



Roll Call Number

20-1530

Agenda Item Number

87A

DATE September 14, 2020

APPROVAL OF CONTRACT AND BOND
AND PERMISSION TO SUBLET ON
POLICE TRAFFIC UNIT PARKING LOT AT 1300 SCOTT AVENUE
\$349,741.78

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the contract and bond, in the amount of \$349,741.78, executed by All Star Concrete, L.L.C., Alex Vazquez, Member and Manager, 1403 SW Ordinance Road, Ankeny, IA, 50023 dated September 14, 2020, for the construction of the following improvement:

Police Traffic Unit Parking Lot at 1300 Scott Avenue, 04-2021-001

The improvement includes the construction of a new Portland Cement Concrete (PCC) parking lot with connecting driveways to S.E. 12th Street, excavation, PCC sidewalks, driveways, storm sewer, intakes, security fence with controlled access gates, parking lot lighting, site landscaping, and other incidental items; all in accordance with the contract documents, including Plan File Nos. 619-170/179, located at 1300 Scott Avenue, Des Moines, Iowa 50309

the same to be performed in accordance with the plans and specifications which have been heretofore approved by this Council, be and the same are hereby approved, subject to receipt of the contract and bond approved as to form by the Legal Department, and certificate of insurance acceptable to the Engineering Department. The attached "Contractor's Anticipated DBE/TSB Utilization" shows the Contractor's efforts to solicit DBE/TSB Participation in accordance with the Disadvantaged Business Enterprise/Targeted Small Business (DBE/TSB) Program.

BE IT FURTHER RESOLVED: That the Mayor be and is hereby authorized and directed to execute said contract on behalf of the City of Des Moines, subject to receipt of the contract and bond approved as to form by the Legal Department, and certificate of insurance acceptable to the Engineering Department, and the City Clerk, be and is hereby authorized and directed to attest to same. No contract shall be deemed to exist between the City of Des Moines and said Bidder until said contract has been executed by the Bidder, and shall have been approved by this Council and executed by the Mayor and attested to by the City Clerk.

BE IT FURTHER RESOLVED: That after said contract has been executed by the Mayor, the City Clerk be and is hereby authorized and directed to return the Contractor's bid security in accordance with the Instructions to Bidders.

BE IT FURTHER RESOLVED: That the attached Permission to Sublet form, from said Contractor requesting permission to sublet designated items, be and is hereby approved, subject to receipt of the contract and bond approved as to form by the Legal Department, and certificate of insurance acceptable to the Engineering Department; and each subcontractor is hereby granted permission to work on said improvement.

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BE IT FURTHER RESOLVED: That the Interim Des Moines Finance Director is hereby authorized to encumber this contract amount against the funds as identified below, and to acquire Builder's Risk Insurance, if appropriate, for the above referenced improvement.

(City Council Communication Number 20-404 attached)Moved by Gatto to adopt.FORM APPROVED s/Kathleen Vanderpool
Kathleen Vanderpool
Deputy City Attorney

SLN

Funding Source: 2020-2021 CIP, Page Building – 10, Municipal Building Improvements, BL085, G.O. Bonds to be issued

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

J. M. Franklin Cownie

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.

P. Kay Cmelik

City Clerk

20-1530

CONTRACTOR'S ANTICIPATED DB/TSB UTILIZATION

Police Traffic Unit Parking Lot at 1300 Scott Avenue

Activity ID 04-2021-001

On August 18, 2020, All Star Concrete, L.L.C., Alex Vazquez, Member and Manager, 1403 SW Ordinance Road, Ankeny, IA 50023 submitted a proposal for construction of the Police Traffic Unit Parking Lot at 1300 Scott Avenue, Activity ID 04-2021-001, which the City Council has determined to be the lowest responsible, responsive bid for said project in the amount of \$349,741.78. The proposal included a statement that the Disadvantaged Business Enterprise/Targeted Small Business (DBE/TSB) Program shall apply to this project.

The Engineering Department has prepared this report summarizing the information that All Star Concrete, L.L.C., has submitted indicating that it anticipates utilizing the following DBE/TSB companies on this project:

<u>DBE/TSB Name</u>	<u>Description of Work</u>	<u>Estimated Amount</u>
<u>All Star Concrete, L.L.C.</u>	<u>Bidder is a TSB/DBE (less sub's/materi</u>	<u>\$300,000.00</u>
	<u>Estimated DBE/TSB Participation</u>	<u>\$300,000.00</u>
	<u>All Star Concrete, L.L.C. Amount</u>	<u>\$349,741.78</u>
	<u>Percentage of DBE/TSB Participation</u>	<u>85.78%</u>

ENGINEERING DEPARTMENT
CITY OF DES MOINES, IOWA

CONTRACT NO.

93575

DATE

9/14/2020

ROLL CALL NO.

20- 1530

CONTRACT

THIS CONTRACT, made and entered into at Des Moines, Iowa, on September 14, 2020, by and between the City of Des Moines, by its Mayor, upon order of its City Council, hereinafter called the "Jurisdiction", and All Star Concrete, L.L.C., hereinafter called the "Contractor".

WITNESSETH:

The Contractor hereby agrees to complete the work comprising the below referenced improvement as specified in the contract documents, which are officially on file with the Jurisdiction, in the Des Moines City Engineer's Office. This contract includes all contract documents. The work under this contract shall be constructed in accordance with the SUDAS Standard Specifications, 2020 Edition; and as further modified by the supplemental specifications and special provisions included in said contract documents, and the Contract Attachments attached hereto. The Des Moines City Engineer is the Engineer. The Contractor further agrees to complete the work in strict accordance with said contract documents, and to guarantee the work as required by law, for the time required in said contract documents, after its acceptance by the Jurisdiction.

This contract is awarded and executed for completion of the work specified in the contract documents for the bid prices shown on the Contract Attachment: Item 2: Bid Items, Quantities and Prices which were proposed by the Contractor in its proposal submitted in accordance with the Notice to Bidders for the following described improvements:

Police Traffic Unit Parking Lot at 1300 Scott Avenue, 04-2021-001

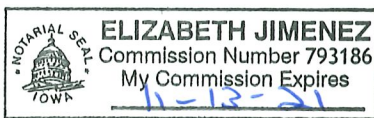
The improvement includes the construction of a new Portland Cement Concrete (PCC) parking lot with connecting driveways to S.E. 12th Street, excavation, PCC sidewalks, driveways, storm sewer, intakes, security fence with controlled access gates, parking lot lighting, site landscaping, and other incidental items; all in accordance with the contract documents, including Plan File Nos. 619-170/179, located at 1300 Scott Avenue, Des Moines, Iowa 50309

The Contractor agrees to perform said work for and in consideration of the Jurisdiction's payment of the bid amount of three hundred forty nine thousand seven hundred forty one and 78/100 dollars (\$349,741.78) which amount shall constitute the required amount of the performance, payment, and maintenance bond. The Contractor hereby agrees to commence work under this contract on or before a date to be specified in a written notice to proceed by the Jurisdiction and to fully complete the project not later than May 22, 2021, and in accordance with Completion Provisions; and to pay liquidated damages for noncompliance with said completion provisions in the amount of five hundred and 00/100 dollars (\$500.00), for each calendar day thereafter that the work remains incomplete.

LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

State of Iowa)
Polk County) SS

On this 27 day of August, 20 20, before me, the undersigned, a Notary Public in and for said county, personally appeared Alex Vazquez, to me personally know, who being by me duly sworn did say that person is Member and Manager of said All Star Concrete, L.L.C., that ~~(the seal affixed to said instrument is the seal of said~~ OR no seal has been procured by the said) All Star Concrete, L.L.C., and that said instrument was signed and sealed on behalf of the said All Star Concrete, L.L.C., by authority of its managers and the said Alex Vazquez acknowledged the execution of said instrument to be the voluntary act and deed of said All Star Concrete, L.L.C., by its voluntarily executed.



Elizabeth Jimenez
 Notary Public in and for the State of Iowa
 My commission expires 11-13-21

Statement of Authority Pursuant to Iowa Code Section 489.302

Dear Secretary of State:

1. The name of the limited liability company is All Star Concrete, LLC (the "Company").
2. The principal address of the Company is 1403 SW Ordinance Road Ankeny, Iowa 50023.
3. Alex Vazquez has the full authority to act for the Company as follows: execute an instrument transferring real property held in the name of the Company; or enter into other transactions on behalf of, or otherwise act for or bind, the Company.

Date: 8-20-20

All Star Concrete, LLC
Business No. 469394

By: Alex Vazquez
Alex Vazquez, Member & Manager

CONTRACT ATTACHMENT: ITEM 1: GENERAL

1. The Contractor acknowledges and agrees:
 - To comply with the Equal Employment Opportunity Program included in the City of Des Moines Contract Compliance Program, which is available at the following website [http://www.dmgov.org/Departments/Engineering/PDF/Contract%20Compliance%20Program%20\(June%202017\).pdf](http://www.dmgov.org/Departments/Engineering/PDF/Contract%20Compliance%20Program%20(June%202017).pdf) or from the City Engineer's Office.
 - To comply with any and all applicable provisions of the Des Moines Human Rights Ordinance, Chapter 62, of the Des Moines Municipal Code.
 - Not to discriminate against any employees, or applicants for employment, on the basis of age, race, religion, creed, color, sex, sexual orientation, national origin, ancestry, disability, familial status or gender identity.
 - To include this provision in all subcontracts for this project.
2. The Contractor agrees to comply with the requirements of the City of Des Moines Contract Compliance Program as referenced in the proposal. Final acceptance of the project will not be made until the Contractor has submitted to the City Engineer a notarized summary of payments to and scope of work by all DBE/TSB subcontractors.
3. The City of Des Moines Master Construction Safety Packet(Safety Plan) is available at <http://www.dmgov.org/Departments/Engineering/PDF/MasterConstructionSafetyPacket.pdf> and is also available upon request from the Engineering Department. The Engineering Department will make available a copy of the City of Des Moines Safety Plan to the Contractor when the contract is awarded. The Contractor understands and agrees that said Safety Plan is for the Contractor's information only and that it is the Contractor's sole responsibility to provide, or make available, this safety information to all its Subcontractors.
4. The Contractor understands and agrees that the construction of the work included in this contract is by its nature dangerous work. The Contractor agrees:
 - That the Contractor should have a safety program; however, the Contractor need not submit a safety program to the City of Des Moines, and City of Des Moines staff will not review or approve the Contractor's safety program. The City of Des Moines assumes that the Contractor will maintain a safe worksite; however, City of Des Moines staff will not intrude in the Contractor's responsibility for safety issues.
 - That until the work is accepted by the Jurisdiction; the work shall be in the custody of and under the charge, care, and control of the Contractor.
 - That the Contractor is responsible for the project area or work site.
 - That the Contractor is solely responsible for the safety of everyone on its work site.
 - That it is the Contractor's sole responsibility to provide as safe a working site as possible given the nature of the work.
 - That it is the Contractor's responsibility to notify and advise its employees, subcontractors, suppliers, and everyone on the worksite of the dangers associated with the work, and provide them with appropriate safety information to protect them from those dangers.

5. The Contractor acknowledges and agrees that no contract shall be binding upon the City of Des Moines until said contract has been executed by the Bidder, and shall have been approved by the City Council and executed by the Mayor and attested to by the City Clerk.
6. The Contractor agrees that sixty (60) days shall constitute a reasonable time within which it shall be required to make progress payments or final payment to subcontractors after each subcontractor's satisfactory performance of its work, all as required by Section 573.12 2.b.(2) of the Code of Iowa.

CONTRACT ATTACHMENT: ITEM 2 - BID ITEMS, QUANTITIES AND PRICES: 1 of 1

This contract is awarded and executed for completion of the work specified in the contract documents for the bid price tabulated below as proposed by the contractor in its proposal submitted in accordance with notice to bidders and notice of public hearing. All quantities are subject to revision by the Jurisdiction. Quantity changes which amount to twenty (20) percent or less of the amount bid shall not affect the unit bid price of that item.

