

AGREEMENT BETWEEN  
THE COUNTY OF ALBANY  
AND LOMONACO & PITTS, ARCHITECTS P.C. D/B/A ARCHITECTURE+  
FOR DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES  
RELATED TO LOCKERS, DRESSING ROOMS AND HALLWAY UPGRADES  
AT THE ALBANY COUNTY TIMES UNION CENTER

PURSUANT TO RES. NO. 233 FOR 2019, ADOPTED JUNE 10, 2019

THIS AGREEMENT is made by and between the County of Albany, a municipal corporation, acting by and through its County Executive, with its principal office located at the Albany County Office Building, 112 State Street, Albany, New York 12207-2021 (hereinafter called the "County") and Lomonaco & Pitts, P.C., a New York professional corporation, doing business as Architecture+, with its principal place of business located at 297 River Street, Troy, New York 12180 (hereinafter called the "Consultant," and, together with the County, may be referred to herein as the "parties").

WITNESSETH:

WHEREAS, the County has a need for design and construction services related to the renovation of the lockers, dressing rooms and hallways at the Albany County Times Union Center; and

WHEREAS, the County has issued a request for proposals for the aforesaid design and construction services, said request having been denominated RFP #2019-045 (hereinafter called the "RFP"), and the RFP having been issued by the Albany County Purchasing Division (hereinafter called the "Purchasing Division") on March 21, 2019 and published on March 21, 2019; and

WHEREAS, the Purchasing Division has issued two (2) addenda to the RFP, the first on March 28, 2019 (hereinafter called the "Addendum #1") and the second on April 2, 2019 (hereinafter called the "Addendum #2," and, together with Addendum #1, may be referred to herein as the "Addenda"); and

WHEREAS, the Consultant has submitted a proposal on April 4, 2019 to provide the aforesaid design and construction services (hereinafter called the "Proposal"); and

WHEREAS, the County has accepted the Proposal of the Consultant to provide the aforesaid design and construction services; and

WHEREAS, the Albany County Legislature has authorized the County Executive to enter into an agreement with the Consultant regarding the aforesaid design and construction services by Resolution No.233 for 2019, adopted June 10, 2019; and

WHEREAS, this Agreement sets forth the understanding reached by the parties herein; and

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

#### ARTICLE 1. THE CONTRACT DOCUMENTS; INTERPRETATION

1.1 The Contract Documents consist of the following: this Agreement; the RFP, which is incorporated by reference and made a part hereof; the Addenda, which are incorporated by reference and made a part hereof; and the Proposal, which is incorporated by reference and made a part hereof (collectively referred to as "the Agreement" hereinafter).

1.2 In the event of any discrepancy, disagreement or ambiguity among the Contract Documents, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity: 1) this Agreement; 2) the Addendum #2; 3) the Addendum #1; 4) the RFP; 5) the Proposal.

#### ARTICLE 2. SCOPE OF SERVICES

The Consultant shall provide all of the following services while coordinating all of its activities with the Albany County Facilities Engineering Division (hereinafter called "ACFE" or "Albany County") and Civic Center SMG Management Staff (hereinafter called "SMG"):

##### 2.1 Project Design Goals/Objectives/Parameters:

2.1.1 The Design Work shall include all required architectural and engineering elements, including but not limited to: replacement of walls, floors, ceilings, cabinetry, millwork, doors/frames and door hardware (mechanical and electronic), insulation, fireproofing, bathroom fixtures/vanities, toilet partitions/accessories, plumbing, HVAC, lighting, fire sprinkler, electrical, voice/data, entertainment systems, furniture and fixed equipment, signage, and any additional items requested by SMG and/or ACFE. **See attached Dressing & Locker Room Plan SK-1**

2.1.2 Renovations will vary by room, and the Consultant shall work closely with SMG and ACFE to select unique, durable, and appropriate equipment and finishes in each area.

2.1.3 Facility operations and activities shall be maintained without disruption during construction, and the Consultant shall be required to incorporate phasing documents and temporary facilities (access, electrical, plumbing, etc.) in the Design Work to ensure same.

2.1.4 The Consultant shall perform multiple site walk-throughs with SMG and ACFE to review existing facility conditions and collect pertinent information necessary to perform the Design Work.

2.1.5 The Consultant shall be required to coordinate the Design Work with other construction projects in planning and/or underway at the Facility.

2.1.6 The Design Work shall incorporate finishes, fixtures, and equipment that are readily available through the existing network of commercial vendors to SMG and/or ACFE, and the Consultant shall coordinate material selections accordingly.

