

DATE June 22, 2020

APPROVING PRIVATE CONSTRUCTION CONTRACT BETWEEN
ELDER CORPORATION AND
DES MOINES HERITAGE TRUST
FOR STORM SEWER IMPROVEMENTS IN 120 E. 5TH STREET
\$26,490.50

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the attached contract documents for a Private Construction Contract in the amount of \$26,490.50 between Elder Corporation, Jared R. Elder II, President, 5088 E. University Avenue, Des Moines, IA, 50327 - as Contractor, and Des Moines Heritage Trust, Tim Waddell, Chair, 896 Polk Blvd, Des Moines, IA, 50312 - as Owner, for construction of storm sewer Improvements described as Storm Sewer Improvements located at 120 E 5th Street, as shown on Plan File Numbers 609-101/102., be and the same are hereby approved, subject to receipt of contract and bond approved as to form by the Legal Department, and certificate of insurance acceptable to the Engineering Department.

BE IT FURTHER RESOLVED: That permission be and is hereby granted to the parties of said contract to construct said storm sewer Improvements in accordance with said contract documents and subject to receipt of contract and bond approved as to form by the Legal Department and certificate of insurance acceptable to the Engineering Department, subject to inspection and approval of the Des Moines City Engineer.

★ **Roll Call Number**

Agenda Item Number

11 B

DATE June 22, 2020

Activity ID: 08-2020-100

Moved by _____ to adopt.

FORM APPROVED:

s/Kathleen Vanderpool

Kathleen Vanderpool
Deputy City Attorney

SLN

Funding Source: All project costs are to be paid by the Owner(s), Des Moines Heritage Trust

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

I, P. Kay Cmelik, City Clerk of said City Council, hereby certify that at a meeting of the City Council, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk



PRIVATE CONSTRUCTION CONTRACT

THIS PRIVATE CONSTRUCTION CONTRACT (hereinafter "Contract"), made and entered into on the 9th day of, June 2020, by and between Elder Corporation, (hereinafter called the "Contractor"), and Des Moines Heritage Trust, (hereinafter called the "Owner").

WHEREAS, the Owner owns property in the City of Des Moines (hereinafter called the "City" or "Jurisdiction") which requires improvements, as described herein, be constructed for development of the property; and

WHEREAS, the improvements are being constructed at Owner's sole cost and expense; and

WHEREAS, the Contactor is responsible for constructing the improvements as set forth in this Contract; and

WHEREAS, this Contract is to set forth the responsibilities of the Owner and Contractor for construction of the improvements and the conditions and requirements that are to be met before the acceptance of the improvements by the City.

WITNESSETH: That the Contractor and Owner, for the consideration stated herein, agree as follows:

ARTICLE I: DESIGN

Owner represents and agrees that the improvements have been designed in accordance with the current edition of SUDAS (Statewide Urban Standard Design and Specifications) and all other applicable laws, regulations, codes, ordinances and City approved design references.

ARTICLE II: SCOPE OF WORK

The Contractor hereby agrees to complete the work comprising the below referenced improvements as specified in the Contract Documents, which are officially on file in the office of the City Engineer. This Contract includes all Contract Documents, as defined in the SUDAS Standard Specifications, 2020 Edition for the construction of the following improvements:

Storm Sewer Improvements located at 120 E 5th Street, as shown on Plan File Numbers 609-101/102.

In accordance with Plan File Numbers 609-001/002

The Quantity of work to be done is estimated as shown on Attachment A. The Contractor further agrees to complete the work in strict accordance with said Contract and Contract Documents, and to guarantee the work and improvements as required by law and for the time required in said Contract and Contract Documents, after its acknowledgment of completion and acceptance by the City of Des Moines, Iowa, hereinafter called the "Jurisdiction".

The improvements shall be constructed in accordance with the SUDAS Standard Specifications, 2020 Edition, which were adopted by the City of Des Moines on May 4, 2020 under Roll Call Number 20-0737¹, as further revised by the City of Des Moines General Supplemental Specifications² to the SUDAS Standard Specification, 2020 Edition, all special provisions included in said Contract Documents and all applicable laws, regulations and codes.

¹ The SUDAS Standard Specification may be viewed at the Iowa SUDAS website: <https://iowasudas.org/manuals/specifications-manual/> or can be purchased online at the Iowa SUDAS website at <https://iowasudas.org/order-the-manuals/>.

² https://www.dsm.city/document_center/Engineering%20and%20Traffic%20Forms%20and%20Documents/ENG-Publications/Notice%20to%20Contractors%20and%20Consultants%202020%20Edition.pdf?pdf=Notice%20to%20Consultants%20and%20Contractors-2020%20SUDAS&t=1588708706725

ARTICLE III: CITY IS THIRD PARTY BENEFICIARY

The Owner and Contractor expressly agree that the City is a third-party beneficiary of this Contract. Owner and Contractor acknowledge and agree that the improvements to be constructed under this Contract are intended to be conveyed to the City. As such, Owner and Contractor expressly agree that services are being indirectly provided to the City under this Contract, that the City is a third party beneficiary of this Contract with respect to the improvements which it is constructing and that the provisions of this Contract shall inure to the benefit of and shall be enforceable by the City as if it were the Owner hereunder. Owner and Contractor acknowledge and agree that they are contractually obligated to the City pursuant to this provision. All cost of construction of the improvements shall be at the sole cost and expense of the Owner and at no expense to the City.

ARTICLE IV: COMMENCEMENT AND COMPLETION OF WORK

The Contractor hereby agrees to commence the work not later than July 1, 2020, and to fully complete the work and improvements, all punch list items and final clean up and provide applicable as built plans not later than August 1, 2020.