Activity ID 04-2021-001
IDOT Project No: N/A

ITEM	ITEM CODE	DESCRIPTION	UNITS	ESTIMATED QUANTITY	UNIT PRICE	AMOUNT
0001 *	1000-100-X-1	CONSTRUCTION STAKING	LS	1.00	\$2,650.00	\$2,650.00
0002	2010-108-D-1	TOPSOIL, ON-SITE, 4" DEPTH	CY	185.00	\$12.72	\$2,353.20
0003	2010-108-E-0	EXCAVATION, CLASS 10, WASTE	CY	554.00	\$9.54	\$5,285.16
0004	2010-108-G-0	SUBGRADE PREPARATION, 12 IN. DEPTH	SY	1,742.00	\$4.51	\$7,856.42
0005	2010-108-I-0	SUBBASE, GRANULAR SUBBASE, 6 IN. DEPTH	SY	1,742.00	\$8.43	\$14,685.06
0006	4020-108-A-1	STORM SEWER, TRENCHED, PVC, 8 IN.	LF	204.00	\$40.28	\$8,217.12
0007	4020-108-A-1	STORM SEWER, TRENCHED, 15 IN.	LF	32.00	\$68.90	\$2,204.80
0008	4020-108-A-1	STORM SEWER, TRENCHED, 18 IN.	LF	309.00	\$68.90	\$21,290.10
0009	6010-108-B-0	INTAKE TYPE, SW-501	EA	4.00	\$1,775.50	\$7,102.00
0010	6010-108-A-0	MANHOLE, SW-401, 48 IN.	EA	1.00	\$795.00	\$795.00
0011	6010-108-G-0	CONNECTION TO EXISTING MANHOLE	EA	2.00	\$795.00	\$1,590.00
0012	7010-108-A-0	PAVEMENT, PCC, 6 IN.	SY	1,540.00	\$40.80	\$62,832.00
0013	7010-108-G-0	MEDIAN PCC, 6 IN.	SY	15.00	\$78.00	\$1,170.00
0014 *	7010-108-E-0	CURB AND GUTTER, 2.5 FT (WIDTH), 6 IN. (THICKNESS)	LF	51.00	\$38.00	\$1,938.00
0015 *	7010-108-E-0	CURB AND GUTTER, REMOVE AND REPLACE	LF	182.00	\$72.18	\$13,136.76
0016	7030-108-A-0	REMOVAL OF SIDEWALK	SY	73.00	\$10.07	\$735.11
0017 *	7030-108-A-0	REMOVAL OF DRIVEWAY	SY	75.00	\$10.07	\$755.25
0018	7030-108-H-0	DRIVEWAY, PAVED, PCC, 8 IN.	SY	77.00	\$68.00	\$5,236.00
0019	7030-108-H-2	DRIVEWAY, GRANULAR	TON	10.00	\$44.52	\$445.20
0020 *	7030-108-I-0	SIDEWALK, PCC, 5 IN.,	SY	119.00	\$55.00	\$6,545.00
0021 *	7030-108-I-0	SIDEWALK, PCC, CLASS A, 5 IN.,	SY	75.00	\$70.00	\$5,250.00
0022 *	7030-108-I-0	DETECTABLE WARNINGS	SF	80.00	\$55.00	\$4,400.00
0023 *	8020-108-B-0	PAINTED PAVEMENT MARKING, WATERBORNE OR SOLVENT-BASED	STA	10.00	\$63.60	\$636.00
0024 *	8020-108-H-0	PAINTED PAVEMENT SYMBOLS, WATERBORNE OR SOLVENT-BASED	EA	7.00	\$53.00	\$371.00
0025 *	8030-108-A-0	TEMPORARY TRAFFIC CONTROL	LS	1.00	\$4,664.00	\$4,664.00
0026 *	9010-108-A-0	CONVENTIONAL SEEDING, SEEDING, FERTILIZING AND MULCHING	AC	0.25	\$5,300.00	\$1,325.00
0027 *	9030-108-B-0	SHRUBS WITH WARRANTY, 3 GALLON SIZE	LS	1.00	\$3,789.50	\$3,789.50
0028 *	9030-108-B-0	TREES WITH WARRANTY, 1.5" CALIPER	LS	1.00	\$5,962.50	\$5,962.50
0029 *	9040-108-N-1	SILT FENCE OR SILT FENCE DITCH CHECK	LF	385.00	\$2.12	\$816.20
0030	9040-108-N-3	SILT FENCE OR SILT FENCE DITCH CHECK, REMOVAL OF DEVICE	LF	385.00	\$0.53	\$204.05
0031	9040-108-T-1	INLET PROTECTION DEVICE	EA	2.00	\$159.00	\$318.00
0032	9040-108-T-2	INLET PROTECTION DEVICE, MAINTENANCE	EA	2.00	\$53.00	\$106.00
0033	9060-108-A-0	DECORATIVE FENCE, ALUMINUM, 6 FT. HEIGHT, AMERISTAR ECHELON II, BLACK	LF	473.00	\$84.83	\$40,124.59
0034	9060-108-B-0	GATES, AMERISTAR TRANSPORT II, AUTOMATIC, BLACK	EA	2.00	\$15,710.26	\$31,420.52
0035	9060-108-B-0	WALK GATE, AMERISTAR TRANSPORT II, BLACK	EA	1.00	\$3,618.84	\$3,618.84
0036	9040-108-T-2	TEMPORARY FENCE, CHAIN LINK, 6 FT. HEIGHT	LF	473.00	\$6.36	\$3,008.28
0037	9060-108-B-0	TEMPORARY GATES, CHAIN LINK, MANUAL SLIDING	EA	2.00	\$1,182.96	\$2,365.92
0038	9060-108-B-0	TEMPORARY GATES, CHAIN LINK, 6 FT WIDE	EA	1.00	\$265.00	\$265.00
0039	11000-000-0	BIKE RACK, RING STYLE EMBEDDED, STAINLESS STEEL	EA	1.00	\$1,060.00	\$1,060.00
0040 *	11000-000-0	ELECTRICAL CONDUIT, 2 IN. DIA, PVC	LF	350.00	\$6.36	\$2,226.00
0041 *	11000-000-0	HANDHOLES	EA	5.00	\$901.00	\$4,505.00
0042	11000-000-0	CONTROL GATE, 10' STRAIGHT ARM	EA	2.00	\$6,837.00	\$13,674.00
0043	11000-000-0	CARD READER	EA	2.00	\$3,667.60	\$7,335.20
0044	11000-000-0	PARKING LOT LIGHTS	LS	1.00	\$4,346.00	\$4,346.00
0045 *	11020-108-A	MOBILIZATION	LS	1.00	\$40,280.00	\$40,280.00
0046 *	11050-301-A	CONCRETE WASHOUT PITS	LS	1.00	\$848.00	\$848.00
TOTAL CONSTRUCTION COST						\$349,741.78

*Item does not have to be included in 4-year maintenance bond but shall be covered by a 1-year maintenance bond.

*TOTAL= \$100,098.21

NOTE: It is understood that the above quantities are estimated for the purpose of this bid. All quantities are subject to revision by the City. Quantity changes which amount to twenty (20) percent or less of the total bid shall not affect the unit bid price of that item.

PERFORMANCE, PAYMENT & MAINTENANCE BOND

KNOW ALL BY THESE PRESENTS

That we, All Star Concrete, L.L.C. , as Principal (the "Contractor" or "Principal"), and Merchants National Bonding, Inc., as Surety, are held and firmly bound unto the City of Des Moines, as Oblige (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 three hundred forty nine thousand seven hundred forty one and 78/100 dollars (\$349,741.78), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representatives and assigns, jointly and severally, firmly by these presents.

The conditions of the above obligations are such that whereas the Contractor entered into a contract with the Jurisdiction, bearing the date of September 14, 2020, (the "Contract") wherein the Contractor undertakes and agrees to construct the following described improvements:

Police Traffic Unit Parking Lot at 1300 Scott Avenue, 04-2021-001

The improvement includes the construction of a new Portland Cement Concrete (PCC) parking lot with connecting driveways to S.E. 12th Street, excavation, PCC sidewalks, driveways, storm sewer, intakes, security fence with controlled access gates, parking lot lighting, site landscaping, and other incidental items; all in accordance with the contract documents, including Plan File Nos. 619-170/179, located at 1300 Scott Avenue, Des Moines, Iowa 50309

and to faithfully perform all the terms and requirements of the Contract within the time specified, in a good and workmanlike manner, and in accordance with the Contract Documents. Provided however, that one year after the date of acceptance by the Jurisdiction as complete, of the work under the above referenced Contract, the maintenance portion of this Bond shall continue in force but the penal sum for maintenance shall be reduced to the sum of two hundred forty nine thousand six hundred forty three and 57/100 dollars (\$249,643.57), which is the cost associated with those items shown on the Proposal and in the Contract which require a maintenance bond period in excess of one year.

It is expressly understood and agreed by the Contractor and Surety that the following provisions are a part of this Bond and are binding upon the 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 the Contract and Contract Documents, by reference made a part hereof, 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 hereby agree to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract, 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 Jurisdiction is required to retain until completion of the improvement, but the Contractor and Surety shall not be liable unless the claims have been established as provided by law. The Contractor and Surety hereby bind themselves to the obligations and conditions set forth in Iowa Code Chapter 573.