2.1.7 The Consultant shall be required to ensure integration with existing Facility systems, including but not limited to: lighting controls, HVAC controls, security systems, and voice/data systems.

2.1.8 The Consultant shall ensure that service contracts, extended warranties, attic stock, and close-out documentation in the Design Work meet the requirements of SMG and ACFE.

2.2 Design Development Phase: Upon receipt of approval to proceed with the Design Work, the Consultant shall:

2.2.1 Meet with SMG and ACFE to develop a project schedule, review existing conditions, and establish specific design criteria. Bi-weekly meetings shall be required for the duration of the project at a day/time set by SMG and ACFE.

2.2.2 Prepare all design drawings in AutoCAD 2016 format or newer version. Prepare specifications in MS Word. Provide all documents to SMG and ACFE in unprotected format.

2.2.3 Prepare 60% design submittal and probable cost estimate for review and comment by SMG and ACFE. Provide five (5) paper copies and one (1) USB drive in the timeframe required by the project schedule. Incorporate all SMG and ACFE comments in subsequent Design Work.

2.2.4 Prepare 90% design submittal and probable cost estimate for review and comment by SMG and ACFE. Provide five (5) paper copies and one (1) USB drive in the timeframe required by the project schedule. Incorporate all SMG and ACFE comments in subsequent Design Work.

2.2.5 Prepare 100% design submittal incorporating all prior comments from SMG and ACFE. Provide five (5) paper copies and one (1) USB drive in the timeframe required by the project schedule. SMG and ACFE shall provide written acceptance of 100% design submittal prior to preparation of construction documents.

2.3 Construction Document Phase: Upon approval of the 100% design submittal by SMG and ACFE, the Consultant shall”

2.3.1 Prepare competitive bid contract documents for general construction in accordance with prevailing competitive bidding requirements (“Wicks Law”, NYS Finance Law Section 135); and in compliance with the County’s

Affirmative Action Plan as approved by Resolution No. 26, adopted June 10, 1996.

2.3.2 Prepare a Project Manual which includes all County bid forms as provided by Albany County Purchasing Division, Instructions to Bidders and Conditions of the Contract. Forms shall include, but not limited to, the following:

- a. Invitation to Bid,
- b. Instruction to Bidders
- c. Bid Forms
- d. Division 1 - General Requirements
- e. Technical Specifications, including performance criteria for all construction materials required on the project, warranties, attic stock, close-out documentation, and service contracts.

2.3.3 Prepare Project Drawings with architect/engineer's certifications and stamps.

2.3.4 Prepare a final cost estimate and construction schedule

2.3.5 Specify testing and inspection requirements of completed work.

2.3.6 Submit the project documents and final cost estimate to SMG, ACFE, and Albany County Purchasing Division, allowing two (2) weeks for review and comment. Incorporate all requested modifications in the final documents.

2.4 Bidding and Contract Negotiation Phase: The Consultant shall assist SMG and ACFE in all aspects of the bidding phase, including, but not limited to:

2.4.1 Solicit bidders and provide electronic (PDF) versions of plans and specifications to be used for bidding and preparation of contracts.

2,4,2 Conduct pre-bid meeting(s) and walk through(s) to present project scope and field contractor questions.

2.4.3 After consultation with SMG and ACFE, respond to contractor questions and prepare any necessary written replies and/or addendums for distribution by the County.

2,4,4 Assist with contractor interviews and selection of lowest responsible bidders. Ensure that contractors have a clear understanding of the project scope.

2,4,5 Provide written contractor bid recommendations as requested by SMG or ACFE.

2,4,6 Prepare a formal presentation for the County if requested by ACFE.

2.5 Contract Administration Phase: The Consultant shall provide all required contract administration services throughout completion of the project, including, but not limited to:

- 2.5.1 Provide completed Architect/Engineer's Letter as required by ACCE in conjunction with contractors' building permits.
- 2.5.2 Participate in no less than three (3) pre-construction meetings with contractors, and prepare meeting minutes for distribution to all participants.
- 2.5.3 Participate in bi-weekly contractor meetings during project implementation and prepare meeting minutes for distribution to all participants.
- 2.5.4 Conduct weekly site inspections during construction to ensure proper quality control, and provide written report of findings to SMG and ACFE.
- 2.5.5 Maintain and update project schedule throughout duration of contractor activity.
- 2.5.6 Review contractors' submittals and shop drawings for conformance to both the letter and intent of the bid documents, and provide written acceptance or rejection of same. Provide electronic copies of all approved documents to SMG and ACFE.
- 2.5.7 Review and respond to contractor requests for information in consultation with SMG and ACFE. Distribute written response to all contractors.
- 2.5.8 Prepare and distribute bulletins to contractors as required, or as requested by SMG and ACFE.
- 2.5.9 Review contractors' change order proposals and provide written recommendations to SMG and ACFE.
- 2.5.10 Maintain all project records for turn over to SMG and ACFE at project completion.
- 2.5.11 Conduct a detailed post-construction site inspection and prepare contractor punch lists with sufficient detail to ensure contractor remediation.
- 2.5.12 Conduct a final inspection and provide written certification of project completion to SMG, ACFE, and ACCE.
- 2.5.13 Review all close-out documentation for conformance with bid documents.
- 2.5.14 Review Contractors' as-built drawings and provide written comments/recommendations to SMG and ACFE.

2.6 While providing services to the County, the Consultant shall follow all applicable laws, codes, standards, rules and regulations while providing the services, including, but not limited to, the Building Code of New York State, the Energy Code of New York State, ICC/ANSI A117.1-1998 and all referenced ADA standards. The Consultant shall certify same.

### ARTICLE 3. COMPENSATION

In consideration of the terms and obligations of this Agreement, the County agrees to pay, and the Consultant agrees to accept, an amount not to exceed ONE HUNDRED

FOUR THOUSAND TWO HUNDRED NINETEEN AND 00/100 DOLLARS (\$104,219.00), as full compensation for the services it provides.

#### ARTICLE 4. PAYMENT

Payment shall be made to the Consultant by the County upon the Consultant's submission of a properly executed claim form, plus all supporting documentation, including, but not limited to, an invoice showing billable hours, to the Department of General Services. Upon acceptance of the claim by the Department of General Services, payment shall be issued promptly to the Consultant.

#### ARTICLE 5. TERM OF AGREEMENT

The term of this Agreement shall commence on the date the County issues a notice to proceed and will continue in effect until the Consultant renders all the services provided for under this Agreement, as determined by Albany County.

#### ARTICLE 6. TERMINATION OF AGREEMENT; REMEDY FOR BREACH

6.1 This Agreement may be terminated by the County or the Consultant as follows:

6.1.1 The County may terminate this Agreement if the Consultant refuses or fails to supply enough properly skilled workers or proper materials to meet any of its requirements, if the Consultant fails to make payment to County-approved subcontractors for materials or labor, or disregards laws, ordinances or rules and regulations or orders of a public entity having jurisdiction over the work, or if the Consultant is substantially in breach of any of its provisions. Additionally, the County may, without cause, order the Consultant in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the County may determine.

6.1.2 The Consultant may terminate the Agreement if the County is substantially in breach of it.

6.2 In the event of a breach by the Consultant, the Consultant shall pay to the County all direct and consequential damages caused by such breach, including, but not limited to, all sums expended by the County to procure a substitute consultant to satisfactorily complete the work, together with the County's own costs incurred in procuring a substitute consultant.

#### ARTICLE 7. ASSIGNMENT

7.1 The Consultant specifically agrees as required by Section 109 of the N.Y. General Municipal Law that the Consultant is prohibited from assigning, transferring, conveying, subcontracting or otherwise disposing of this Agreement, or of the Consultant's right, title, or interest therein, without the prior written consent of the County.

7.2 The Consultant shall not subcontract for any portion of the services required under this Agreement without the prior written approval of the County. Any such subcontractor shall be subject to the terms and conditions of this Agreement and any additional terms and conditions the County may deem necessary or appropriate.

#### ARTICLE 8. AVAILABLE DATA

All technical or other data relative to this Agreement in the possession of the County or in the possession of the Consultant shall be made available to the other party to this Agreement without expense to the other party.

#### ARTICLE 9. COOPERATION

The Consultant shall cooperate with representatives, agents and employees of the County and the County shall cooperate with representatives, agents and employees of the Consultant to the end that work may proceed expeditiously and economically.

#### ARTICLE 10. NON-DISCRIMINATION

In accordance with Article 15 of N.Y. Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Consultant agrees that neither it nor any of its County-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics or marital status refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

#### ARTICLE 11. RELATIONSHIP

The Consultant is, and shall function as, an independent contractor under the terms of this Agreement and shall not be considered an agent or employee of the County for any purpose. The employees and agents of the Consultant shall not in any manner be, or be held out to be, agents or employees of the County.