ARTICLE V: APPROVAL OF PLANS AND SPECIFICATIONS

The Owner must obtain written approval of the City Engineer of the plans and specifications for the improvements. Any changes to those plans and specifications or Contract Documents once approved by the City Engineer must also be approved in writing by the City Engineer.

ARTICLE VI: MAINTENANCE REQUIREMENTS

The Contractor hereby agree, at their own expense:

- A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of four (4) years from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;
- B. To keep all work in continuous good repair; and
- C. To pay the Jurisdiction's reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's agreement herein made extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time such work was accepted.

ARTICLE VII: THE CONTRACT SUM

Upon performance of this Contract by the Contractor, the Owner shall pay to the Contractor the lump sum of Twenty-Six Thousand, Four Hundred Ninety and 50/100 dollars (\$ \$26,490.50), or the total amount based upon the actual quantities constructed and the unit prices listed on Attachment A, which payment shall be in full compensation and settlement for the work. Except as hereafter provided, the details regarding actual payment by the Owner to the Contractor for compensation for work completed shall be between the Owner and the Contractor. The City shall hold the Owner and Contractor responsible for the completion of the work and improvements, until final acceptance is made. Said final acceptance means a certificate of completion of the project, submitted by the Des Moines City Engineer to the Des Moines City Council with written acceptance by the Des Moines City Council by approval of a resolution accepting the improvements. Such certification, approval and acceptance shall not constitute an acceptance of any unauthorized work, and no approval, acceptance or payment shall constitute an acceptance of unauthorized or defective work or improper material.

ARTICLE VIII: GENERAL

A. ENGINEERING SERVICES AND INSPECTIONS

The Contractor agrees to comply with all procedures required by the Jurisdiction to include, but not limited to: plan check, testing, and construction inspection(s). The Jurisdiction reserves the right to inspect all work on said improvements to the same standard as if the improvement was a Jurisdiction-funded public improvement. The Owner shall hire a licensed surveyor to do all survey work needed for this Contract including an as-built survey. The surveyor shall contact the Jurisdiction regarding format and information required on the as-built survey.

B. INSPECTION COORDINATION

The Contractor shall contact the Des Moines Engineering Department at 515-283-4177 (or cellular 515-208-4177), 24-hours before beginning construction and coordinate with Des Moines Engineering Department for inspection. The Contractor shall make arrangements and accommodate inspections by the Jurisdiction. **Failure to have inspections as required may result in the City requiring the Contractor to remove and replace some or all of the work or may result in the City not accepting the improvements.** The Contractor shall notify the Owner and the City Engineer in writing when all construction work, including the punch list and final cleanup, is completed; so that the City Engineer can make a final inspection of the work, and the Owner can order the as-built survey if required and have the surveyor file a monument preservation certification in accordance with Iowa Code 355.11 (if applicable).

C. FEES PAID BY THE OWNER AND/OR CONTRACTOR

The Owner and/or Contractor agree to obtain all federal, state, and local permits and pay all fees necessary for the Contract work including, but not limited to, Grading and NPDES permits. The Owner agrees to pay the City's administrative, inspection, and testing fees in accordance with Section 94-321 of the Des Moines City Code, at the time the private construction Contract is submitted to the City Engineer for review and prior to presentation to City Council for approval and permission to construct the improvement. Said fees were established by the City Council on December 18, 2002, under Roll Call No. 02-3007 as follows:

Description of Service/Permit	Fee
Administrative Fee for private construction contracts	\$900.00 per contract
Inspection and Testing Fee for private Paving construction contracts	6% of the first \$30,000 of construction contract cost and 2% thereafter
Inspection and Testing Fee for private Sanitary Sewer construction contracts	8% of the first \$30,000 of construction contract cost and 3% thereafter
Inspection and Testing Fee for private Storm Sewer construction contracts	8% of the first \$30,000 of construction contract cost and 2% thereafter

Payment should be made payable to the City of Des Moines and presented with this contract

FEE CALCULATION

Enter data for this contract and calculate fees below, which is the sum of the \$900.00 administrative fee plus the inspection and testing fees based upon the contract costs. (See instructions for example calculations.)

Paving Fee: Construction Amount \$ 10,342.50
 Administrative Fee: \$900.00 \$ _____
 Inspection and Testing Fee:
 • 6% of first \$30,000 of paving construction cost \$ 620.55
 • 2% of the remaining paving construction cost over \$30,000 \$ _____
Total Paving Fee: \$ 620.55

Sanitary Sewer Fee: Construction Amount \$ _____
 Administrative Fee: \$900.00 \$ _____
 Inspection and Testing Fee:
 • 8% of first \$30,000 of sanitary sewer construction cost \$ _____
 • 3% of the remaining sanitary sewer construction cost over \$30,000 \$ _____
Total Sanitary Sewer Fee: \$ _____

Storm Sewer Fee: Construction Amount \$ 16,148.00
 Administrative Fee: \$900.00 \$ 900.00
 Inspection and Testing Fee:
 • 8% of first \$30,000 of storm sewer construction cost \$ 1,291.84
 • 2% of the remaining storm sewer construction cost over \$30,000 \$ _____
Total Storm Sewer Fee : \$ 2,191.84

D. BONDS, INSURANCE AND INDEMNITY

The Contractor agrees to provide the insurance required by Section 1070, Part 3 – Bonds and Insurance, of said Standard Specifications through the period of operations covered by this Contract until acknowledgment of completion and/or acceptance by the Des Moines City Council; and the Contractor shall defend, indemnify, and hold harmless the Jurisdiction and its officers, agents, and employees in accordance with Section 1070, 3.03 Contractor's Indemnity - Contractual Liability Insurance. The Contractor agrees to provide, on the form provided, a Performance, Payment and Maintenance Bond in the full amount of this Contract with the maintenance period of four years.