3. MAINTENANCE: The Contractor and the Surety shall, at their own expense:

- A. 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) year(s) from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of the work;
- B. Keep all work in continuous good repair; and
- C. 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 obligation extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time the work was accepted.

4. GENERAL: Every Surety on this Bond shall be deemed and held bound, 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, that 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 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 as 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 costs 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 accruing to the benefit of the Jurisdiction, the Contractor and Surety agree, jointly and severally, to pay the Jurisdiction all outlay and expense incurred 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 the Surety for any amount guaranteed hereunder whether action is brought against the Contractor or whether or not the Contractor is joined in the action.

NOW THEREFORE, the condition of this obligation is such that if the 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 triplicate, this 14th day of September, 20 20

PRINCIPAL: <u>All Star Concrete, L.L.C.</u> Contractor By <u>Alex Vazquez</u> Signature Alex Vazquez Member and Manager Title FORM APPROVED BY: <u>Kathleen Vanderpool by AD</u> Kathleen Vanderpool Deputy City Attorney	SURETY: <u>Merchants National Bonding, Inc.</u> Surety Company By <u>Dione R. Young</u> Signature Attorney-in-Fact/Officer <u>Dione R. Young, Attorney-in-fact</u> Name of Attorney-in-Fact/Officer <u>Holmes, Murphy and Associates, LLC</u> Company Name <u>2727 Grand Prairie Parkway</u> Company Address <u>Waukee, IA 50263</u> City, State Zip Code <u>(515) 223-6800</u> Company Telephone Number
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NOTE:

1. All signatures on this performance, payment & maintenance 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, embossed seal.
3. The Certificate or 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.
5. This bond form must be utilized as printed; no additions/deletions/alterations are permitted, other than providing the required information.

MERCHANTS
BONDING COMPANY™
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,

Dione R Young

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 14th day of September, 2020.



William Warner Jr.
Secretary



CERTIFICATE OF LIABILITY INSURANCE

87

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 LISTED BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER, THE INSURED, THE 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, the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not constitute an endorsement 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): E-MAIL ADDRESS:		FAX (A/C, No, Ext):
INSURED All Star Concrete LLC 1403 SW Ordinance Rd Ankeny, IA 50023				INSURER(S) AFFORDING COVERAGE		NAIC #
				INSURER A: Integrity Insurance Company		14303
				INSURER B:		
				INSURER C:		
				INSURER D:		
				INSURER E:		
				INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** 60169509 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	X	X	CPP2778813	03/13/20	03/13/21	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	X	CA2778814	03/13/20	03/13/21	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			CUP2778818	03/13/20	03/13/21	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	X N/A	WCP2778816	03/13/20	03/13/21	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

RE: 04-2021-001

Additional Insured (CGL, Auto, WC): City of Des Moines, Iowa including ongoing and completed operations, when required by written contract with the insured per policy terms and conditions.

Waiver of Subrogation (CGL, Auto, WC) when required by written contract with the insured per policy terms and conditions

Governmental immunity applies with respect to the General Liability

30 Day Notice of Cancellation Applies

CERTIFICATE HOLDER City of Des Moines Engineering Department 400 Robert D. Ray Drive Des Moines, IA 50309 USA	APPROVED SEP 09 2020 CITY OF DES MOINES ENGINEERING DEPARTMENT	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 <i>Steven J. Pugh</i>
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Integrity Insurance Company
P.O. Box 539
Appleton, Wisconsin 54912-0539

Endorsement

CA 74

Policy Number: CA 2778814

Business Auto Optimum Plus

THIS ENDORSEMENT CHANGES THE POLICY.
PLEASE READ IT CAREFULLY.

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

SECTION I - COVERED AUTOS

The following is added to Paragraph C. **Certain Trailers, Mobile Equipment and Temporary Substitute Autos:**

If Physical Damage Coverage is provided by the Business Auto Coverage Form, any "auto" you do not own while used with permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its breakdown, repair, servicing, "loss" or destruction is also a covered "auto" for Physical Damage Coverage. The coverage provided for the temporary "auto" will be the same coverage and deductible as the "auto" it replaces.

SECTION II - COVERED AUTOS LIABILITY COVERAGE

A. Broad Form Insured

Paragraph A.1., **Who Is An Insured**, is amended to include as an insured:

- d. Any legally incorporated entity of which you own more than 50 percent of the voting stock during the period for which this endorsement is effective, if there is no similar insurance available to that organization. However:

- (1) The Named Insured does not include any organization:
- (a) that is a partnership or joint venture;
or
(b) that is an insured under any other policy, or has exhausted its Limit of Insurance under any other policy.

Paragraph d.(1)(i) above does not apply to a policy written to apply specifically in excess of this policy.

- (2) Coverage for newly acquired or formed organizations is afforded only for 180 days from the date of acquisition or formation.
- (3) Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired that organization.

e. Employees As Insureds - Non-ownership

Any employee of yours is an "insured":

- (1) While using a covered "auto" you don't own, hire or borrow in your business or your personal affairs; or
- (2) While operating an "auto" hired or rented without a driver under contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

f. Blanket Additional Insureds

Any person or organization whom you are required in a written contract or agreement to include as an additional "insured" with respect to your ownership, maintenance or use of a covered "auto". This provision only applies to written contracts or agreements that are signed prior to any "bodily injury" or "property damage" to which coverage applies.

Coverage under this provision (f.) shall be primary and non-contributory with respect to the person or organization included as an "insured" under this provision (f.), but only if the written contract or agreement requires coverage to be primary and non-contributory.

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Endorsement

CA 74

Policy Number: CA 2778814

Business Auto Optimum Plus

B. Increased Supplementary Payments

Paragraphs 2.a.(2) and (4) Supplementary Payments 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 earning up to \$500 a day because of time off from work.

C. Amended Fellow Employee Exclusion

Exclusion 5., under Paragraph B., Exclusions, of **SECTION II - COVERED AUTOS LIABILITY COVERAGE**, does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

The insurance provided under this provision is excess over any other collectible insurance.

SECTION III - PHYSICAL DAMAGE COVERAGE

The following coverages are added to Paragraph

A. Coverage, of SECTION III - PHYSICAL DAMAGE COVERAGE:

5. Hired Auto Physical Damage Coverage (Other Than "Mobile Equipment")

If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss, or Collision coverage are provided under the Business Auto Coverage Form for any "auto" you own, then the Physical Damage coverages provided are extended to "autos" you hire, subject to the following:

- a. The most we will pay for "loss" to any hired "auto" is the lesser of:
 - (1) \$75,000;
 - (2) Actual Cash Value; or

(3) Cost of Repair.

- b. For each hired "auto", our obligation to pay for "loss" will be reduced by the deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning.
- c. The insurance provided under this coverage extension is primary over any other collectible insurance.
- d. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.
- e. Subject to a maximum limit of \$500 per "accident", we will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable for, and the lessor incurs an actual financial loss.

6. Air Bag Coverage

We will pay up to a maximum of \$1,000 per occurrence to have air bags in your covered "auto" replaced for an incurred "loss" resulting from accidental deployment. Collision, Specified Causes of Loss, and Comprehensive deductibles do not apply to this coverage.