#### ARTICLE 12. INDEMNIFICATION

The Consultant shall defend, indemnify and hold harmless the County, its employees and its agents from and against all claims, costs, damages, losses and expenses (including, but not limited to, reasonable attorneys' fees) arising out of, or in consequence of, any negligent act or intentional act or omission of the Consultant, its employees or agents, to the extent of its or their responsibility for such claims, damages, losses and expenses.

### ARTICLE 13. NON-APPROPRIATIONS

Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by or are otherwise unavailable to the County for payment under this Agreement. The County will immediately notify the Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the County of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted.

### ARTICLE 14. APPLICABLE LAW

The laws of the State of New York shall govern this Agreement. The designated venue is Albany, New York.

### ARTICLE 15. RECORDS

15.1 The Consultant shall maintain complete and proper accounting records that shall clearly identify all costs associated with and revenue derived from the work performed under this Agreement. Such records shall be subject to periodic and final audit by the County upon request.

15.2 The Consultant shall provide the County and authorized State and/or Federal personnel access to any and all books, documents, records, charts, software or any other information relevant to performance under this Agreement, immediately upon request.

15.3 The Consultant shall retain all of the above information for six (6) years after final payment or the termination of this Agreement, and shall make such information available to the County, and authorized State and/or Federal personnel during such period.

### ARTICLE 16. INSURANCE

16.1 The Consultant shall procure and maintain for the entire term of this Agreement, without additional expense to the County, insurance policies of the kinds and in the amounts provided in the Schedule A attached hereto and made a part hereof. The insurance policies shall name the County and SMG as additional insureds. Such policies may only be changed upon thirty (30) days prior written approval by the County.

16.2 The Consultant shall, prior to commencing any of the services outlined herein, furnish the County with Certificates of Insurance showing that the requirements of this article have been met. The Consultant shall also provide the County with updated Certificates of Insurance prior to the expiration of any previously-issued certificate. No work shall be commenced under this Agreement until the Consultant has delivered the Certificates of Insurance to the County. Upon failure of the Consultant to furnish, deliver and maintain such insurance certificates as provided above, the County may declare this Agreement suspended, discontinued or terminated.

16.3 As required by Section 108 of the N.Y. General Municipal Law, this Agreement shall be of no force and effect unless the Consultant shall secure compensation for the benefit of, and keep insured during the life of this Agreement, all employees engaged thereon in compliance with the provisions of the N.Y. Workers' Compensation Law. The Consultant shall require any subcontractor authorized by the County to do likewise for all of their employees engaged thereon, all in compliance with the provisions of the N.Y. Workers' Compensation Law and of Schedule A of this Agreement.

#### ARTICLE 17. NO WAIVER OF PERFORMANCE

Failure of the County to insist upon strict and prompt performance of the provisions of this Agreement, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of the County's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of the Consultant.

#### ARTICLE 18. MODIFICATION

This Agreement may only be modified by a formal written amendment executed by the parties.

#### ARTICLE 19. EXECUTION OF DOCUMENTS

This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

#### ARTICLE 20. HEADINGS – CONSTRUCTION

The headings appearing in this Agreement are for the purpose of easy reference only and shall not be considered a part of this Agreement or in any way to modify, amend or affect the provisions hereof.

#### ARTICLE 21. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties and no representations or promises have been made except as herein expressly set forth.

#### ARTICLE 22. COMPLIANCE WITH MacBRIDE PRINCIPLES

The Consultant hereby represents that it is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. 3 for 1993, in that the Consultant either (a) has no business operations in Northern Ireland or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of its

compliance with such principles. In the event of a violation of this stipulation, the County reserves all rights to take remedial measures as authorized under section 4 of Local Law No. 3 in 1993, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the Consultant in default and/or seeking debarment or suspension of the Consultant.

#### ARTICLE 23. NON-INTERRUPTION OF WORK

The Consultant agrees that it will not intentionally engage in any course of conduct or activity, or employ for the purposes of performing the public work, any subcontractors, employees, labor or materials which will or may result in the interruption of the performance of the public work due to labor strife or unrest by workmen employed by the Consultant or by any of the trades working in or about the public works and/or premises where the work is being performed.

#### ARTICLE 24. EXTRA WORK

If the County requests services that the Consultant believes to be outside the Scope of Services described in Article 2 (hereinafter called "extra work"), the Consultant shall, before performing those services, inform the County in writing of the Consultant's belief that the services requested are additional services constituting extra work, and may provide an estimate in writing to the County of the probable total of the additional service fees to be incurred in performing the services requested.