E. NON-DISCRIMINATION

The Contractor hereby acknowledges and agrees to comply with any and all applicable provisions of the Des Moines Human Rights Ordinance, Chapter 62 of the Des Moines Municipal Code. The Contractor specifically agrees not to discriminate against any employees or applicants for employment on the basis of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. The Contractor further agrees to include this provision in all subcontracts for this project.

F. PUNCH LIST ITEMS AND FINAL COMPLETION

The Contractor is responsible for timely completion of the improvements in accordance with Article III, including construction of the improvements, completion of all punch list items, final cleanup and providing the as-built survey to the City that also indicates whether the surveyor was required to file a monument preservation certification in accordance with Iowa Code 355.11. **All those items must be completed by the dates set forth in Article IV, or the Contractor will be in violation of this Contract.**

G. CITY'S STANDARD FORM CONTRACT CONTROLS

The Owner and the Contractor acknowledge that this Contract has been prepared utilizing a standard City of Des Moines contract form provided by the City or downloaded from the City's website in PDF (Portable Document Format). The Owner and Contractor represent that no changes have been made to the form of this Contract other than to insert required information and text in text boxes provided for that purpose, and they agree that unauthorized changes made to the form of the contract shall not be binding on them or on the City and that the form of the contract as it appears on the City's website shall govern and be binding on the parties to this Contract.

H. SURVEY MONUMENT PRESERVATION

The Owner and Contractor are responsible to fully comply with Section 355.6A of the Iowa Code and shall hire or cause to be hired a licensed professional surveyor to determine if a monument (such as a property corner, section corner, survey control) is likely to be disturbed or removed prior to construction and provide that information to the City before construction begins. The surveyor shall locate and preserve the monuments likely to be disturbed or removed, in the manner provided in section 355.6A. In accordance with Iowa Code 355.11, United States Public Land Survey Corner Monuments shall be preserved and/or replaced.

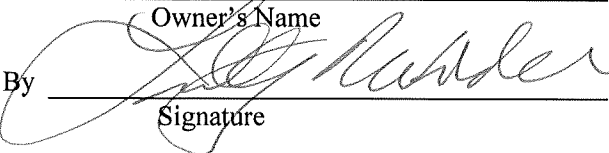

I. NPDES PERMIT AND STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

If the work under this Contract disturbs one or more total acres, this Contract is subject to Section 402(b) of the Clean Water Act and Iowa Code Section 455B.174 and Iowa Administrative Code 567-64.4 (projects disturbing one or more total acres) and requires inclusion in the National Pollution Discharge Elimination System (NPDES) General Permit No. 2, or an individual NPDES Permit for stormwater (also storm water) discharge associated with industrial activity for construction activities. All work shall be in accordance with Section 9040 – Erosion and Sediment Control of the SUDAS Standard Specifications. The revisions to Section 9040 – Erosion and Sediment Control that are included in the City of Des Moines General Supplemental Specifications to the current SUDAS Standard Specification, as referenced above, shall not apply. The Owner, and its Contractor, shall be totally responsible for all Erosion and Sediment Control work including preparing the storm water pollution prevention plan, publications, notices, fees, fines, and all stormwater pollution prevention work.

J. TREE PROTECTION SUPPLEMENTAL SPECIFICATIONS

- A. **WORK ON PRIVATE PROPERTY:** Chapter 42, Article X, Tree Removal and mitigation, of the Municipal Code of the City of Des Moines shall apply.
- B. **WORK ON PUBLIC RIGHT OF WAY:** The City of Des Moines Supplemental Specification for Tree Protection shall apply to this private Construction Contract. The Supplemental Specification for Tree Protection is available from the City Engineer's Office and is also available at the following link:
- C. https://www.dsm.city/document_center/Engineering%20and%20Traffic%20Forms%20and%20Documents/ENG-Regulations/Tree%20Protection%20SS%2003-24-2017%20Current%20Version.pdf?pdf=Tree%20Protection%20Specification&t=1578589324911.

IN WITNESS WHEREOF, the Parties hereto have caused this Instrument to be executed in four (4) original counterparts as of the day and year first above written.

OWNER	CONTRACTOR
Des Moines Heritage Trust	Elder Corporation
Owner's Name	Contractor's Name
By 	By 
Signature	Signature
Tim Waddell	Steve Frame
Printed Name	Printed Name
Chair	Vice President
Title	Title
896 Polk Blvd	5088 E University Avenue
Address	Address
Des Moines, IA 50312	Des Moines, Iowa 50327
City, State, Zip Code	City, State, Zip Code
515-210-2396	515-266-3111
Telephone Number	Telephone Number
Tim.Waddell@IowaEDA.com	Linda.Breeden@eldercorp.com
Email Address	Email Address
Type or print the name and title of the company's owner, president, CEO, etc. if a different person than entered above.	Type or print the name and title of the company's owner, president, CEO, etc. if a different person than entered above.
Name	J. Elder II
Name	Name
Title	President
Title	Title

CONTRACTOR IDENTIFICATION INFORMATION To Be Provided By:

1. All Contractors: Contractor's public registration number issued by the Iowa Commissioner of Labor pursuant to Section 91C.5 of the Iowa Code: C130634.
2. Out-of-State Contractors: Contractor's Bond (State of Iowa, Division of Labor, Out-of-State Contractor Project Bond) pursuant to Section 91C.7 of the Iowa Code
 Bond No: _____
 Name of Surety: _____

NOTE: All signatures on this contract must be original signatures in ink; copies or facsimile of any signature will not be accepted.

ATTACHMENT A

In accordance with Article II: Scope of Work, the Quantity of work to be done is estimated on this Private Construction Contract Attachment A as listed below.