7. Additional Living Expense

We will pay up to \$25 a day, to a maximum of \$400 for additional living expenses, meaning food, lodging and telephone costs, incurred by you due to a covered "loss" caused by:

- a. Comprehensive only if the Declarations indicate that Comprehensive Coverage is provided for that "auto".
- b. Specified Causes of Loss only if the Declarations indicate that Specified Causes of Loss Coverage is provided for that auto.
- c. Collision only if the Declarations indicate that Collision Coverage is provided for that auto.

Endorsement

CA 74

Policy Number: CA 2778814

Business Auto Optimum Plus

This coverage applies only in the event that the "loss":

- a. Disables a covered "auto"; and
- b. Occurs more than 100 miles from the insured address shown in the Declarations or the garaging address of your covered "auto", if it is different from the insured address.

We will pay the additional living expenses incurred until your covered "auto" is returned to use or we pay for its "loss".

8. Locked Vehicle Coverage

We will pay to have your covered "auto" unlocked if your vehicle's keys are locked inside your covered "auto". Collision, Specified Causes of Loss, and Comprehensive deductibles do not apply to this coverage.

9. Rental Reimbursement Coverage

The following coverage is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage:**

- a. This coverage applies only to a covered "auto" described in the policy.
- b. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductible applies to this coverage.
- c. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, at a maximum of 30 days.
- d. Our payment is limited to the lesser of the following amounts:
 - (1) Necessary and actual expenses incurred.
 - (2) A maximum payment of \$60 per day.

- e. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

- f. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the **PHYSICAL DAMAGE COVERAGE Coverage Extension**.

10. Loan Lease Gap Coverage

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

- a. The amount paid under **SECTION III - PHYSICAL DAMAGE COVERAGE** of the policy; and
- b. Any:
 - (1) Overdue lease/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 loans or leases.

11. Fuel In Vehicle Coverage

With respect to a covered "loss" for a covered "auto", we will also pay the actual "loss" sustained for the "loss" of fuel used to operate your "auto". You must provide documentation supporting your claim for "loss".

Endorsement

CA 74

Policy Number: CA 2778814

Business Auto Optimum Plus

Deductible

- a. If "loss" to the fuel is the result of a "loss" to the covered "auto" under the Business Auto Coverage Form's Comprehensive or Collision Coverage, then payment for "loss" will be reduced by the applicable deductible shown in the declarations for the covered "auto". In the event of "loss" due to fire or lightning, no deductible will apply.
- b. If "loss" to the fuel is the result of a "loss" to the covered "auto" under the Business Auto Coverage Form's Specified Causes of Loss Coverage, then payment for "loss" will be reduced by the applicable deductible of \$100.
- c. If "loss" occurs solely to fuel then our obligation to pay will be reduced by the applicable deductible of \$100 for this coverage.

In the event more than one deductible applies to the "loss", only the highest deductible will apply. In no event will more than one deductible apply.

12. Fire Department Service Charge

We will pay up to \$1,000 for your liability for fire department charges resulting from a covered "loss", providing that your liability for such charges is:

- a. Assumed by a written contract or agreement prior to the "loss"; or
- b. Required by law or ordinance.

No deductible applies to this coverage.

13. Fire Extinguisher Recharge

We will pay the lesser of the actual cost of recharging or replacing fire extinguishers kept in your covered "auto" that are discharged intentionally attempting to extinguish a fire.

No deductible applies to this coverage.

14. Personal Effects

Physical Damage Coverage afforded to a covered "auto" may be extended to cover "loss" to your personal property or, if you are an individual, the personal property of a family member, that is in a covered "auto" at the time of "loss".

The most we will pay for any one "loss" is \$500.

15. Miscellaneous Equipment

We will pay the lesser of the actual cash value, cost to repair or replacement cost for "loss" to your miscellaneous equipment, consisting of hand trucks, dollies, pads, pallets, covers, binders, tarps, tie-downs, chains and other similar equipment used for handling property transported by your covered "auto". The most we will pay for any "loss" is \$1,500.

Exclusions

We will not pay for loss caused by:

- a. Theft, unless there are visible signs or marks of forcible entry into the covered "auto" and the theft is reported to law enforcement authorities; or
- b. Mysterious disappearance.

Deductible

- a. If "loss" to the miscellaneous equipment is the result of a "loss" to the covered "auto" under the Business Auto Coverage Form's Comprehensive or Collision Coverage, then payment for "loss" will be reduced by the applicable deductible shown in the declarations for the covered "auto". In the event of "loss" due to fire or lightning, no deductible will apply.
- b. If "loss" to the miscellaneous equipment is the result of a "loss" to the covered "auto" under the Business Auto Coverage Form's Specified Causes of Loss Coverage, then payment for "loss" will be reduced by the applicable deductible of \$100.

Endorsement

CA 74

Policy Number: CA 2778814

Business Auto Optimum Plus

- c. If "loss" occurs solely to the miscellaneous equipment, then for each covered "auto" payment for "loss" will be reduced by the applicable deductible of \$100 for this coverage.

In the event more than one deductible applies to the "loss", only the highest deductible will apply. In no event will more than one deductible apply.

16. Audio, Visual and Data Electronic Equipment

A. Coverage

1. We will pay with respect to any covered "auto" covered under Paragraph A.1. of **SECTION III - PHYSICAL DAMAGE COVERAGE** in the Business Auto Coverage Form for "loss" to any electronic equipment that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound. This coverage applies only if the equipment is permanently installed in the covered "auto" at the time of the "loss" or the equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto".
2. We will pay with respect to any covered "auto" covered under Paragraph A.1. of **SECTION III - PHYSICAL DAMAGE COVERAGE** in the Business Auto Coverage Form for "loss" to any accessories used with the electronic equipment described in Paragraph A.1. above. However, this does not include tapes, records or discs.

B. Exclusions

The exclusions that apply to **SECTION III -**

PHYSICAL DAMAGE COVERAGE, except for the exclusion relating to Audio, Visual and Data Electronic Equipment, also apply to coverage provided by this extension. In addition, the following exclusions apply:

We will not pay, under this extension, for either any electronic equipment or accessories used with such electronic equipment that is:

1. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system; or
2. Both:
 - a. An integral part of the same unit housing any sound reproducing equipment designed solely for the reproduction of sound if the sound reproducing equipment is permanently installed in the covered "auto"; and
 - b. Permanently installed in the opening of the dash or console normally used by the manufacturer for the installation of a radio.

C. Limit of Insurance

With respect to coverage under this extension, the Limit of Insurance provision of **SECTION III - PHYSICAL DAMAGE COVERAGE** is replaced by the following:

1. The most we will pay for all "loss" to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "accident" is the lesser of:
 - a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
 - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

Endorsement

CA 74

Policy Number: CA 2778814

Business Auto Optimum Plus

2. An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of the "loss".
3. We may deduct for betterment if:
 - a. The deductions reflect a measurable decrease in market value attributable to the poorer condition of, or prior damage to, the vehicle.
 - b. The deductions are for prior wear and tear, missing parts and rust damage that is reflective of the general overall condition of the vehicle considering its age. In this event, deductions may not exceed \$500.

