrence" to your workers compensation carrier that develops into a liability claim for which coverage is provided by the Coverage Form, failure to report such an "occurrence" to us at the time of the "occurrence" shall not be deemed a violation of paragraphs a., b., and c. above. However, you shall give written notice of this "occurrence" to us as soon as you become aware that this "occurrence" may be a liability claim rather than a workers compensation claim.

**4. Paragraph 6. is replaced with the following:**

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

Any error or omission in the description of, or failure to completely describe or disclose any premises, operations or products intended to be covered by the Coverage Form will not invalidate or affect coverage for those premises, operations or products, provided such error or omission or failure to completely describe or disclose premises, operations or products was not intentional.

You must report such error or omission to us as soon as practicable after its discovery. However, this provision does not affect our right to collect additional premium charges or exercise our right of cancellation or nonrenewal.

**5. The following is added to paragraph 8. Transfer Of Rights Of Recovery Against Others To Us:**

However, we waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" included in the "products-completed operations hazard" under the following conditions:

- a) Only when you have agreed in writing to waive such rights of recovery in a contract or agreement;
- b) Only as to the person/entity as to whom you are required by the contract to waive rights of recovery; and
- c) Only if the contract or agreement is in effect during the term of this policy, and was executed by you prior to the loss.

**6. Paragraph 10. is added as follows:**

**10. Liberalization**

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in the applicable state(s).



# FLORIDA AUTO ADVANTAGE COVERAGE ENDORSEMENT

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## FLORIDA AUTO ADVANTAGE COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

NOTE: The following are additions, replacements and amendments to the Business Auto Coverage Form, and will apply unless excluded by separate endorsement(s) to the Business Auto Coverage Form.

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

The Business Auto Coverage Form is amended as follows:

**SECTION II – LIABILITY COVERAGE** is amended as follows:

**A.1. Who Is An Insured** provision is amended by adding the following:

- d. Any legally incorporated subsidiary of yours in which you own more than 50% of the voting stock on the effective date of this coverage form. However, “insured” does not include any subsidiary that is an “insured” under any other liability policy or would be an “insured” under such a policy but for its termination or the exhaustion of its limits of insurance. In order for such subsidiaries to be considered insured under this policy, you must notify us of such subsidiaries within 60 days of policy effective date.
- e. Any organization you newly acquire or form during the policy period, other than a partnership or joint venture, and over which you maintain sole ownership or a majority interest. However, coverage under this provision:
  - (1) Does not apply if the organization you acquire or form is an “insured” under another liability policy or would be an “insured” under such a policy but for its termination or the exhaustion of its limits of insurance;
  - (2) Does not apply to “bodily injury” or “property damage” that occurred before you acquired or formed the organization; and
  - (3) Is afforded only for the first 90 days after you acquire or form the organization or until the end of the policy period, whichever comes first.
- f. Who Is An Insured is amended to include as an insured any person or organization except a person or organization that leases or rents “auto(s)” to you, but only to the extent of his, her, or its liability for whom you and such person or organization have agreed in writing in a contract or agreement, signed and executed by you prior to the loss for which coverage is sought, that such person or organization be added as an additional insured on your policy. Certificates of insurance will not be considered an Agreement to Insure.

Such person or organization is an additional insured but only with respect to your negligent actions, which cause liability to be imposed on such person or organization without fault on the part of said person or organization.

A.2. **Coverage Extensions, Supplementary Payments** a.(2) and a (4) are deleted and replaced with the following:

- (2) Up to \$3,000 for cost of bail bonds (including bond for related traffic 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 \$350 a day because of time off from work.

**SECTION III – PHYSICAL DAMAGE COVERAGE** is amended as follows:

4. **Coverage Extensions** a. and b. are deleted and replaced with the following:

a. **Transportation Expenses:**

We will pay up to \$40 per day to a total maximum of \$1,200 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type or light trucks with a gross vehicle weight of less than 10,000 pounds. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

b. **Loss of Use Expenses**

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

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

However, the most we will pay for any expenses for loss of use to any one vehicle is \$40 per day, to a total maximum of \$1200.