In accordance with Article IV: The Contract Sum is the compensation to be paid by the Owner to the Contractor.

- If the Contractor is to be paid based upon a lump sum price, this amount should be entered on the Contract and only the Item Number, Description, and Quantity of the work as shown on the construction plans need to be listed below.

- If the Contractor is to be paid based upon the total amount of the actual quantities constructed instead of based upon a lump sum price, then the Item Number, Description, and Estimated Quantities of work as shown on the construction plans as well as the Unit Prices, and Total Prices are to be listed below, and the total contract sum should be entered in the space provided for the contract sum on the Contract.

Item No.	Description	Quantity	Unit Price	Total Price
1	Full Depth Composite Pavement	79 SY	\$112.00	\$8,848.00
2	6" Asphalt	14 SY	\$106.75	\$1,494.50
3	Traffic Control	1 LS	\$1,000.00	\$1,000.00
4	SW-401 Manhole	2 Each	\$4,800.00	\$9,600.00
5	15" RCP Storm Sewer	73 LF	\$76.00	\$5,548.00
TOTAL CONTRACT SUM:				\$26,490.50

NON-PROFIT CORPORATION ACKNOWLEDGEMENT

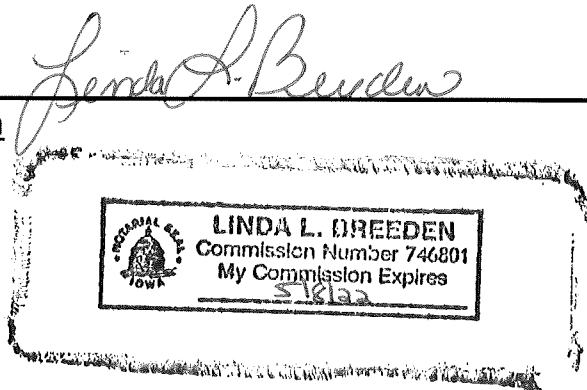
State of Iowa

Polk County

On this 9th day of June 2020, before me a Notary Public in and for said county, personally appeared, Tim Waddell, to me personally know, who, being by me duly sworn did say that person is Chair of said Des Moines Heritage Trust, that ~~(the seal affixed to said instrument is the seal of said~~ OR no seal has been procured by the said), Des Moines Heritage Trust, and that said instrument was signed and sealed on behalf of the said, Des Moines Heritage Trust, by authority of it's managers and the said Chair acknowledged the execution of said instrument to be the voluntary act and deed of said Chair, by it voluntarily executed.

Notary Public in and for the State of Iowa

My Commission expires 5/8/2022



OWNER'S CORPORATE ACKNOWLEDGEMENT

State of _____)
) SS
_____ County)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ and _____, to me known, who, being by me duly sworn, did say that they are the _____, and _____, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of this Board of Directors; that _____ and _____ acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____

OWNER'S PARTNERSHIP ACKNOWLEDGMENT

State of _____)
) SS
_____ County)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ to me personally known, who being by me duly sworn, did say that the person is one of the partners of _____, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____

OWNER'S INDIVIDUAL ACKNOWLEDGEMENT

State of _____)
) SS
_____ County)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ and _____, to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that (he) (she) (they) executed the instrument as (his) (her) (their) voluntary act and deed.

Notary Public in and for the State of _____
My commission expires _____

OWNER'S LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

State of _____)
) SS
_____ County)

On this _____ day of _____, 20²⁰, before me a Notary Public in and for said county, personally appeared _____, to me personally know, who being by me duly sworn did say that person is _____ of said _____, that (the seal affixed to said instrument is the seal of) said OR no seal has been procured by the said) _____, and that said instrument was signed and sealed on behalf of the said _____, by authority of its managers and the said _____ acknowledged the execution of said instrument to be the voluntary act and deed of said _____, by it voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____

CONTRACTOR'S CORPORATE ACKNOWLEDGEMENT

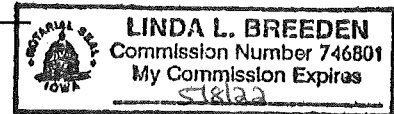
State of Iowa)

) SS

Polk County)

On this 9th day of June, 2020, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Steve Frame and N/A, to me known, who, being by me duly sworn, did say that they are the Vice President, and N/A, respectively, of the corporation executing the foregoing instrument; that ~~(no seal has been procured by)~~ (the seal affixed thereto is the seal of) the corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of this Board of Directors; that Steve Frame and N/A acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Linda L. Breeden
Notary Public in and for the State of Iowa
My commission expires 5/8/2022



CONTRACTOR'S PARTNERSHIP ACKNOWLEDGMENT

State of _____)

) SS

_____ County)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ to me personally known, who being by me duly sworn, did say that the person is one of the partners of _____, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____

CONTRACTOR'S INDIVIDUAL ACKNOWLEDGEMENT

State of _____)

) SS

_____ County)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ and _____, to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that (he) (she) (they) executed the instrument as (his) (her) (their) voluntary act and deed.

Notary Public in and for the State of _____
My commission expires _____

CONTRACTOR'S LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

State of _____)

) SS

_____ County)

On this _____ day of _____, 20____, before me a Notary Public in and for said county, personally appeared _____, to me personally known, who being by me duly sworn did say that person is _____ of said _____, that (the seal affixed to said instrument is the seal of said OR no seal has been procured by the said) _____, and that said instrument was signed and sealed on behalf of the said _____, by authority of its managers and the said _____ acknowledged the execution of said instrument to be the voluntary act and deed of said _____, by it voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____



PERFORMANCE, PAYMENT & MAINTENANCE BOND
FOR PRIVATE CONSTRUCTION CONTRACTS

KNOW ALL MEN BY THESE PRESENTS:

That we, Elder Corporation, as Principal (hereinafter the "Contractor" or "Principal") and Merchants Bonding Company (Mutual), as Surety are held and firmly bound unto the City of Des Moines, Iowa, as Obligee (hereinafter referred to as the "Jurisdiction"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of Twenty Six Thousand, Four Hundred Ninety Dollars and Fifty Cents dollars (\$ 26,490.50), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representative and assigns, jointly or severally, firmly by these presents.