D. Deductible

1. If "loss" to the audio, visual or data electronic equipment or accessories used with this equipment is the result of a "loss" to the covered "auto" under the Business Auto Coverage Form's Comprehensive or Collision Coverage, then for each covered "auto" our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" to audio, visual or data electronic equipment caused by fire or lightning.
2. If "loss" to the audio, visual or data electronic equipment or accessories used with this equipment is the result of a "loss" to the covered "auto" under the Business Auto Coverage Form's Specified Causes Of Loss Coverage, then for each covered "auto" our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible of \$100 for this coverage.

3. If "loss" occurs solely to the audio, visual or data electronic equipment or accessories used with this equipment, then for each covered "auto" our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible of \$100 for this coverage.
4. In the event that there is more than one applicable deductible, only the highest deductible will apply. In no event will more than one deductible apply.

17. Business Income and Extra Expense (Business Income Downtime)

A. Business Income Coverage

We will pay up to \$200 for each day of suspension, subject to income verification for a maximum of six weeks during the "period of restoration" for your "loss" of "business income". The "loss" must be caused by a covered cause of loss to a covered "auto" covered under Paragraph A.1. of **SECTION III - PHYSICAL DAMAGE COVERAGE** in the Business Auto Coverage Form. Any payment is subject to the exclusions applicable to Physical Damage Coverage and the Conditions below.

B. Extra Expense Coverage

We will pay the necessary and reasonable "extra expense" that you incur during the "period of restoration" that you would not have incurred had there been no "loss" to a covered "auto" used in your business. The "loss" must be caused by a cause of loss covered under Paragraph A.1. of **SECTION III - PHYSICAL DAMAGE COVERAGE** in the Business Auto Coverage Form. Any payment is subject to the exclusions applicable to Physical Damage Coverage and the Conditions below.

Endorsement

CA 74

Policy Number: CA 2778814

Business Auto Optimum Plus

Conditions:

- a. No other deductible applies to these coverages.
- b. We will not pay under these coverages if you do not repair or replace the covered "auto".
- c. You must resume all or part of your business as quickly as possible.
- d. If you have other "autos" you can use to reduce the amount of "loss" payable under these coverages, you are required to use them.
- e. We will not pay for "loss" or expenses caused by suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of your business, we will cover such "loss" that affects your "business income".
- f. We will pay for expenses you incur to reduce the amount that would otherwise have been payable under this coverage. We will not pay more than the amount by which you actually reduce the "business income" "loss" or "extra expense" incurred.
- g. We will not pay under "extra expense" coverage any expenses you incur for the rental of an "auto" because of "loss" to a covered "auto".

C. Additional Definitions for This Coverage Extension

1. "Business income" means the:

- a. Net income (net profit or loss before income taxes) that would have been earned if no "loss" would have occurred; and

- b. Continuing normal operating expenses incurred, including payroll.

2. "Extra Expense" means those expenses you incur to avoid or minimize the suspension of business and to continue your business operations.

3. "Period of restoration" means the period of time that:

a. Begins:

(1) 24 hours after the time of "loss" for "business income" coverage, provided the covered "auto" is out of service for repair and in the custody of a repair facility; or

(2) Immediately after the time of "loss" for "extra expense" coverage.

b. Ends:

(1) When the repairs to the covered "auto" have been completed by the repair facility and they determine the "auto" is road-worthy. The "period of restoration" will not be extended if additional repairs are required after the "auto" is determined to be road-worthy.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

The following changes have been made to
**SECTION III - PHYSICAL DAMAGE
COVERAGE:**

Endorsement

CA 74

Policy Number: CA 2778814

Business Auto Optimum Plus

A. Towing and Labor

Paragraph A.2. **Towing** under SECTION III - PHYSICAL DAMAGE COVERAGE, is deleted and replaced by the following:

2. Towing and Labor

We will pay towing and labor costs incurred up to the limits shown below, each time a covered "auto" classified and rated as a private passenger type, "light truck" or "medium truck" is disabled:

- a. For private passenger type vehicles or "light trucks" we will pay to up \$75 per disablement. "Light trucks" are trucks that have a gross vehicle weight (GVW) of 10,000 pounds or less.
- b. For "medium trucks" we will pay up to \$175 per disablement. "Medium trucks" are trucks that have a gross vehicle weight (GVW) of 10,001-20,000 pounds.

However, the labor must be performed at the place of disablement.

B. Physical Damage Increased Transportation Expense Coverage

Coverage for temporary transportation expense under 4. **Coverage Extensions, a. Transportation Expenses**, is increased to \$50 per day, up to a maximum limit of \$1,000.

C. Deductible

The following are added to Paragraph D. **Deductible of Section III - Physical Damage Coverage**:

1. Glass Repair

No deductible applies to glass damage if the glass is repaired rather than replaced.

2. When a truck tractor and an attached trailer are damaged in the same collision loss, only one deductible will be applied and that will

be the highest deductible applicable to the tractor or trailer.

SECTION IV - BUSINESS AUTO CONDITIONS

A. Unintentional Failure to Disclose Hazards

Paragraph B., **General Conditions**, is amended by adding the following:

9. Unintentional Failure to Disclose Hazards

If you unintentionally fail to disclose any hazards or exposures existing as of the inception date of the Business Auto Coverage Form, the coverage afforded by this policy will not be prejudiced. However, you must report the undisclosed hazard or exposure as soon as practicable after its discovery, and we have the right to collect additional premium for same.

B. Waiver Of Transfer Of Rights Of Recovery Against Others To Us - Automatic Status Under An Insured Contract

Under SECTION IV, BUSINESS AUTO CONDITIONS, A.5. **Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following paragraphs:

- a. We waive any right of recovery we may have against any person or organization described in Paragraph b. below because of payments we make for "bodily injury" or "property damage" caused by an "accident" and resulting from the ownership, maintenance, or use of a covered "auto" in performance of work being performed under a contract with that person or organization.
- b. The waiver applies only to a person or organization with whom you have a written contract or agreement in which you are required to waive the rights of recovery under this policy, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

Endorsement

CG 38

Policy Number: CPP 2778813

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

THIS ENDORSEMENT CHANGES THE POLICY.
PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided
under the following:

**COMMERCIAL GENERAL LIABILITY
COVERAGE PART**

A. **Section II - Who Is An Insured** is amended to include as an additional insured any person or organization for whom you are required by a written contract or agreement, executed by both parties prior to the date of loss, to add as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" performed for the additional insured and included in the "products-completed operations hazard". But such person or organization is not an additional insured under this policy for any works, claims, losses, damages, acts or omissions of any kind that are unrelated to "your work" for such entity.

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

1. This insurance does not apply to any "bodily injury" or "property damage" resulting from any act or omission by, or willful misconduct of the additional insured, whether the sole or a contributing cause of the loss. Coverage afforded to the additional insured is limited solely to the additional insured's "vicarious liability" that is a specific and direct result of your conduct.

"Vicarious liability" is defined in this endorsement as liability that is imposed on the additional insured solely by virtue of its relationship with you, and not due to any act or omission of the additional insured.