The following Coverage Extension is added:

c. **Fire Department Service Charge**

When a fire department is called to save or protect a covered "auto", its equipment, its contents, or occupants from a covered cause of loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No deductible applies to this additional coverage.

d. **Auto Loan/Lease Gap Coverage**

For those businesses not shown in the Declarations as “auto” dealerships, the following provisions apply:

- (1) If a long term leased “auto”, under an original lease agreement, is a covered “auto” under this Coverage Form and the lessor of the covered “auto” is named as an additional insured under this policy, in the event of a total loss to the leased covered “auto”, we will pay any unpaid amount due on the lease, less the amount paid under the Physical Damage Coverage Section of the policy; and less any:
  - (a) Overdue lease payments at the time of the “loss”;
  - (b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - (c) Security deposits not returned by the lessor;
  - (d) Costs for extended warranties, Credit Life Insurance, Health Accident or Disability Insurance purchased with the lease; and
  - (e) Carry-over balances from previous loans or leases.
- (2) If an owned “auto” is a covered “auto” under this Coverage Form and the loss payee of the covered “auto” is named a loss payee under this policy, in the event of a total loss to the covered “auto”, we will pay any unpaid amount due on the loan, less the amount paid under the Physical Damage Coverage Section of the policy; and less any:
  - (a) Overdue loan payments at the time of the “loss”;
  - (b) Costs for extended warranties, Credit Life Insurance, Health Accident or Disability Insurance purchased with the loan; and
  - (c) Carry-over balances from previous loans.

D. **Deductible** is deleted and replaced with the following:

For each covered “auto”, our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations subject to the following:

Any Comprehensive Coverage deductible shown in the Declarations does not apply to “loss” caused by fire or lightning, and, no deductible applies to glass damage to the side or rear windows if the glass is repaired rather than replaced. However, no deductible shall be applied to damage to the windshield of any covered “auto.”

**SECTION IV – BUSINESS AUTO CONDITIONS** is amended as follows:

**Loss Conditions A.2.a. Duties in the Event of Accident, Claim, Suit or Loss** is amended to add the following paragraph:

- (4) This duty applies when the “accident”, claim, “suit” or “loss” is first known to:
  - (a) You, if you are an individual;
  - (b) A partner, if you are a partnership;

- (c) An executive officer or insurance manager, if you are a corporation; or
- (d) A member or manager, if you are a limited liability company.

**General Conditions B.2. Concealment, Misrepresentation or Fraud** is amended to include the following:

However, if you unintentionally fail to disclose any hazards at the inception of your policy, we will not deny coverage under this Coverage Form because of such failure. This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

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:

BUSINESS AUTO COVERAGE FORM

### SCHEDULE

Name of Person or Organization:

City of Venice, its Elected Officials, Officers, Agents and Employees  
401 W. Venice Avenue, Venice, FL 34285

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

Paragraph 5. the Transfer of Rights of Recovery Against Others to Us Condition (**Section IV – Business Auto Conditions**) is amended by the addition of the following:

However, we will waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make under this Coverage Form arising out of an "accident" or "loss" if:

- a. The "accident" or "loss" is caused by operations undertaken by you in accordance with the contract existing between you and such person or organization shown in the Schedule above: and
- b. The contract or agreement was executed prior to any "accident" or "loss."

Our waiver of our right to recovery applies only to the extent that the person or organization shown in the Schedule above is considered to be either an Additional Insured under the policy or is entitled to indemnity from you. No waiver of the right of recovery will directly or indirectly apply to your employees or employees of the person or organization shown in the Schedule, and we reserve our rights or lien to be reimbursed from any recovery funds obtained by an injured employee.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EARLIER NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM  
BUSINESSOWNERS COVERAGE FORM  
COMMERCIAL CRIME COVERAGE FORM  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM  
COMMERCIAL OUTPUT POLICY  
COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART  
FARM UMBRELLA COVERAGE FORM  
GARAGE COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM  
PRODUCT WITHDRAWAL COVERAGE FORM  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE FORM

### SCHEDULE

A. Number of Days' Notice: 30

B. Person(s) or Organization:

City of Venice, its Elected Officials, Officers, Agents and Employees  
401 W. Venice Avenue  
Venice, FL 34285

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

For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation to you, as provided in **Paragraph 2.** of either the Cancellation Common Policy Condition or as amended by an applicable state cancellation endorsement, is increased to the number of days shown in item **A.** in the Schedule above.

When a person or organization is listed in item **B.** in the Schedule above, the number of days notice in item **A.** only applies to notice to you and the person(s) or organization listed. Failure to mail such notice to the person(s) or organization listed in **B.** shall impose no obligation or liability of any kind upon the company, its agents or representatives.



**INSource PARTNERS LLC**  
Insurance and Surety Services

September 1, 2017

City of Venice  
401 W. Venice Avenue  
Venice, FL 34285

Re: Magnum Builders of Sarasota, Inc.  
RFQ #3056-17 Construction Management Services  
City of Venice Water Treatment Plant Building Improvements

Dear Sir or Madam:

When requested by Magnum Builders of Sarasota, Inc., we will be pleased to provide Builders Risk Insurance for the above-referenced project, subject to normal underwriting requirements.

Please contact us should you need additional information.

Thank you.

Sincerely,

Christine A. Papa, AAI  
Executive Vice President

CAP/cm