The conditions of the above obligations are such that whereas said Contractor entered into a Private Construction Contract with Des Moines Heritage Trust (hereinafter the "Owner"), bearing date the 9th day of June, 20 20, (hereinafter the "Contract") wherein said Contractor undertakes and agrees to construct the following described improvements:

Storm Sewer Improvements located at 120 E 5th Street, as shown on Plan File Numbers 609-101/102.

with the work further described in the Contract Attachment A, and to faithfully perform all the terms and requirements of said Contract within the time therein specified, in a good and workmanlike manner, and in accordance with the Contract Documents. Principal and Surety agree that the Obligee is a third party beneficiary under the Contract and the provisions of the Contract shall inure to the benefit of and shall be enforceable by the Obligee.

SURETY'S BOND NO. IAC590570

It is expressly understood and agreed by the Contractor and Surety in this Bond that the following provisions are a part of this Bond and are binding upon said Contractor and Surety, to-wit:

1. **PERFORMANCE:** The Contractor shall well and faithfully observe, perform, fulfill and abide by each and every covenant, condition and part of said Contract and Contract Documents, by reference made a part hereof, for the above referenced improvements, and shall indemnify and save harmless the Jurisdiction from all outlay and expense incurred by the Jurisdiction by reason of the Contractor's default or failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT:** The Contractor and Surety on this Bond are hereby agreed to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the Contract price which the Owner retains until completion of the improvements.
3. **MAINTENANCE:** The Contractor and the Surety on this Bond hereby agree, at their own expense:
 - A. To remedy any and all defects that may develop in or result from work to be performed under the contract within the period of four (4) years from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;
 - B. To keep all work in continuous good repair; and
 - C. To pay the Jurisdiction's reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's and Surety's agreement herein made extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time such work was accepted.

4. **GENERAL:** Every Surety on this Bond shall be deemed and held, any contract to the contrary notwithstanding, to the following provisions:
 - A. To consent without notice to any extension of time to the Contractor in which to perform the Contract;
 - B. To consent without notice to any change in the Contract or Contract Documents, which thereby increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than twenty percent of the total contract price, and that this bond shall then be released as to such excess increase; and
 - C. To consent without notice that this Bond shall remain in full force and effect until the Contract is completed; whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed and the liquidated damages are being charged against the Contractor.

The Contractor and every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:

- A. That no provision of this Bond or of any other contract shall be valid which limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.
- B. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the Jurisdiction including interest, benefits and overhead where applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorneys fees (including overhead expenses of the Jurisdiction's staff attorneys), and all cost and expenses of litigation as they are incurred by the Jurisdiction. It is intended the Contractor and Surety will defend and indemnify the Jurisdiction on all claims made against the Jurisdiction on account of Contractor's failure to perform as required in the Contract and Contract Documents, that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the Jurisdiction will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.
- C. In the event the jurisdiction incurs any "outlay and expense" in defending itself with respect to any claim as to which the Contractor or Surety should have provided the defense, or in the enforcement of the promises given by the Contractor in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the Contractor and Surety in this Bond, the Contractor and Surety agree that they will make the Jurisdiction whole for all such outlay and expense, provided that the Surety's obligation under this bond shall not exceed 125% of the penal sum of this bond.

In the event that any actions or proceedings are initiated with respect to this Bond, the parties agree that the venue thereof shall be Polk County, State of Iowa. If legal action is required by the Jurisdiction to enforce the provisions of this Bond or to collect the monetary obligation incurring to the benefit of the Jurisdiction, the Contractor and the Surety agree, jointly and severally, to pay the Jurisdiction all outlay and expense incurred therefor by the Jurisdiction. All rights, powers, and remedies of the Jurisdiction hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers and remedies given to the Jurisdiction, by law. The Jurisdiction may proceed against Surety for any amount guaranteed hereunder whether action is brought against the Contractor or whether Contractor is joined in any such action or actions or not.

5. CITY'S STANDARD BOND FORM CONTROLS: The Contractor and Surety acknowledge that this bond has been prepared utilizing a standard City of Des Moines bond form provided by the City or downloaded from the City's website in PDF (Portable Document Format). The Contractor and Surety represent that no changes have been made to the form of the Bond other than to insert required information and text in text boxes provided for that purpose, and they agree that unauthorized changes made to the standard bond form shall not be binding on them or on the City and that the standard bond form as it appears on the City's website shall govern and be binding on the parties to this Bond.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all of the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.


When a word, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract, or the Contract Documents; second, if not defined in the Bond, Contract, or Contract Documents, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract and Contract Documents are hereby made a part of this Bond.

Witness our hands, in quadruplicate, this 9th day of June, 2020.