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

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

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

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance Shown in the Declarations;

whichever is less.

D. If you have agreed in a written contract or agreement that this policy will be primary, and without right of contribution from any insurance issued to that additional insured, and the contract or agreement was executed prior to the "bodily injury" or "property

Integrity Insurance Company
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Appleton, Wisconsin 54912-0539

Endorsement

CG 38

Policy Number: CPP 2778813

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

damage", then this insurance will be primary over, and we will not seek contribution from, such insurance. The primary and noncontributory provision applies only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" performed for the additional insured and included in the "products-completed operations hazard".

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

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Endorsement

CG 72

Policy Number: CPP 2778813

Optimum General Liability Plus Endorsement

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The following is a summary of the coverage modifications, extensions and additions provided in this endorsement. The limits, unless stated otherwise, and deductibles shown below apply at each designated location. If a limit is shown elsewhere in the policy for any of these coverages, then that limit applies in addition to the limits shown below. If a different deductible amount is shown in the policy for any of these coverages, then that deductible will be the applicable deductible. For complete details of the coverage provided, refer to the specific policy language.

COMMERCIAL GENERAL LIABILITY COVERAGES

LIMIT	DEDUCTIBLE	SUBJECT OF INSURANCE	PAGE
Included	None	Additional Insured - Required By Contract	3
Included	None	Additional Insured - Grantor Of Franchise	4
Included	None	Additional Insured - Lessor Of Leased Equipment	4
Included	None	Additional Insured - Managers Or Lessors Of Premises	5
Included	None	Additional Insured - Vendors	5
Included	None	Additional Insured - Mortgagee, Assignee, or Receiver	6
Included	None	Additional Insured - State Or Governmental Agency	6
Included	None	Aggregate Limit Per Location/Per Project	14
Included	None	Blanket Primary And Noncontributory	9
Included	None	Bodily Injury Redefined	10
Included	None	Broad Form Named Insured	3
\$300,000	None	Damage To Premises Rented To You	8
Included	None	Duties In The Event Of Occurrence, Offense, Claim Or Suit	8
Included	None	Expected Or Intended Injury	2
Included	None	Incidental Medical Malpractice	7
Included	None	Liberalization Clause	10
\$25,000/occurrence \$50,000/aggregate	\$250	Limited Care Custody Or Control	10
\$5,000	\$100	Lost Key Coverage	13

Endorsement

CG 72

Policy Number: CPP 2778813

Optimum General Liability Plus Endorsement

LIMIT	DEDUCTIBLE	SUBJECT OF INSURANCE	PAGE
1,000 Pounds	None	Mobile Equipment	10
180 Days to Report	None	Newly Formed Or Acquired Organizations	7
51 Feet	None	Non-Owned Watercraft	2
\$10,000	None	Property Damage To Borrowed Equipment	14
\$2,500	None	Supplementary Payments - Bonds	3
\$500	None	Supplementary Payments - Earnings	3
Included	None	Unintentional Failure To Disclose Hazards	10
\$5,000/occurrence	\$250	Voluntary Property Damage	12
\$25,000/aggregate			
Included	None	Waiver Of Transfer of Rights Of Recovery	9

The following changes are made to the Commercial General Liability Coverage form:

SECTION I - COVERAGES

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

2. Exclusions are changed as follows:

a. Expected Or Intended Injury is deleted and replaced with the following:

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

g. (2) of Aircraft, Auto Or Watercraft is deleted and replaced with the following:

A watercraft you do not own that is:

(a) Less than 51 feet long; and

(b) Not being used to carry persons or property for a charge.

j. Damage To Property deleting the first paragraph after (6) and replacing with the following:

Paragraphs (1), (3), and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days.

A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits Of Insurance.**

The last paragraph of 2. Exclusions is deleted and replaced with the following:

Endorsement

CG 72

Policy Number: CPP 2778813

Optimum General Liability Plus Endorsement

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises, including the contents of such premises, rented to you or temporarily occupied by you with the permission of the owner.

A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits of Insurance.**

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B is changed as follows:

Paragraph **1.b.** is deleted and replaced with the following:

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

Paragraph **1.d.** is deleted and replaced with the following:

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

SECTION II - WHO IS AN INSURED is changed as follows:

The following is added to **Section II - Who Is An Insured:**

With respects to coverage provided under Commercial General Liability Coverage the following is added to include as a named insured:

Broad Form Named Insured

Any organization or subsidiary thereof which is a legally incorporated entity of which you own a financial interest of more than 50 percent of the voting stock on the effective date of this endorsement.

This provision does not apply to "bodily injury", "property damage" or "personal and advertising injury" with respect to which a Named Insured under this policy is also a Named Insured under another policy or would be a Named Insured under such policy but for its termination or upon exhaustion of its limits of insurance.

Additional Insureds

The following are added as Additional Insureds under **Section II - Who Is An Insured:**

• **Additional Insureds Required By Contract**

A. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or

Endorsement

CG 72

Policy Number: CPP 2778813

Optimum General Liability Plus Endorsement

2. The acts or omissions of those acting on your behalf;
in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

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

This insurance does not apply:

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

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

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

2. To "bodily injury" or "property damage" occurring after:

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

• **Additional Insured - Grantor Of Franchise When Required In Written Agreement With You**

- A. SECTION II - WHO IS AN INSURED is amended to include as an additional insured any person(s) or organization(s) who has granted a franchise to you, when you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy, but only with respect to their liability as grantor of a franchise to you.

• **Additional Insured - Lessor Of Leased Equipment - Automatic Status When Required In Lease Agreement With You**

- A. SECTION II - WHO IS AN INSURED is amended to include as an additional insured any person(s) or organization(s) from whom you lease equipment when you and such person(s) or

Endorsement

CG 72

Policy Number: CPP 2778813

Optimum General Liability Plus Endorsement

organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

A person's or organization's status as an additional insured under this provision ends when their contract or agreement with you for such leased equipment ends.

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

• **Additional Insured - Managers Or Lessors Of Premises When Required in Written Lease Agreement With You**

A. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person(s) or organization(s) from whom you have leased premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the manager or the lessor.

• **Additional Insured - Vendors**

A. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person(s) or organization(s) (referred to throughout this endorsement as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

If coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.

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

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

Endorsement

CG 72

Policy Number: CPP 2778813

Optimum General Liability Plus Endorsement

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

(1) The exceptions contained in Sub-paragraphs d. or f.; or

(2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

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

• **Additional Insured - Mortgagee, Assignee, or Receiver**

A. SECTION II - WHO IS AN INSURED is amended to include as an additional insured any person(s) or organization(s), with respect to their liability as mortgagee, assignee, or receiver arising out of the ownership, maintenance, or use of the premises by you.

B. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

• **Additional Insured - State Or Governmental Agency or Subdivision Or Political Subdivision - Permits Or Authorizations**

A. SECTION II - WHO IS AN INSURED is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision but only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

- 1. This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or

Endorsement

CG 72

Policy Number: CPP 2778813

Optimum General Liability Plus Endorsement

- b. "Bodily injury" or "property damage" included within the products-completed operations hazard."