#### ARTICLE 25. STORMWATER MANAGEMENT PROGRAM

The Consultant understands that Albany County is a regulated entity subject to the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-0-15-003), and must comply with the terms and conditions of the aforementioned Permit. The Consultant further understands that under the New York State Environmental Conservation Law, it is unlawful for any person to directly or indirectly cause or contribute to a violation of water quality standards, and that Albany County adopted Local Law 7 of 2007 enabling the County to take action against any discharges that cause or contribute to a violation of water quality standards. The Consultant agrees to comply with the terms and conditions of the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-0-15-003) as well as Albany County Local Law No. 7 for 2007 and any Best Management Practices developed pursuant to the foregoing, as established in Albany County's Stormwater Management Program Plan. The Consultant also agrees to implement any corrective actions identified by Albany County or a representative pursuant to the above regulations, and further understands that any non-compliance by the County will not diminish, eliminate, or lessen the Consultant's own liability. The Consultant shall execute and deliver to the County a certification statement acknowledging the above provisions prior to commencing any work.

## ARTICLE 26. MISCELLANEOUS PROVISIONS

26.1 In addition to the policies and procedures described above, the Consultant also acknowledges that it shall follow the MacBride Principles, Non Interruption of Work Agreement (per Res. No. 298 for 1986), Iranian Energy Sector Divestment (per N.Y. Gen. Mun. Law § 103-9), and all other policies and procedures contained in the RFP.

26.2 During the term of this Agreement, the Consultant agrees that, in the event of its reorganization or dissolution as a business entity or change in business, the Consultant shall give the County thirty (30) days written notice in advance of such event.

26.3 The Consultant shall at all times obtain and maintain all licenses required by New York State, or other relevant regulating body, to perform the services required under this Agreement.

26.4 If any term, part, provision, section, subdivision or paragraph of this Agreement shall be held to be unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions or paragraphs.

26.5 The County shall bear no responsibility other than that set forth in this Agreement.

26.6 All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be deemed properly given if, and only if, delivered personally, sent by registered or certified United States mail, postage prepaid, or, with the prior consent of the receiving party, dispatched via facsimile transmission.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed the day and year first indicated below.

COUNTY OF ALBANY

DATED: 8/5/19

BY:



Daniel P. McCoy  
County Executive

or

Philip F. Calderone  
Deputy County Executive

ARCHITECTURE+

DATED: July 30, 2019

BY:



Name:



Title:

STATE OF NEW YORK )  
COUNTY OF ALBANY ) SS.:

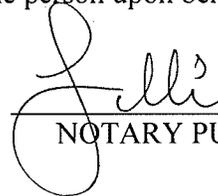
On the \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, personally appeared Daniel P. McCoy personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEW YORK )  
COUNTY OF ALBANY ) SS.:

On the 5 day of August, 2019, before me, the undersigned, personally appeared Philip F. Calderone personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

MICHAEL A. LALLI  
NOTARY PUBLIC - STATE OF NEW YORK  
No. 01LA6322012  
Qualified in Albany County  
My Commission Expires March 30, 2023

  
\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEW YORK )  
COUNTY OF ALBANY ) SS.:

On the 31<sup>st</sup> day of July, 2019, before me, the undersigned, personally appeared MADY KATE YOUNG personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
NOTARY PUBLIC

PIERRETTE MIRKLER  
Notary Public, State Of New York  
No. 01V16000009  
Qualified In Albany County  
Commission Expires 05/27/20 23

SCHEDULE A  
INSURANCE COVERAGE

1. Workers' Compensation and Employers' Liability Insurance: A policy or policies providing protection for employees in the event of job-related injuries.
2. Automobile Liability Insurance: A policy or policies with the limits of not less than \$500,000 combined for each accident because of bodily injury, sickness, or disease, sustained by any person, caused by accident, and arising out of the ownership, maintenance or use of any automobile for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of any automobile.
3. General Liability Insurance: A policy or policies of comprehensive all-risk insurance, including coverage for demolition of structures, with limits of not less than:

Liability For:	Combined Single Limit
Property Damage	\$1,000,000
Bodily Injury	\$1,000,000
Personal Injury	\$1,000,000.

4. Professional Liability Insurance: A policy or policies of professional liability insurance with limits not less than ~~\$5,000,000~~

*\$2,000,000 per claim / \$4,000,000 aggregate*