PRINCIPAL:

Elder Corporation
Contractor's Name

By 
Signature

Steve Frame
Printed Name

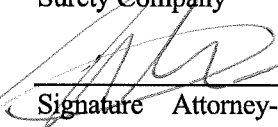
Vice President
Title

FORM APPROVED BY:

Signature- Attorney for Jurisdiction

SURETY:

Merchants Bonding Company (Mutual)
Surety Company


Signature Attorney-in-Fact/Officer

Anne Crowner
Name of Attorney-in-Fact/Officer

Holmes, Murphy and Associates, LLC
Company Name

2727 Grand Prairie Parkway
Company Address

Waukee, IA 50263
City, State, Zip Code

(515) 223-6800
Company Telephone Number

NOTE:

1. All signatures on this performance, maintenance & payment bond must be original signatures in ink; copies or facsimile of any signature will not be accepted.
2. This bond must be sealed with the Surety's raised, embossing seal.
3. The Certificate of Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.
4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.

MERCHANTS
BONDING COMPANYTM
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Anne Crowner

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

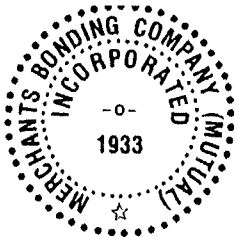
"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 5th day of March, 2020.

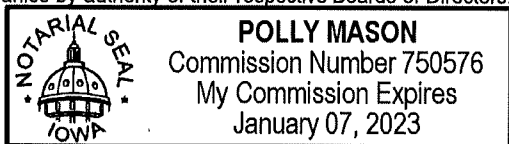


MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 5th day of March, 2020, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



Polly Mason
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 9th day of June, 2020.



William Warner Jr.
Secretary



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/15/2019

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

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must 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 Holmes Murphy & Assoc - WDM PO Box 9207 Des Moines, IA 50306-9207	1-800-247-7756	CONTACT NAME:	
		PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED Elder Corporation, Elder Properties, LLC 5088 East University Avenue Des Moines, IA 50327		INSURER(S) AFFORDING COVERAGE	
		INSURER A: ZURICH AMER INS CO	NAIC # 16535
		INSURER B: TRAVELERS PROP CAS CO OF AMER	NAIC # 25674
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 57569402 **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 INSR	SUBR INSR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liability	X	X	GLO3757123	11/01/19	11/01/20	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> ACV or Cost	X	X	BAP3757124	11/01/19	11/01/20	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			ZUP41N0201019NF	11/01/19	11/01/20	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) <input checked="" type="checkbox"/> Y/N <input type="checkbox"/> N/A If yes, describe under DESCRIPTION OF OPERATIONS below		X	WC3757122	11/01/19	11/01/20	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L EACH ACCIDENT \$ 1,000,000 E.L DISEASE - EA EMPLOYEE \$ 1,000,000 E.L DISEASE - POLICY LIMIT \$ 1,000,000

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

RE: All operations performed by the insured for the certificate holder during the policy year
As required by contract, the City of Des Moines' Additional Insured, Governmental Immunities & Cancellation and Material Change endorsements have been included, per attached.
Fellow Employee Exclusion deleted for managers & supervisors under the General Liability & Auto

APPROVED

CERTIFICATE HOLDER

City of Des Moines
Engineering Department

400 Robert D. Ray Drive

Des Moines, IA 50309

OCT 16 2019

CITY OF DES MOINES
ENGINEERING DEPARTMENT

USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



ZURICH

Additional Insured – Owners, Lessees Or Contractors – Ongoing Operations – Scheduled

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem.	Return Prem.
GLO375712300	10/01/2018	11/01/2019	10/01/2018			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:
Commercial General Liability Coverage Part

SCHEDULE

Name of Person or Organization:	Location and Description of Ongoing Operations:	Additional Premium:
Any person or organization, other than an architect, engineer or surveyor, whom you are required to add as an additional insured under this policy under a written contract or written agreement executed prior to loss, except where such requirement is prohibited by law and where that contract specifically requires the ISO CG2010 10/2001 edition form or the equivalent of same.	Any location or project, other than a wrap-up or other consolidated insurance program location or project for which insurance is otherwise separately provided to you by a wrap-up or other consolidated insurance program.	INCLUDED

A. Section II – Who Is An Insured is amended to include as an insured any person or organization shown in the Schedule of this endorsement, but only with respect to liability arising out of your ongoing operations performed for that insured at or from the corresponding location designated and described in the Schedule.

However, if you have entered into a construction contract with an additional insured person or organization shown in the Schedule of this endorsement, the insurance afforded to such additional insured only applies to the extent permitted by law.

B. With respect to the insurance afforded to any additional insured shown in the Schedule of this endorsement, the following additional exclusion applies:

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

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

All other terms and conditions of this policy remain unchanged.



Additional Insured – Owners, Lessees Or Contractors – Completed Operations – Scheduled

ZURICH[®]

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem.	Retum. Prem.
GLO375712300	10/01/2018	11/01/2019	10/01/2018			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:
Commercial General Liability Coverage Part

SCHEDULE

Name of Person or Organization:	Location and Description of Completed Operations:	Additional Premium:
Any person or organization, other than an architect, engineer or surveyor, whom you are required to add as an additional insured under this policy under a written contract or written agreement executed prior to loss, except where such requirement is prohibited by law and where that contract specifically requires the ISO CG2037 10/2001 edition form or the equivalent of same.	Any Location or project, other than a wrap-up or other consolidated insurance program location or project for which insurance is otherwise separately provided to you by a wrap-up or other consolidated insurance program.	INCLUDED

Section II – Who Is An Insured is amended to include as an insured any person or organization shown in the Schedule of this endorsement, but only with respect to liability arising out of "your work" at or from the corresponding location designated and described in the Schedule performed for that insured and included in the "products-completed operations hazard".

However, if you have entered into a construction contract with an additional insured person or organization shown in the Schedule of this endorsement, the insurance afforded to such additional insured only applies to the extent permitted by law.

All other terms and conditions of this policy remain unchanged.



