



## Roll Call Number

20-1532

## Agenda Item Number

88 A

DATE September 14, 2020

APPROVAL OF CONTRACT AND BOND  
AND PERMISSION TO SUBLET ON  
MUNICIPAL SERVICE CENTER - PHASE 2  
\$44,930,979.00

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the contract and bond, in the amount of \$44,930,979.00, executed by Koester Construction Company, Inc., Paul Koester, President, 3050 SE Enterprise Drive, Suite A, Grimes, IA, 50111 dated September 14, 2020, for the construction of the following improvement:

Municipal Service Center - Phase 2, 102018001

The improvement includes construction of an approximate 261,270 square foot new facility which incorporates the Public Works Department vehicle maintenance, fuel pump station, wash bay, and radio maintenance, with LEED certification; design consists of pre-cast concrete panels, glazed aluminum curtainwalls, architectural aluminum metal panels; wall structure consists of perimeter bearing walls and internal bearing and non-bearing concrete masonry units; floor structure is steel beam framing along with concrete/metal floor decking; roof structure is metal roof joists and decking; roofing system is a single-ply, fully adhered membrane on low slope roof areas; mechanical systems will incorporate energy efficient system, solar array for electricity, rain water collection, and ventilation system to filter exhaust fumes from administration areas; and reconstruction of Burlington Northern railroad crossing; all work in accordance with the contract documents, including Plan File Nos. 604-001/296, located at 1650 Maury Street, Des Moines, Iowa

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 Departments. 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.

**Roll Call Number**20-1532**Agenda Item Number**88 A

DATE September 14, 2020

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.

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 20-403 attached)

Moved by Gatto to adopt.

FORM APPROVED Kathleen Vanderpool by AK  
Kathleen Vanderpool  
Deputy City Attorney

*SLN* Funding Source: 2020-2021 CIP, Page Building – 12, Municipal Service Center - Phase 2, BL128, Being: G.O. Bonds \$25,430,979; Solid Waste Bonds \$13,500,000; Sanitary Sewer Fund \$3,000,000; Storm Water Utility Fund \$3,000,000

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



Department of Engineering  
City of Des Moines, Iowa



88A  
20-1532

## CONTRACTOR'S ANTICIPATED DBE/TSB UTILIZATION

### Municipal Service Center - Phase 2

#### Activity ID 102018001

On September 1, 2020, Koester Construction Company, Inc., Paul Koester, President, 3050 SE Enterprise Drive, Suite A, Grimes, IA 50111 submitted a proposal for construction of the Municipal Service Center - Phase 2, Activity ID 102018001, which the City Council has determined to be the lowest responsible, responsive bid for said project in the amount of \$44,930,979.00. 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 Koester Construction Company, Inc., 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>
None	N/A	\$0.00
	Estimated DBE/TSB Participation	\$0.00
	Koester Construction Company, Inc. Amount	\$44,930,979.00
	Percentage of DBE/TSB Participation	0.00%

ENGINEERING DEPARTMENT  
CITY OF DES MOINES, IOWA

CONTRACT NO.  
DATE  
ROLL CALL NO.

15392  
9/14/2020  
20- **1532**

### 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 Koester Construction Company, Inc., 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:

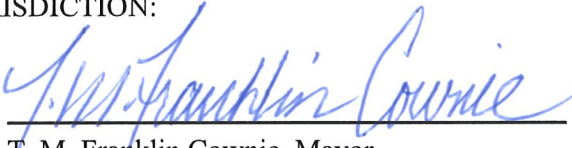



Municipal Service Center - Phase 2, 102018001

The improvement includes construction of an approximate 261,270 square foot new facility which incorporates the Public Works Department vehicle maintenance, fuel pump station, wash bay, and radio maintenance, with LEED certification; design consists of pre-cast concrete panels, glazed aluminum curtainwalls, architectural aluminum metal panels; wall structure consists of perimeter bearing walls and internal bearing and non-bearing concrete masonry units; floor structure is steel beam framing along with concrete/metal floor decking; roof structure is metal roof joists and decking; roofing system is a single-ply, fully adhered membrane on low slope roof areas; mechanical systems will incorporate energy efficient system, solar array for electricity, rain water collection, and ventilation system to filter exhaust fumes from administration areas; and reconstruction of Burlington Northern railroad crossing; all work in accordance with the contract documents, including Plan File Nos. 604-001/296, located at 1650 Maury Street, Des Moines, Iowa

The Contractor agrees to perform said work for and in consideration of the Jurisdiction's payment of the bid amount of Fourty Four Million Nine Hundred Thirty Thousand Nine Hundred Seventy Nine and 00/100 dollars (\$44,930,979.00) 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 31, 2022; 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.



IN WITNESS WHEREOF, the Parties hereto have executed this instrument, in triplicate on the date first shown written.

<p><b>JURISDICTION:</b></p> <p>By <u></u> T. M. Franklin Cownie, Mayor</p> <p>(Seal) ATTEST: <u></u> P. Kay Cmelik, City Clerk</p> <p>FORM APPROVED BY: <u></u> Kathleen Vanderpool, Deputy City Attorney</p>	<p><b>CONTRACTOR:</b></p> <p>Koester Construction Company, Inc.</p> <p>By <u></u> Contractor</p> <p>Signature Paul Koester</p> <p>President</p> <p>Title</p> <p>3050 SE Enterprise Drive, Suite A</p> <p>Street Address</p> <p>Grimes, IA</p> <p>50111</p> <p>City, State - Zip Code</p> <p>(515) 986-5500 / pkoester@koester.cc msch Telephone Number / Email Address</p>
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**CONTRACTOR PUBLIC REGISTRATION INFORMATION To Be Provided By:**

1. All Contractors: The Contractor's Public Registration Number, issued by the Iowa Commissioner of Labor pursuant to Section 91C.5 of the Iowa Code, is as follows:  
Number C094243
2. Out-of-State Contractors:
  - A. Pursuant to Section 91C.7 of the Iowa Code, an out-of-state contractor, before commencing a contract in excess of five thousand dollars in value in Iowa, shall file a bond with the division of labor services of the department of workforce development. The contractor should contact 515-242-5871 for further information. Prior to contract execution, the City Engineer may forward a copy of this contract to the Iowa Department of Workforce Development as notification of pending construction work. It is the contractor's responsibility to comply with said Section 91C.7 before commencing this work.
  - B. Prior to entering into contract, the designated low bidder, if it be a corporation organized under the laws of a state other than Iowa, shall file with the Engineer a certificate from the Secretary of the State of Iowa showing that it has complied with all the provisions of Chapter 490 of the Code of Iowa, or as amended, governing foreign corporations. For further information contact the Iowa Secretary of State Office at 515-281-5204.