Additional Conditions Applicable to Additional Insured Coverage Provided Above

With respect to coverage provided by the **Additional Insureds** added by this endorsement, the following is added:

1. The insurance afforded to such additional insured:
 - a. Only applies to the extent permitted by law; and
 - b. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.
 - c. Does not apply unless the written lease agreement has been executed prior to the "bodily injury", "property damage", or "personal and advertising injury".
2. The following is added to **SECTION III - LIMITS OF INSURANCE**:

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

- a. Required by the written contract or agreement, or
 - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

The **Additional Insureds** added by this endorsement shall not increase the applicable Limits of Insurance shown in the Declarations and do not apply to any person or organization included as an additional insured by an endorsement issued by us and made a part of the Coverage Form.

The following changes are made to **SECTION II - WHO IS AN INSURED**:

• **Incidental Medical Malpractice**

Paragraph 2.a.(1)(d) does not apply to your "employees" who provide professional health care services on your behalf as duly licensed:

1. Nurses;
2. Emergency Medical Technicians; or
3. Paramedics

in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place. This coverage does not apply if you are in the business or occupation of providing any such professional services.

• **Newly Formed Or Acquired Organizations As Named Insured**

Paragraph 3. Is deleted in its entirety and replaced with the following:

Any organization you newly acquire or form during the policy period, other than a partnership or joint venture, and over which you maintain an ownership interest of more than 50 percent of such

Endorsement

CG 72

Policy Number: CPP 2778813

Optimum General Liability Plus Endorsement

organization, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization;
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization; and
- d. Coverage A does not apply to damage to "your products" that occurred before you acquired or formed the organization.

An additional premium will apply in accordance with our rules and rates in effect on the date you acquired or formed the organization.

The last paragraph under **SECTION II - WHO IS AN INSURED** does not apply to the extent that such paragraph would conflict with the above.

SECTION III - LIMITS OF INSURANCE is changed as follows:

Paragraph 6. is deleted and replaced with the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises while rented to you, or in the case of damage by fire, explosion, lightning, smoke, or leakage from automatic fire protection systems, while rented to you or temporarily occupied by you with the permission of the owner. The limit is the greater of:
 - a. \$300,000; or
 - b. The amount shown in the Declarations for Damage To Premises Rented To You Limit.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

The requirement in paragraph 2.a. stating that you must see to it that we are notified of an "occurrence" only applies when the "occurrence" or offense is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An officer of the corporation, if you are a corporation;
4. Your members and managers, if you are a limited liability company;
5. Your insurance manager; or
6. The trustee, if you are a trust.

Endorsement

CG 72

Policy Number: CPP 2778813

Optimum General Liability Plus Endorsement

The requirement in 2.b. that you must see to it that we receive written notice of a claim or "suit" as soon as practicable will not be considered breached unless the breach occurs after such claim or "suit" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An officer of the corporation, if you are a corporation;
4. Your members and managers, if you are a limited liability company;
5. Your insurance manager; or
6. The trustee, if you are a trust.

Other Insurance is amended by the addition of the following:

4. This provision supersedes any provision to the contrary:

The following is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

Primary and Noncontributory

Insurance provided under this policy shall apply on a primary basis and shall not seek contribution from any other insurance available to an additional insured added to this policy by this endorsement subject to the following conditions:

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

The word "fire" is changed to "fire, lightning, explosion, smoke, or leakage from automatic fire protection systems" wherever it appears in:

1. Condition 4.b (1)(a)(ii), and
2. 9.a of Section V - Definitions

The following paragraphs are added to 8. **Transfer Of Rights Of Recovery Against Other To Us:**

Waiver Of Transfer Of Rights Of Recovery Against Others To Us When Required Within A Written Agreement With You - Blanket

We waive any right of recovery we may have because of payments we make for injury or damage arising out of:

1. Your ongoing operations or "your work" done under a written contract with that person or organization; or
2. The ownership, maintenance or use of that part of the premises leased to you.

Endorsement

CG 72

Policy Number: CPP 2778813

Optimum General Liability Plus Endorsement

The waiver applies only to a person or organization with whom you have a written contract or agreement in which you are required to waive the rights of recovery under this policy, but only to the extent that subrogation is waived prior to any injury or damage under a contract with that person or organization. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

The following are added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

- **Unintentional Failure To Disclose Hazards**

Any unintentional error or omission in the description of, or failure to completely describe, any premises or operations intended to be covered by this Coverage Form will not invalidate or affect coverage for those premises or operations. However, you must report such error or omission to us as soon as practicable after its discovery. This provision does not affect our right to collect additional premium as a result of any unintentional error or omission. In addition, this provision does not affect our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

- **Liberalization Clause**

If we revise this Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

SECTION V - DEFINITIONS are amended as follows:

With respects to coverage provided by this endorsement the following definitions are amended:

Bodily Injury Redefined

3. The definition of "bodily injury" is deleted and replaced with the following:

3. "Bodily injury" means:

- a. Bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time; and
- b. Mental anguish, shock or humiliation arising out of an injury as defined in Paragraph a. above and that is covered under this policy. Mental anguish means any type of mental or emotional illness or distress.

- **Mobile Equipment Redefined**

Paragraph 12. f., subparagraph (1) does not apply to self-propelled vehicles of less than 1,000 pounds gross vehicle weight.

COVERAGE EXTENSIONS

The following Coverages are added subject to the terms, conditions, limitations and exclusions stipulated for each:

- **Limited Care, Custody Or Control Liability Coverage**

With respects to **Limited Care, Custody Or Control Liability Coverage** the following is added to Paragraph 1.a. of **SECTION I-COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

Integrity Insurance Company
P.O. Box 539
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Endorsement

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Policy Number: WCP 2778816

**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

Any person or organization that requires you to obtain this waiver from us by a written contract executed prior to the date of injury covered by this policy.

Integrity Insurance Company
P.O. Box 539
Appleton, Wisconsin 54912-0539

Endorsement

CG 56

Policy Number: CPP 2778813

**IOWA GOVERNMENTAL IMMUNITIES
ENDORSEMENT**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Name of Jurisdiction
CITY OF DES MOINES, ENGINEERING DEPARTMENT
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

1. Non-waiver of Government Immunity

We expressly agree and state that the purchase of this policy and the including of the Jurisdiction specified in the Schedule above (hereafter referred to as "the Jurisdiction") as an Additional Insured on this policy, does not waive any of the defenses of governmental immunity available to the Jurisdiction under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.

2. Claims Coverage

We further agree that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.

3. Assertion of Governmental Immunity

The Jurisdiction shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon our timely written request.

Nothing contained in this endorsement shall prevent us from asserting the defense of governmental immunity on behalf of the Jurisdiction.

4. Non-denial of Coverage

We shall not deny coverage otherwise available under this policy, nor deny any of the rights and benefits accruing to the Jurisdiction 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 asserted by the Jurisdiction specified in the Schedule above.

5. No Other Change in Policy

The above preservation of governmental immunities shall not otherwise change or alter the coverage available under this policy. Any claims that may occur and are not subject to Code of Iowa Section 670.4 shall be subject to the terms and conditions of this insurance policy.

All other terms and conditions of this policy remain unchanged.