Other Insurance Amendment – Primary And Non-Contributory

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Premt	Return Prem.
GLO375712300	10/01/2018	11/01/2019	10/01/2018			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: Elder Corporation
Address (including ZIP Code): 5088 E. University Ave., Pleasant Hill, IA 50327

This endorsement modifies insurance provided under the:
Commercial General Liability Coverage Part

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

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

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

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

This insurance is excess over:

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

All other terms and conditions of this policy remain unchanged.



ZURICH

Waiver Of Subrogation (Blanket) Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l. Prem.	Return Prem.
GLO375712300	10/01/2018	11/01/2019	10/01/2018		\$	\$

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

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

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



ZURICH

Blanket Notification to Others of Cancellation or Non-Renewal

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem.	Return Prem.
GLO 3757123-00	10/01/2018	11/01/2019		37180000	INCL	

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:
Commercial General Liability Coverage Part

- A. If we cancel or non-renew this Coverage Part by written notice to the first Named Insured, we will mail or deliver notification that such Coverage Part has been cancelled or non-renewed to each person or organization shown in a list provided to us by the first Named Insured if you are required by written contract or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to the first Named Insured. Such list:
1. Must be provided to us prior to cancellation or non-renewal;
 2. Must contain the names and addresses of only the persons or organizations requiring notification that such Coverage Part has been cancelled or non-renewed; and
 3. Must be in an electronic format that is acceptable to us.
- B. Our notification as described in Paragraph A. of this endorsement will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to the first Named Insured. We will mail or deliver such notification to each person or organization shown in the list:
1. Within seven days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
 2. At least 30 days prior to the effective date of:
 - a. Cancellation, if cancelled for any reason other than nonpayment of premium; or
 - b. Non-renewal, but not including conditional notice of renewal;
- C. Our mailing or delivery of notification described in Paragraphs A. and B. of this endorsement is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
1. Extend the Coverage Part cancellation or non-renewal date;
 2. Negate the cancellation or non-renewal; or
 3. Provide any additional insurance that would not have been provided in the absence of this endorsement.
- D. We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs A. and B. of this endorsement.

All other terms and conditions of this policy remain unchanged.

Policy Number: GLO375712300

ENDORSEMENT

ZURICH AMERICAN INSURANCE COMPANY

Named Insured: Elder Corporation

Effective Date: 10/01/18
12:01 A.M., Standard Time

Agent Name:

Agent No.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF GOVERNMENTAL IMMUNITIES ENDT

CITY OF DES MOINES, IOWA
GOVERNMENTAL IMMUNITIES ENDORSEMENT REQUIRED IN PROJECTS SPECS

1. NonWaiver of Government Immunity: The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage: The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
3. Assertion of Government Immunity: The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
4. Non-Denial of Coverage: The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserts by the City of Des Moines, Iowa.
5. No Other Change in Policy: The insurance carrier and the City of Des Moines, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.



ZURICH®

Coverage Extension Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem.	Return Prem.
BAP375712400	10/01/2018	11/01/2019	10/01/2018			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

**Business Auto Coverage Form
Motor Carrier Coverage Form**

A. Amended Who Is An Insured

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

The following are also "insureds":

- a. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- b. Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- c. Anyone else who furnishes an "auto" referenced in Paragraphs A.1.a. and A.1.b. in this endorsement.
- d. Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the Other Insurance Condition in the Business Auto Coverage Form and the Other Insurance – Primary and Excess Insurance Provisions Condition in the Motor Carrier Coverage Form:

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

B. Amendment – Supplementary Payments

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

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

G. Fellow Employee Coverage

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

D. Driver Safety Program Liability and Physical Damage Coverage

1. The following is added to the Racing Exclusion in Section II – Covered Autos Liability Coverage:

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

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

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

E. Lease or Loan Gap Coverage

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

Lease Or Loan Gap Coverage

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

a. Any amount paid under the Physical Damage Coverage Section of the Coverage Form; and

b. Any:

(1) Overdue lease or loan payments at the time of the "loss";

(2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;

(3) Security deposits not returned by the lessor;

(4) Costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and

(5) Carry-over balances from previous leases or loans.

F. Towing and Labor

Paragraph A.2. of the Physical Damage Coverage Section is replaced by the following:

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

G. Extended Glass Coverage

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

If glass must be replaced, the deductible shown in the Declarations will apply. However, if glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

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

The Coverage Extension for Loss Of Use Expenses in the Physical Damage Coverage Section is replaced by the following:

Loss Of Use Expenses

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

(1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";

(2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

(3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto";

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

I. Personal Effects Coverage

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

Personal Effects Coverage

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

(1) Personal property owned by an "insured"; and

(2) In or on a covered "auto".

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

(1) The reasonable cost to replace; or

(2) The actual cash value.

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

(1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.

(2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.

(3) Paintings, statuary and other works of art.

(4) Contraband or property in the course of illegal transportation or trade.

(5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

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

J. Tapes, Records and Discs Coverage

1. The Exclusion in Paragraph B.4.a. of Section III - Physical Damage Coverage in the Business Auto Coverage Form and the Exclusion in Paragraph B.2.c. of Section IV - Physical Damage Coverage in the Motor Carrier Coverage Form does not apply.

2. The following is added to Paragraph 1.a. Comprehensive Coverage under the Coverage Provision of the Physical Damage Coverage Section:

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

(a) Are the property of an "insured"; and

(b) Are in a covered "auto" at the time of "loss".

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

K. Airbag Coverage

The Exclusion in Paragraph B.3.a. of Section III – Physical Damage Coverage in the Business Auto Coverage Form and the Exclusion in Paragraph B.4.a. of Section IV – Physical Damage Coverage in the Motor Carrier Coverage Form does not apply to the accidental discharge of an airbag.