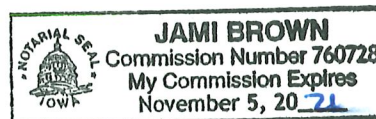
**NOTE: All signatures on this contract must be original signatures in ink: copies or facsimile of any signature will not be accepted.**

## CORPORATE ACKNOWLEDGEMENT

State of Iowa )  
Polk County ) SS

On this 10th day of September, 20 20, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Paul Koester and \_\_\_\_\_, to me known, who, being by me duly sworn, did say that they are the President \_\_\_\_\_, and \_\_\_\_\_, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of this Board of Directors; Paul Koester and \_\_\_\_\_ acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

[Signature]  
Notary Public in and for the State Iowa  
My commission 760728





**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 is a base bid price contract. The bidder must provide any bid price(s), the total base bid price, any alternate price(s), and the total base bid plus any add-alternates if there are alternates on the proposal. The total base bid plus any alternates selected by the Jurisdiction shall be used for comparison of bids. The total base bid plus any add-alternates shall be used for determining the sufficiency of the bid security.

Activity ID 10-2018-001  
IDOT Project No: None

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNITS</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
1	As described in Contract Documents, Municipal Service Center - Phase 2, complete as specified. Plan sheets AG001.1-T501.	LS	1.00	\$43,360,000.00	\$43,360,000.00
2	BID ALLOWANCE- BAS CONTROLS (Baker Group) as Described in Contract Documents, Complete as Specified in 01 2100.	LS	1.00	\$641,094.00	\$641,094.00
3	BID ALLOWANCE- ACCESS CONTROLS (Baker Group) as Described in Contract Documents, Complete as Specified in 01 2100.	LS	1.00	\$55,765.00	\$55,765.00
4	BID ALLOWANCE- CAMERA SYSTEM (Baker group) as Described in Contract Documents, Complete as Specified in 01 2100.	LS	1.00	\$49,120.00	\$49,120.00
TOTAL BASE BID					\$44,105,979.00
ADD ALTERNATE #1	ELECTRICAL - PHOTOVOLTATIC ARRAY APPROX 533KW DC, As Described in Contract Documents sheet E103.1, Complete as Specified.	ADD	1.00	\$825,000.00	\$825,000.00
ADD ALTERNATE #2	ELECTRICAL - PHOTOVOLTATIC ARRAY APPROX 266KW DC, As Described in Contract Documents sheet E103.1, Complete as Specified.	ADD	1.00	\$0.00	\$0.00
TOTAL BASE BID PLUS ALTERNATE #1 SELECTED BY THE CITY					\$44,930,979.00

**PERFORMANCE, PAYMENT & MAINTENANCE BOND**

KNOW ALL BY THESE PRESENTS:

That we, Koester Construction Company, Inc. , as Principal (the "Contractor" or "Principal"), and Argonaut Insurance Company, as Surety, are held and firmly bound unto the City of Des Moines, as Obligee (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 Fourty Four Million Nine Hundred Thirty Thousand Nine Hundred Seventy Nine and 00/100 dollars (\$44,930,979.00), 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:

Municipal Service Center - Phase 2, 102018001

The improvement includes construction of an approximate 261,270 square foot new facility which incorporates the Public Works Department vehicle maintenance, fuel pump station, wash bay, and radio maintenance, with LEED certification; design consists of pre-cast concrete panels, glazed aluminum curtainwalls, architectural aluminum metal panels; wall structure consists of perimeter bearing walls and internal bearing and non-bearing concrete masonry units; floor structure is steel beam framing along with concrete/metal floor decking; roof structure is metal roof joists and decking; roofing system is a single-ply, fully adhered membrane on low slope roof areas; mechanical systems will incorporate energy efficient system, solar array for electricity, rain water collection, and ventilation system to filter exhaust fumes from administration areas; and reconstruction of Burlington Northern railroad crossing; all work in accordance with the contract documents, including Plan File Nos. 604-001/296, located at 1650 Maury Street, Des Moines, Iowa

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 zero and 00/100 dollars ( ), 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 one (1) 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, 2020

## PRINCIPAL:

Koester Construction Company, Inc.

Contractor

By

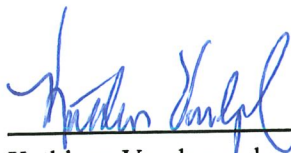


Signature Paul Koester

President

Title

## FORM APPROVED BY:

Kathleen Vanderpool  
Deputy City Attorney

## SURETY:

Argonaut Insurance Company

Surety Company

By

  
Signature Attorney-in-Fact/OfficerDione R. Young, Attorney-in-Fact

Name of Attorney-in-Fact/Officer

Holmes, Murphy and Associates, LLC

Company Name

2727 Grand Prairie Parkway

Company Address

Waukegan, IA 50263

City, State Zip Code

(515) 223-6800

Company Telephone Number

## 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.



**Argonaut Insurance Company**  
**Deliveries Only: 225 W. Washington, 24th Floor**  
**Chicago, IL 60606**

**United States Postal Service: P.O. Box 469011, San Antonio, TX 78246**

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the Argonaut Insurance Company, a Corporation duly organized and existing under the laws of the State of Illinois and having its principal office in the County of Cook, Illinois does hereby nominate, constitute and appoint:

Anne Crowner, Craig E. Hansen, Jay D. Freiermuth, Dione R. Young, Stacy Venn, Cindy Bennett, Brian M. Deimerly, Seth Rooker, Timothy J. McCulloh, Sydney Burnett, Wendy A. Casey

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all bonds, contracts, agreements of indemnity and other undertakings in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

\$75,000,000.00

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of Argonaut Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the Company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the Argonaut Insurance Company, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Argonaut Insurance Company has caused its official seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the 8th day of May, 2017.



Argonaut Insurance Company

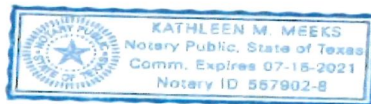
by: \_\_\_\_\_

Joshua C. Betz, Senior Vice President

STATE OF TEXAS  
COUNTY OF HARRIS SS:

On this 8th day of May, 2017 A.D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICER OF THE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me duly sworn, depose and said that he is the officer of the said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation, and that Resolution adopted by the Board of Directors of said Company, referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.



Kathleen M. Meeks

(Notary Public)

I, the undersigned Officer of the Argonaut Insurance Company, Illinois Corporation, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of said Company, on the 14th day of September, 2020.



James Bluzard

James Bluzard, Vice President-Surety





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
09/19/2019

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

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

PRODUCER Holmes Murphy & Assoc - WDM PO Box 9207 Des Moines, IA 50306-9207	1-800-247-7756	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:	FAX (A/C, No):
INSURED Koester Construction Company, Inc. 3050 SE Enterprise Drive, Suite A Grimes, IA 50111		INSURER(S) AFFORDING COVERAGE INSURER A: AMCO INS CO INSURER B: ALLIED PROP & CAS INS CO INSURER C: DEPOSITORS INS CO INSURER D: NATIONWIDE MUT INS CO INSURER E: INSURER F:	
		NAIC # 19100 42579 42587 23787	

## COVERAGES

CERTIFICATE NUMBER: 57289584

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 <input checked="" type="checkbox"/> XCU Included <input checked="" type="checkbox"/> Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	X	X	GLAO3018938331	10/15/19	10/15/20	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	X	BAPC3018938331	10/15/19	10/15/20	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"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$			CAA3018938331	10/15/19	10/15/20	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WCD3018938331	10/15/19	10/15/20	<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
D	Contractors Equipment			CIM3018938331	10/15/19	10/15/20	Owned Equipment 448,355 Leased/Rented 250,000 Deductible 1,000

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

Covers all operations performed by the insured for the certificate holder during the policy year.

APPROVED

## CERTIFICATE HOLDER

City of Des Moines  
City Administration Building  
Engineering Dept  
400 E Court Ave

Des Moines, IA 50309

USA

## CANCELLATION

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

AUTHORIZED REPRESENTATIVE

*J.P. Dill*

**QUICK REFERENCE**

**COMMERCIAL UMBRELLA LIABILITY POLICY**

**READ YOUR POLICY CAREFULLY**

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## COMMERCIAL UMBRELLA LIABILITY POLICY

Various provisions in this policy restrict coverage. Please read the entire policy and any "underlying insurance" carefully to determine rights, duties and what is covered and not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us", and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks are defined in this policy. These definitions are found in the Definitions section or the specific policy provision where they appear.

### INSURING AGREEMENTS

#### A. Coverage A - Excess Follow Form Liability Insurance

1. Under Coverage A, we will pay on behalf of the "insured" that part of "loss" covered by this insurance in excess of the total applicable limits of "underlying insurance", provided the injury or offense takes place during the Policy Period of this policy. The terms and conditions of "underlying insurance" are, with respect to Coverage A, made a part of this policy except with respect to:
  - a. any contrary provision contained in this policy; or
  - b. any provision in this policy for which a similar provision is not contained in "underlying insurance".
2. With respect to the exceptions stated above, the provisions of this policy will apply.
3. The amount we will pay for damages is limited as described in Limits of Insurance.
4. Notwithstanding anything to the contrary contained above, if "underlying insurance" does not cover "loss" for reasons other than exhaustion of an aggregate limit of insurance by payment of claims, then we will not cover such "loss".
5. We have no obligation under this insurance with respect to any claim or "suit" settled without our consent.

6. If we are prevented by law from paying on behalf of the "insured" for coverage provided under this insurance, then we will indemnify the "insured".
7. With respect to any coverage provided by "underlying insurance" that is on a claims-made basis:
  - a. this insurance does not apply to "injury or damage" which occurred before the Retroactive Date, if any, shown in the "underlying insurance", or which occurs after the policy period; and
  - b. the aggregate limit shall not be reinstated on this insurance except by endorsement thereon.

#### B. Coverage B - Umbrella Liability Insurance

1. Under Coverage B, we will pay on behalf of the "insured" damages the "insured" becomes legally obligated to pay by reason of liability imposed by law because of "bodily injury", "property damage", or "personal and advertising injury" covered by this insurance which takes place during the Policy Period and is caused by an "occurrence". We will pay such damages in excess of the Retained Limit Aggregate specified in the Declarations or the amount payable by "other insurance", whichever is greater.
2. Damages because of "bodily injury" include damages claimed by any person or organization for care or loss of services resulting at any time from "bodily injury".
3. This coverage applies anywhere.
4. The amount we will pay is limited as described in Limits of Insurance.
5. Coverage B will not apply to any loss, claim or "suit" for which insurance is afforded under "underlying insurance" or would have been afforded except for the exhaustion of the limits of insurance of "underlying insurance".
6. We have no obligation under this insurance with respect to any claim or "suit" settled without our consent.
7. If we are prevented by law from paying on behalf of the "insured" for coverage provided under this insurance, then we will indemnify the "insured".



8. This insurance applies to "bodily injury" and "property damage" only if:

- a. The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- b. The "bodily injury" or "property damage" occurs during the "policy period"; and
- c. Prior to the "policy period", no "insured" and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed "insured" or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the "policy period" will be deemed to have been known prior to the "policy period".

9. "Bodily injury" or "property damage" which occurs during the "policy period" and was not, prior to the "policy period", known to have occurred by any "insured" or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "policy period".

10. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any "insured" or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- a. Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- b. Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- c. Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

11. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the "policy period".

control of the investigation, settlement or defense of any claim or "suit" against the "insured" for damages covered by this policy:

1. under Coverage A, when the applicable limit of "underlying insurance" has been exhausted by payment of claims; or
  2. under Coverage B, when damages are sought for "bodily injury", "property damage", or "personal and advertising injury" to which no "underlying insurance" or "other insurance" applies.
- B. In those circumstances where paragraph A. above applies, in addition to the applicable Limits of Insurance we will pay our expenses and the following to the extent that they are not included in "underlying insurance":
1. Up to \$3,000 for the cost of bail bonds. We do not have to furnish these bonds.
  2. The cost of bonds to release attachments, but only for bond amounts within the amount of insurance available. We do not have to furnish these bonds.
  3. 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 \$250 a day because of time off from work.
  4. All court costs taxed against the "insured" in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured";
  5. Pre-judgment interest awarded against the "insured" on that part of the judgment we become obligated to pay. However, if we make an offer to pay the applicable Limit of Insurance, we will not pay any pre-judgment interest based on that period of time after the offer.
  6. All interest awarded against the "insured" on that amount of any judgment that is within the applicable Limits of Insurance that we become obligated to pay that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court that part of the judgment we are obligated to pay.

These Payments will not reduce the limits of insurance.

#### **DEFENSE AND SUPPLEMENTARY PAYMENTS**

**Applicable to Coverage A and Coverage B**

A. We have the right and the duty to assume



C. In those circumstances where paragraph A. above does not apply we do not have the duty to assume control of the investigation, settlement or defense of any claim or "suit" against the insured. We do, however, have the right to participate in the investigation, settlement or defense of any claim or "suit" that we feel may create liability on our part under the terms of this policy. If we exercise this right, we will do so at our expense.

We will not defend any "suit" after we have exhausted the applicable Limit of Insurance as stated in the Declarations.

If we are prevented by law or otherwise from carrying out the provisions of this section, DEFENSE AND SUPPLEMENTARY PAYMENTS, we will pay any expense incurred with our consent.

#### **LIMITS OF INSURANCE**

##### **A. Applicable to Coverage A and Coverage B**

1. With respect to Coverage A and Coverage B, the Limits of Insurance shown in the Declarations and the rules below determine the most we will pay, regardless of the number of:

- a. "insureds";
- b. claims made or "suits" brought against any or all "insureds";
- c. coverages provided under this policy; or
- d. persons or organizations making claims or bringing "suits".

2. The Limits of Insurance of this policy will apply as follows:

- a. The limit for Each Occurrence stated in the Declarations is the most we will pay for all damages arising out of any one "occurrence" even if such damages are covered, in whole or in part, under both Coverage A and Coverage B.

Any amount paid for damages arising out of an "occurrence" will reduce the amount of the applicable aggregate limit of insurance available for payment of damages arising out of any other "occurrence".