L. Two or More Deductibles

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

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

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

M. Physical Damage – Comprehensive Coverage – Deductible

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

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

N. Temporary Substitute Autos – Physical Damage

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

Temporary Substitute Autos – Physical Damage

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

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

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

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

Temporary Substitute Autos – Physical Damage

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

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

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

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

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company), or an executive officer or insurance manager (if you are a corporation). The failure of any

agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as practicable:

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

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

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

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

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

Q. Employee Hired Autos - Physical Damage

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

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

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

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

R. Unintentional Failure to Disclose Hazards

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

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

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

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

S. Hired Auto - World Wide Coverage

Paragraph 7a.(5) of the Policy Period, Coverage Territory Condition is replaced by the following:

- (5) Anywhere in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

T. Bodily Injury Redefined

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

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

U. Expected Or Intended Injury

The Expected Or Intended Injury Exclusion in Paragraph B, Exclusions under Section II – Covered Auto Liability Coverage is replaced by the following:

Expected Or Intended Injury

"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.

V. Physical Damage – Additional Temporary Transportation Expense Coverage

Paragraph A.4.a. of Section III – Physical Damage Coverage is replaced by the following:

4. Coverage Extensions

a. Transportation Expenses

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

W. Replacement of a Private Passenger Auto with a Hybrid or Alternative Fuel Source Auto

The following is added to Paragraph A, Coverage of the Physical Damage Coverage Section:

In the event of a total "loss" to a covered "auto" of the private passenger type that is replaced with a hybrid "auto" or "auto" powered by an alternative fuel source of the private passenger type, we will pay an additional 10% of the cost of the replacement "auto", excluding tax, title, license, other fees and any aftermarket vehicle upgrades, up to a maximum of \$2500. The covered "auto" must be replaced by a hybrid "auto" or an "auto" powered by an alternative fuel source within 60 calendar days of the payment of the "loss" and evidenced by a bill of sale or new vehicle lease agreement.

To qualify as a hybrid "auto", the "auto" must be powered by a conventional gasoline engine and another source of propulsion power. The other source of propulsion power must be electric, hydrogen, propane, solar or natural gas, either compressed or liquefied. To qualify as an "auto" powered by an alternative fuel source, the "auto" must be powered by a source of propulsion power other than a conventional gasoline engine. An "auto" solely propelled by biofuel, gasoline or diesel fuel or any blend thereof is not an "auto" powered by an alternative fuel source.

X. Return of Stolen Automobile

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

If a covered "auto" is stolen and recovered, we will pay the cost of transport to return the "auto" to you. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

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



ZURICH[®]

Blanket Notification to Others of Cancellation or Non-Renewal

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem.	Return Prem.
BAP3757124	10/01/2018	11/01/2019				

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial Automobile Coverage Part

- A. If we cancel or non-renew this Coverage Part by written notice to the first Named Insured, we will mail or deliver notification that such Coverage Part has been cancelled or non-renewed to each person or organization shown in a list provided to us by the first Named Insured if you are required by written contract or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to the first Named Insured. Such list:
1. Must be provided to us prior to cancellation or non-renewal;
 2. Must contain the names and addresses of only the persons or organizations requiring notification that such Coverage Part has been cancelled or non-renewed; and
 3. Must be in an electronic format that is acceptable to us.
- B. Our notification, as described in Paragraph A. of this endorsement, will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to the first Named Insured. We will mail or deliver such notification to each person or organization shown in the list:
1. Within seven days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
 2. At least 30 days prior to the effective date of:
 - a. Cancellation, if cancelled for any reason other than nonpayment of premium; or
 - b. Non-renewal, but not including conditional notice of renewal.
- C. Our mailing or delivery of notification described in Paragraphs A. and B. of this endorsement is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
1. Extend the Coverage Part cancellation or non-renewal date;
 2. Negate the cancellation or non-renewal; or
 3. Provide any additional insurance that would not have been provided in the absence of this endorsement.
- D. We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs A. and B. of this endorsement.

All other terms and conditions of this policy remain unchanged.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

Schedule

ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU FOR THAT PERSON AND/OR ORGANIZATION

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement: Elder Corporation.
Insured

Effective Policy No. WC375712200

Endorsement No.
Premium \$

Insurance Company

Countersigned by _____

BLANKET NOTIFICATION TO OTHERS OF CANCELLATION OR NONRENEWAL ENDORSEMENT

This endorsement adds the following to Part Six of the policy:

**PART SIX
CONDITIONS**

Blanket Notification to Others of Cancellation or Nonrenewal

1. If we cancel or non-renew this policy by written notice to you, we will mail or deliver notification that such policy has been cancelled or non-renewed to each person or organization shown in a list provided to us by you if you are required by written contract or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to you. Such list:
 - a. Must be provided to us prior to cancellation or non-renewal;
 - b. Must contain the names and addresses of only the persons or organizations requiring notification that such policy has been cancelled or non-renewed; and
 - c. Must be in an electronic format that is acceptable to us.
2. Our notification as described in Paragraph 1, above will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to you. We will mail or deliver such notification to each person or organization shown in the list:
 - a. Within seven days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
 - b. At least 30 days prior to the effective date of:
 - (1) Cancellation, if cancelled for any reason other than nonpayment of premium; or
 - (2) Non-renewal, but not including conditional notice of renewal.
3. Our mailing or delivery of notification described in Paragraphs 1. and 2. above is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
 - a. Extend the policy cancellation or non-renewal date;
 - b. Negate the cancellation or non-renewal; or
 - c. Provide any additional insurance that would not have been provided in the absence of this endorsement.
4. We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs 1. and 2. above.

All other terms and conditions of this policy remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective:
Insured

Policy No.

Endorsement No.
Premium \$

Insurance Company