If the applicable aggregate limit of insurance has been reduced by payment of damages to an amount that is less than the limit of Each Occurrence stated in the Declarations, the remaining aggregate limit of insurance is the most that will be available for payment of damages arising out of any other "occurrence".

b. Subject to paragraph 2.a. above, the limit stated in the Declarations for the Products-Completed Operations Aggregate is the most we will pay for all damages under the "products-completed operations hazard".

c. Subject to paragraph 2.a. above, the limit stated in the Declarations for the Other Aggregate is the most we will pay for all damages under Coverage A, or separately under Coverage B, except for:

- 1) damage covered under the "products-completed operations hazard" or,
- 2) damage covered under "underlying insurance" to which no underlying aggregate limit applies.

3. The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the Policy Period shown in the Declarations, unless the Policy Period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the preceding period for purposes of determining the Limits of Insurance.

##### **B. Applicable to Coverage A Only**

1. With respect to Coverage A and subject to paragraphs 2.a., 2.b. and 2.c. above:

- a. if the limits of "underlying insurance" have been reduced by payment of "loss", this policy will immediately apply excess of the reduced underlying limit; or
- b. if the limits of "underlying insurance" have been exhausted by payment of loss, this policy will continue in force as "underlying insurance".

2. The provisions of 1.a. and 1.b. above apply to injury or offense which takes place before the expiration of this policy or the underlying policy, whichever comes first.



**EXCLUSIONS****A. Applicable to Coverage A and Coverage B**

Under Coverage A and Coverage B, this insurance does not apply to:

1. **Workers' Compensation And Similar Laws:**  
Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
2. **E. R. I. S. A.**  
Any obligation of the insured under the Employees' Retirement Income Security Act of 1974 (E. R. I. S. A.), and any amendments thereto or any similar federal, state or local statute.
3. **Auto Coverages**  
Any loss, cost or expense payable under or resulting from any first-party physical damage coverage; no-fault law; personal injury protection or auto medical payments coverage; or uninsured or underinsured motorist law.
4. **Abuse or Molestation**  
"Injury or damage", "bodily injury", "property damage" or "personal and advertising injury" arising out of:
  - a. The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured, or
  - b. The negligent:
    - 1) Employment;
    - 2) Investigation;
    - 3) Supervision;
    - 4) Reporting to the proper authorities, or failure to so report; or
    - 5) Retention;
 of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph a. above.
5. **Cross Suits**  
"Injury or damage", "bodily injury", "property damage" or "personal and advertising injury" sustained by any Named insured shown in the Declarations arising out of the activities or operations of any other Named Insured shown in the Declarations.

**6. Damage To "Your Product"**

"Injury or damage" or "property damage" to "your product" arising out of it or any part of it.

**7. Damage To "Your Work"**

"Injury or damage" or "property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**8. Employment-related Practices**

"Injury or damage", "bodily injury" or "personal and advertising injury" to:

**a. A person arising out of any:**

- 1) Refusal to employ that person;
- 2) Termination of that person's employment; or
- 3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

**b. The spouse, child, parent, brother or sister of that person as a consequence of "injury or damage", "bodily injury" or "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraph 1), 2) or 3) above is directed.**

This exclusion applies whether the injury-causing event described in Paragraph 1), 2) or 3) above occurs before employment, during employment or after employment of that person.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**9. Fungi Or Bacteria**

- a. "Injury or damage", "bodily injury", "property damage" or "personal and advertising injury" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents,



regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such "injury or damage", "bodily injury", "property damage", or "personal and advertising injury".

- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

**10. Punitive Damages**

Any punitive or exemplary damages, fines or penalties.

**11. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**12. Silica Or Silica-Related Dust**

- a. "Injury or damage", "bodily injury", "property damage" or "personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- b. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

**13. Asbestos, Electronic Emissions, Lead or Radon**

"Injury or damage", "bodily injury", "property damage" or "personal and advertising injury" arising out of:

- a. Asbestos including but not limited to any injury or damage related to, arising or alleged to have arisen out of any use, exposure, existence, detection, removal, elimination, avoidance, act, error, omission, failure to disclose or warn of the presence of asbestos or any other duty involving asbestos;
- b. Electromagnetic emissions or radiation including but not limited to any injury or damage related to, arising or alleged to have arisen out of any use, exposure, existence, detection, removal, elimination, avoidance, act, error, omission, failure to disclose or warn of the presence of electromagnetic emissions or radiation or any other duty involving electromagnetic emissions or radiation;
- c. Lead including but not limited to any injury or damage related to, arising or alleged to have arisen out of any use, exposure, existence, detection, removal, elimination, avoidance, act, error, omission, failure to disclose or warn of the presence of lead or any other duty involving lead; or
- d. Radon or any other radioactive emissions, manmade or natural, including but not limited to any injury or damage related to, arising or alleged to have arisen out of any use, exposure, existence, detection, removal, elimination, avoidance, act, error, omission, failure to disclose or warn of the presence of radon or any other radioactive emissions or any other duty involving radon or other radioactive emissions.

**B. Applicable to Coverage A Only**

The exclusions applicable to the "underlying insurance" also apply to this insurance. Additionally, this insurance does not apply to:

- 1. Damage To Property
  - "Injury or damage" to:
    - a. Property:



- 1) You own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property; or
- 2) Owned or transported by the insured and arising out of the ownership, maintenance or use of a "covered auto".
- b. Premises you sell, give away or abandon, if the "injury or damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. Personal property in the care, custody or control of the insured;
- e. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "injury or damage" arises out of those operations; or
- f. That particular part of any property that must be restored, repaired or replaced because your work (as defined in the "underlying insurance") was incorrectly performed on it.

Paragraph b. of this exclusion does not apply if the premises are your work (as defined in the "underlying insurance") and were never occupied, rented or held for rental by you.

Paragraphs a.2), c., d., e. and f. of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs c. and d. of this exclusion do not apply to liability assumed under a written Trailer Interchange agreement.

Paragraph f. of this exclusion does not apply to "injury or damage" included in the "products-completed operations hazard".

## 2. Auto Pollution

"Injury or damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:

- 1) Being transported or towed by, handled or handled for movement into, onto or from the "covered auto";
- 2) Otherwise in the course of transit by or on behalf of the "insured"; or
- 3) Being stored, disposed of, treated or processed in or upon the "covered auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the "covered auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the "covered auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the "covered auto" or its parts, if:

- 1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- 2) The "injury or damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 10.b. and 10.c. of the definition of "mobile equipment".

Paragraphs b. and c. above of this exclusion do not apply to "occurrences" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a "covered auto" if:

- 1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a "covered auto"; and
- 2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.



**3. Other Than Auto Pollution**

a. "Injury or damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

1) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

a) "Injury or damage" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

b) "Injury or damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

c) "Injury or damage" arising out of heat, smoke or fumes from a "hostile fire";

2) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

a) Any insured; or

b) Any person or organization for whom you may be legally responsible; or

4) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any

insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

a) "Injury or damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "injury or damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

b) "Injury or damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

c) "Injury or damage" arising out of heat, smoke or fumes from a "hostile fire".

5) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".



b. Any loss, cost or expense arising out of any:

- 1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- 2) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "injury or damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**C. Applicable to Coverage B Only**

Under Coverage B, this insurance does not apply to:

1. Expected Or Intended Injury

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

2. Contractual Liability

"Bodily injury", "property damage" or "personal and advertising injury" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages that the "insured" would have in the absence of the contract or agreement.

3. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- a. Causing or contributing to the intoxication of any person;
- b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

c. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any "insured" allege negligence or other wrongdoing in:

- 1) The supervision, hiring, employment, training or monitoring of others by that "insured"; or
- 2) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage" involved that which is described in paragraph a., b., or c.

4. Auto Coverages

"Bodily injury" or "property damage" arising out of the ownership, maintenance or use of any "auto" within the United States of America, including its possessions and territories; Puerto Rico; and Canada, or while "autos" are being transported between these places.

5. Employer's Liability

"Bodily injury" to:

- a. An "employee" of the insured arising out of and in the course of:
  - 1) Employment by the insured; or
  - 2) Performing duties related to the conduct of the insured's business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

6. Aircraft Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property



damage" involved the ownership, maintenance, use or entrustment to others of any aircraft or watercraft that is owned or operated by or rented or loaned to any "insured".

#### 7. Racing Activities

"Bodily injury" or "property damage" arising out of the use of "mobile equipment" or "autos" in, or while in practice for, or while being prepared for, any prearranged professional or organized racing, speed, demolition, or stunting activity or contest.

#### 8. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### 9. Damage To Property

"Property damage" to:

- a. Property:
  - 1) You own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property; or
  - 2) Owned or transported by the insured and arising out of the ownership, maintenance or use of a "covered auto".
- b. Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. Personal property in the care, custody or control of the insured;
- e. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing

operations, if the "property damage" arises out of those operations; or

- f. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

#### 10. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

#### 11. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- a. "Your product";
- b. "Your work"; or
- c. "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

#### 12. Professional Services

"Bodily injury", "property damage" and "personal and advertising injury" due to the rendering of or failure to render any professional service. This includes but is not limited to:

- a. Legal, accounting or advertising services;
- b. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;



- c. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;
- d. Engineering services, including related supervisory or inspection services;
- e. Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;
- f. Any health or therapeutic service treatment, advice or instruction;
- g. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
- h. Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardio-vascular fitness, body-building or physical training programs;
- i. Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- j. Body piercing or tattooing services;
- k. Services in the practice of pharmacy;
- l. Law enforcement or firefighting services; and
- m. Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

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

13. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury", "property damage" or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- d. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

14. "Personal and Advertising Injury"

- a. Knowing Violation Of Rights Of Another  
Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".
- b. Material Published With Knowledge Of Falsity  
Arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.
- c. Material Published Prior To Policy Period  
Arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.
- d. Criminal Acts  
Arising out of a criminal act committed by or at the direction of the insured.
- e. Breach Of Contract  
Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".
- f. Quality Or Performance Of Goods - Failure To Conform To Statements  
Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".
- g. Wrong Description Of Prices  
Arising out of the wrong description of the price of goods, products or services stated in your "advertisement".



**h. Infringement Of Copyright, Patent, Trademark, Trade Secret Or Trade Name**

Arising out of the infringement of copyright, patent, trademark, trade secret, trade name, or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**i. Insureds In Media And Internet Type Businesses**

Committed by an insured whose business is:

- 1) Advertising, broadcasting, publishing or telecasting;
- 2) Designing or determining content of websites for others; or
- 3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 13.a., b. and c. of "personal and advertising injury" under the **DEFINITIONS** section, **C. Applicable to Coverage B Only**.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**j. Electronic Chatrooms Or Bulletin Boards**

Arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**k. Unauthorized Use Of Another's Name Or Product**

Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**15. Pollution**

- a. Bodily injury, "property damage" or "personal and advertising injury" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time; or

- b. Any loss, cost or expense arising out of any:

- 1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- 2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

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**DEFINITIONS**

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**A. Applicable to Coverage A and Coverage B**

As used in Coverage A and Coverage B:

**1. "Auto" means:**

- a. a Land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment; or
- b. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

**2. "Covered auto" means only those "autos" to which "underlying insurance" applies.**

**3. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.**

**4. "Loss" means those sums actually paid in the settlement or satisfaction of a claim which the "insured" is legally obligated to pay as damages because of injury or offense, after making proper deductions for all recoveries and salvage.**

**5. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:**

- a. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;



- b. vehicles maintained for use solely on or next to premises you own or rent;
- c. vehicles that travel on crawler treads;
- d. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - 1) power cranes, shovels, loaders, diggers or drills; or
  - 2) road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - 1) air compressors, pumps and generators including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - 2) cherry pickers and similar devices used to raise or lower workers;
- f. vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- 1) equipment designed primarily for:
  - a) snow removal;
  - b) road maintenance, but not construction or resurfacing; or
  - c) street cleaning;
- 2) cherry pickers, and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- 3) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

6. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

7. "Other insurance" means a policy of insurance affording coverage that this policy also affords. "Other insurance" includes any type of self-insurance or other mechanism by which an "insured" arranges for funding of legal liabilities.

"Other insurance" does not include "underlying insurance" or a policy of insurance specifically purchased to be excess of this policy affording coverage that this policy also affords.

8. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

9. "Products-completed operations hazard" means all "injury or damage", "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- a. products that are still in your physical possession; or
- b. work that has not yet been completed or abandoned. "Your work" will be deemed completed at the earliest of the following times:
  - 1) when all of the work called for in your contract has been completed;
  - 2) when all the work to be one at the site has been completed if your contract calls for work at more than one site; or
  - 3) when that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

This hazard does not include "injury or damage", "bodily injury" or "property damage" arising out of:



- 1) the transportation of property, unless the "injury or damage" "bodily injury" or "property damage", arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by loading or unloading of that vehicle by any insured; or
  - 2) the existence of tools, uninstalled equipment or abandoned or unused materials
10. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
11. "Silica-related dust" means a mixture or combination of silica and other dust or particles.
12. "Suit" means a civil proceeding in which injuries or damages to which this insurance applies are alleged. "Suit" includes:
- a. an arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
  - b. any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.
13. "Underlying insurance" means the policy or policies of insurance listed in the Schedule of Underlying Insurance forming a part of this policy, including any type of self-insurance or alternative method by which the "insured" arranges for funding of legal liabilities that affords coverage that this policy covers.
- "Underlying insurance" does not include any Extended Reporting Periods on the policies shown in the Declarations. Extended Reporting Periods must be endorsed onto this policy by us.
14. "Underlying insurer" means any insurer who provides any policy of insurance listed in the Schedule of Underlying Insurance.
15. "Your product" means:
- a. any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - 1) you;
    - 2) others trading under your name; or
    - 3) a person or organization whose business or assets you have acquired; and

- b. containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

- a. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. the providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for use of others but not sold.

16. "Your work" means:

- a. work or operations performed by you or on your behalf; and
- b. materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

- a. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- b. the providing of or failure to provide warnings or instruction.

#### B. Applicable to Coverage A Only

As used in Coverage A:

1. "Injury or damage" means any injury or damage covered in the applicable "underlying insurance" arising from an "occurrence".
2. "Insured" means:
  - a. the Named Insured stated in the Declarations;
  - b. any person or organization, other than an additional insured, included as an "insured" in "underlying insurance"; and
  - c. any additional insured under any policy of "underlying insurance" will automatically be an "insured" under this insurance.

Subject to the LIMITS OF INSURANCE section, if coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is:



- 1) the minimum amount of insurance required by the contract or agreement, less any amounts payable by any "underlying insurance"; or
- 2) the amount of insurance available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

3. "Covered auto" means only those "autos" to which "underlying insurance" applies.
4. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

### C. Applicable to Coverage B Only

As used in Coverage B:

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters.
2. "Bodily injury" means physical injury, sickness or disease to a person and, if arising out of the foregoing, mental anguish, mental injury, shock or humiliation, including death at any time resulting therefrom.
3. "Coverage territory" means anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanctions or embargo by the United States of America.
4. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
5. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by laws or any other similar governing document.
6. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. it incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. you have failed to fulfill the terms of a contract or agreement;
 if such property can be restored to use by:
  - a. the repair, replacement, adjustment or removal of "your product" or "your work";
  - b. your fulfilling the terms of the contract or agreement.

### 7. "Insured" means:

- a. If you are designated in the Declarations as:

- 1) An individual, you and your spouse, but only with respect to the conduct of a business of which you are the sole owner.
- 2) A partnership or joint venture, your members, partners and their spouses are also "insureds", but only with respect to the conduct of your business.
- 3) A limited liability company, any member, but only with respect to the conduct of your business. Your managers are "insureds" but only with respect to their duties as your managers.
- 4) An organization other than a partnership, joint venture or limited liability company, your "executive officers" and directors, but only with respect to their duties as your officers or directors. Your stockholders are also "insureds", but only with respect to their liability as stockholders.

- b. Any organization over which the Named Insured maintains majority interest and to which more specific insurance does not apply, other than one which you newly acquire or form;
- c. Any newly acquired or formed organization over which the Named Insured maintains majority interest and to which more specific insurance does not apply; provided that this policy does not apply to any injury or damage that took place before you acquired or formed the organization;
- d. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury".



- 1) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" in the course of his or her employment or performing duties related to the conduct of your business;
  - 2) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph 1) above; or
  - 3) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph 1) or 2) above.
- e. any person or organization while acting as your real estate manager; or
- f. your legal representative if you die, but only with respect to duties as such.
- No person or organization is an "insured" with respect to the conduct of any current, past or newly formed partnership or joint venture that is not designated within the Declarations of this policy as Named Insured.
8. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does include a "temporary worker".
  9. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses committed in the course of your business:
    - a. false arrest, detention or imprisonment;
    - b. malicious prosecution;
    - c. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
    - d. oral or written publication of material that slanders or libels a person or organization or disparages a person's or organizations goods, products or services;

- e. oral or written publication of material that violates a person's right of privacy;
- f. discrimination, unless insurance coverage therefore is prohibited by law or statute;
- g. the use of another's advertising idea in your "advertisement"; or
- h. infringing upon another's copyright, trade dress or slogan in your "advertisement".

10. "Property damage" means:

- a. physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the "occurrence" that caused it.

11. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

12. "Tort liability" means a liability that would be imposed by law in the absence of any contract or agreement.

## CONDITIONS

### Applicable to Coverage A and Coverage B

The following Conditions are applicable to both Coverage A and Coverage B.

#### 1. Appeals

At our option we can initiate or participate in an appeal of a judgment against any "insured" if the judgment is for more than the amount of the Retained Limit Aggregate stated in the Declarations or the Limits of Insurance of "underlying insurance". If we initiate or participate in an appeal, we will pay our costs of the appeal. These payments will be in addition to the Limits of Insurance of this policy.

#### 2. Audit of Books and Records

We may audit the "insured's" books and records at any time during the term of this insurance or within three years after expiration or termination.

#### 3. Bankruptcy or Insolvency

##### a. Bankruptcy or Insolvency of Insured

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of our obligations under this policy.



b. Bankruptcy or Insolvency of Underlying Insurer

Bankruptcy or insolvency of the "underlying insurer" will not relieve us of our obligations under this policy.

However, this insurance will not replace the "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". This insurance will apply as if the "underlying insurance" were in full effect.

4. Cancellation

a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- 1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- 2) 30 days before the effective date of cancellation if we cancel for any other reason.

c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

e. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

f. If notice is mailed, proof of mailing will be sufficient proof of notice.

5. Changes

Notice to any agent or knowledge possessed by any agent or by any other person will not effect a waiver or change in any part of this policy. This policy can only be changed by a written endorsement that becomes part of this policy.

6. Duties in the Event of "Occurrence", Claim or "Suit"

a. You must see to it that we and your "underlying insurers":

1) are notified as soon as possible of any "occurrence" which may result in a claim if the claim may involve this policy or any "underlying insurance";

2) receive notice of the claim or "suit" as soon as possible;

3) are helped, at our request, to enforce any right against any person or organization which may be liable to the "insured" because of injury or damage to which this insurance applies; and

4) receive the "insured's" full cooperation as stated in this policy or in any "underlying insurance".

b. Additionally, it is a requirement of this policy that:

1) the "insured" not make any admission of liability; and

2) the "insured" not, unless we agree, incur any expense or make any payment other than for first aid. Any such unauthorized expenses will be the "insured's" own cost.

7. First Named Insured

The person or organization first named in the Declarations is primarily responsible for the payment of all premiums. The first Named Insured will act on behalf of all other "insureds" for the giving and receiving of notice of cancellation and the receiving of any return premiums that become payable under this policy.

8. Inspections and Surveys

a. We have the right but are not obligated to:

1) make inspections and surveys at anytime;

2) give you reports on the conditions we find; and

3) recommend changes.

b. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:



- 1) are safe or healthful; or
  - 2) comply with laws, regulations, codes or standards.
  - c. This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
9. Maintenance of Underlying Insurance
- a. While this policy is in effect you agree to maintain "underlying insurance" in full force. This means that:
    - 1) "underlying insurance" may not be cancelled or non-renewed by either you or the insurance company without notifying us;
    - 2) renewals or replacements of "underlying insurance" will not be more restrictive in coverage;
    - 3) terms, conditions and endorsements of "underlying insurance" will not materially change;
    - 4) collectability of "underlying insurance" limits as listed in the Schedule of Underlying Insurance, or replacements thereof, must be available regardless of the bankruptcy or insolvency of the "underlying insurers"; and
    - 5) limits of "underlying insurance" will not change except for any reduction in the aggregate limits of insurance by payment of loss.
  - b. Your failure and/or your "underlying insurer's" failure to comply with this condition will not invalidate this policy, but in the event of such failure we will only be liable to the same extent as if there had been compliance with this condition.
10. "Other Insurance"

If "other insurance" applies to claims covered by this policy, the insurance under this policy is excess and we will not make any payments until the "other insurance" has been exhausted by payment of claims. This insurance is not subject to the terms or conditions of any "other insurance".

10. "Other Insurance"

If "other insurance" applies to claims covered by this policy, the insurance under this policy is excess and we will not make any payments until the "other insurance" has been exhausted by payment of claims. This insurance is not subject to the terms or conditions of any "other insurance".

11. Other Umbrella Liability Policies

If this policy and any other umbrella liability policy issued to you by us or any affiliated Company apply to the same "occurrence", the total maximum amount payable under all policies shall not exceed the highest applicable limit of liability under any one policy.

12. Policy Period

- a. If the "underlying insurance" applies on a claims-made basis, this insurance will respond to injury or damage only if a claim for damages is first received and recorded, in the manner prescribed by the "underlying insurance", during the policy period of this insurance shown in the Declarations, including any Extended Reporting Period applicable to this insurance, regardless of any Extended Reporting Period applicable to "underlying insurance".
- b. If the "underlying insurance" does not apply on a claims-made basis, this insurance will respond to injury or damage that occurs or arises from an offense committed during the policy period of this insurance shown in the Declarations.

13. Premium

The premium for this policy as stated in of the Declarations is a flat premium. It is not subject to adjustment unless an endorsement is attached to this policy.

14. Representations or Fraud

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us;
- c. We issued this policy in reliance upon your representations; and
- d. This policy is void in any case of fraud by you as it relates to this policy or any claim under this policy.



**15. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the first Named Insured, this insurance applies:

- a. as if each Named Insured were the only Named Insured; and
- b. separately to each "insured" against whom claim is made or "suit" is brought.

**16. Transfer of Rights and Duties**

Your rights and duties under this insurance may not be transferred without our written consent. If you die, then your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative. Until your legal representative is apportioned, anyone having temporary custody of your property will have your rights and duties, but only with respect to that property.

**17. Transfer of Rights of Recovery**

- a. If the "insured" has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us. The "insured" must do nothing after loss to impair them. At our request, the "insured" will bring "suit" or transfer those rights to us and help us enforce them.
- b. Any amount recovered will be appointed in the inverse order of payment of loss to the extent of actual payment. The expenses of all such recovery proceedings will be apportioned in the ratio of respective recoveries.

**18. When Loss is Payable**

This policy will not apply until the "insured", or the "insured's" "underlying insurer", is obligated to pay the full amount of the underlying limit or Retained Limit Aggregate. When the amount of "loss" has finally been determined, we will promptly pay on behalf of the "insured" the amount of "loss" which falls within the terms of this policy. The first Named Insured will promptly reimburse us for any amount within the Retained Limit Aggregate paid by us.

**1. Under any Liability Coverage, to "bodily injury" or "property damage":**

- a. With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**2. Under any Medical Payments Coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.****3. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:**

- a. The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
- b. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or

**NUCLEAR ENERGY LIABILITY EXCLUSION**

- A. The insurance does not apply:



- c. The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion c. applies only to "property damage" to such "nuclear facility" and any property thereat.

B. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties;

"Nuclear material" means "source material", "Special nuclear material" or "by-product material";

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed

primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";
- (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Property damage" includes all forms of radioactive contamination of property.

This insurance is primary to any expanded property damage coverage provided by a separate endorsement attached to this policy, and it will supplant any deductible in said endorsement

#### E. Damage To Premises Rented To You

1. Under Section I – Coverages, Coverage A Bodily Injury And Property Damage Liability, the last paragraph of 2. Exclusions is replaced with:

If Damage To Premises Rented To You is not otherwise excluded, Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke, or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner.

2. Under Section III – Limits Of Insurance, Paragraph 6 is replaced with:

6. Subject to 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, lightning, explosion, smoke or sprinkler leakage, while rented to you or temporarily occupied by you with permission of the owner. The limit is increased to \$1,000,000.

3. Under Section IV – Commercial General Liability Conditions, 4. Other Insurance, b. Excess Insurance (1) (a) (ii) is replaced with:

(ii) That is Fire, Lightning, Explosion, Smoke or Sprinkler leakage insurance for premises rented to you or temporarily occupied by you with permission of the owner.

#### F. Supplementary Payments

Under Section I – Coverages, Supplementary Payments – Coverages A and B Paragraphs 1.b and 1.d. are replaced with:

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

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

#### G. Newly Formed And Acquired Organizations

Under SECTION II – WHO IS AN INSURED Paragraph 3.a. is replaced with:

- a. Coverage under this provision is afforded only until the 180<sup>th</sup> day after you acquire or form the organization or the end of the policy period, whichever is earlier;

#### H. Additional Insured – Automatic Status When Required In An Agreement Or Contract With You

Section II – Who Is An Insured is amended to include:

1. Any person(s) or organization(s) described in Paragraph a. – d. below with whom you have agreed in writing in a contract or written agreement that such person or organization be added as an additional insured on your policy during the policy period shown in the Declarations.
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

The person or organization added as an insured by this endorsement is an insured only for liability due to:

- a. Lessors of Leased Equipment – with respect to their 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). This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

However, their status as additional insured under this policy ends when their lease, contract, or agreement with you for such leased equipment expires.

- b. Managers or Lessors of Premises – with respect to liability arising out of the ownership, maintenance, or use of that part of the premises you own, rent, lease, or occupy.



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 person or organization.

However, their status as additional insured under this policy ends when you cease to be a tenant of such premises.

**c. State or Political Subdivision – Permits Relating to Premises** – with respect to the following hazards for which the state or political subdivision has issued a permit or authorization in connection with premises you own, rent, or control and to which this insurance applies.

- (1) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- (2) The construction, erection, or removal of elevators; or
- (3) The ownership maintenance or use of any elevators covered by this insurance.

This insurance does not apply to:

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

However, such state or political subdivision's status as additional insured under this policy ends when the permit ends.

**d. Owners, Lessees, or Contractors** – with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused in whole or in part, by:

**(1) Your acts or omissions; or**

- (2) The acts or omissions of those acting on your behalf; in the performance of your ongoing operations performed for that additional insured, whether the work is performed by you or on your behalf.

The insurance does not apply to:

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

- (a) The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, survey, field orders, change orders, or drawings and specifications; or

- (b) Supervisory, inspection, architectural or engineering activities.

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

- (2) "Bodily injury" or "property damage" occurring after:

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



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

However, a person or organization's status as additional insured under this policy ends when your operations for that additional insured are completed.

With respect to the insurance afforded to such additional insureds a. - d. described above, the following is added to **Section III - Limits Of Insurance**:

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

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

whichever is less.

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

However, the insurance afforded to such additional insureds a. - d. described above:

1. Only applies to the extent permitted by law; and
  2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
3. **Primary and Noncontributory - Other Insurance Conditions**

The following is added to the **Other Insurance Condition** and supersedes any provisions to the contrary:

**Primary and Noncontributory Insurance**

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

- a. The additional insured is a Named Insured under such other insurance; and

- b. 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.

**I. Employee Bodily Injury To Another Employee**

Under **Section II - Who Is An Insured** The following is added to Paragraph 2.a.(1):

Paragraphs 2.a.(1) (a), (b) and (c) do not apply to "bodily injury" to a co-"employee" in the course of the co-"employee's" employment by you, or to "bodily injury" to a co-"volunteer worker" while performing duties related to the conduct of your business.

**J. Broad Form Named Insured**

Under **Section II - Who Is An Insured** The following is added to Paragraph 2.:

- e. Any business entity incorporated or organized under the laws of the United States of America (including any State thereof), its territories or possessions, or Canada (including any Province thereof) in which the Named Insured shown in the Declarations owns, during the policy period, an interest of more than fifty percent. If other valid collectible insurance is available to any business entity covered by this solely by reason of ownership by the Named Insured shown in the Declarations in excess of fifty percent, this insurance is excess over the other insurance, whether primary, excess, contingent, or on any other basis.

**K. Aggregate Limit Per Location**

Under **Section III - Limits Of Insurance** the following is added to Paragraph 2:

The General Aggregate Limit under **Section III Limits Of Insurance** applies separately to each of your locations owned by or rented to you or temporarily occupied by you with the permission of the owner. For the purposes of this provision, location means premises involving the same or connecting lots, or premises whose connection is interrupted only by a public street, roadway, waterway or railroad right-of-way.

**L. Aggregate Limit Per Project**

Under **Section III - Limits Of Insurance** The following paragraph is added to Paragraph 2:

The General Aggregate Limit under **Section III Limits Of Insurance** applies separately to each of your construction projects away from premises owned by or rented to you.



## COMMERCIAL AUTO

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### A. EFFECT OF THIS ENDORSEMENT

Coverage provided under this policy is modified by the provisions of this endorsement. If there is any conflict between the provisions of this endorsement and the provision(s) of any state-specific endorsement also attached to this policy, then the provision(s) of the state-specific endorsement shall apply instead of the provisions of this endorsement that are in conflict, but only to the extent of the conflict, and only to the extent necessary to bring such provisions into conformance with the state requirement(s) contained in the provision(s) of the state-specific endorsement.

### B. NEWLY ACQUIRED OR FORMED ENTITIES

The Named Insured shown in the Declarations is amended to include any organization you newly acquire or form, other than a partnership, joint venture, or limited liability company, and over which you maintain ownership or majority (more than 50%) interest; if there is no other similar insurance available to that organization. Coverage under this provision is afforded until the 180<sup>th</sup> day after you acquire or form the organization or the end of the policy period, whichever is later.

### C. EMPLOYEES AS INSURED - NONOWNED AUTOS

The following is added to paragraph A.1. Who Is An Insured of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

- d. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

### D. ADDITIONAL INSURED BY CONTRACT, PERMIT OR AGREEMENT

The following is added to A.1. Who Is An Insured of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

Any person or organization that you are required to name as an additional insured in a written contract or agreement that is executed or signed by you prior to a "bodily injury" or "property damage" occurrence is an "insured" for Covered Auto Liability coverage. However, with respect to covered "autos", such person or organization is an insured only to the extent that person or organization qualifies as an "insured" under A.1. Who is an Insured of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

If specifically required by the written contract or agreement referenced in the paragraph above, any coverage provided by this endorsement to an additional insured shall be primary and any other valid and collectible insurance available to the additional insured shall be non-contributory with this insurance. If the written contract does not require this coverage to be primary and the additional insured's coverage to be non-contributory, then this insurance will be excess over any other valid and collectible insurance available to the additional insured.

### E. SUPPLEMENTARY PAYMENTS - BAIL BONDS

Supplementary Payments of SECTION II - COVERED AUTOS LIABILITY COVERAGE is revised as follows:

- (2) Up to \$3,000 for 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.

### F. SUPPLEMENTARY PAYMENTS - LOSS OF EARNINGS

Supplementary Payments of SECTION II - COVERED AUTOS LIABILITY COVERAGE is revised as follows:

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$1,000 a day because of time off from work.

### G. PERSONAL EFFECTS AND PROPERTY OF OTHERS EXTENSION

- 1. The Care, Custody or Control Exclusion of SECTION II - COVERED AUTOS LIABILITY COVERAGE, does not apply to "property damage" to property, other than your property, up to an amount not exceeding \$500 in any one "accident". Coverage is excess over any other valid and collectible insurance.

- 2. The following paragraph is added to A.4. Coverage Extensions of SECTION III - PHYSICAL DAMAGE COVERAGE:

- c. We will pay up to \$1,000 for your property that is lost or damaged as a result of a covered "loss", without applying a deductible. Coverage is excess over any other valid and collectible insurance.



**M. Medical Payments**

Under **Section III – Limits Of Insurance**, Paragraph 7. is replaced with:

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

This coverage does not apply if Coverage C – **Medical Payments** is excluded either by the provisions of any coverage forms attached to the policy or by endorsement.

**N. Knowledge Of An Occurrence**

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

- e. Knowledge of an occurrence, offense, claim or suit by an agent or employee of any insured shall not in itself constitute knowledge of the insured unless you, a partner, if you are a partnership; or an executive officer or insurance manager, if you are a corporation receives such notice of an occurrence, offense, claim or suit from the agent or employee.
- f. The requirements in Paragraph b. will not be considered breached unless there is knowledge of occurrence as outlined in Paragraph e. above.

**O. Unintentional Failure To Disclose Hazard**

Under **Section IV – Commercial General Liability Conditions**, Condition 6. **Representations** the following paragraph is added:

- d. Your failure to disclose all hazards or prior "occurrences" or offenses existing as of the

inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" or offenses is not intentional. This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**P. Waiver Of Subrogation**

Under **Section IV – Commercial General Liability Conditions**, 8. **Transfer Of Rights Of Recovery Against Others To Us** the following paragraph is added:

If required by a written contract executed prior to loss, we waive any right of subrogation we may have against the contracting person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard".

**Q. Liberalization**

Under **Section IV – Commercial General Liability Conditions**, the following paragraph is added:

**10. Liberalization**

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

**R. Broadened Bodily Injury Definition (Mental Anguish)**

Under **Section V – Definitions** Definition 3. "Bodily Injury" is replaced with:

- 3. "Bodily injury" means physical injury, sickness, or disease to a person and if arising out of the foregoing, mental anguish, mental injury, shock, or humiliation, including death at any time resulting therefrom.

All terms and conditions of this policy apply unless modified by this endorsement.



**COMMERCIAL AUTO**  
**AC 70 06 03 16**

must be caused by a cause of loss listed under item A1 of Physical Damage Coverage in this Coverage Part. Extra Expenses means those expenses you incur to avoid or minimize the suspension of business and to continue your business operations.

**3. Additional Conditions**

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. We will not pay under this coverage if you do not repair or replace the covered "auto". You must resume all or part of your business as quickly as possible. If you have other autos you can use to reduce the amount of loss payable under this coverage, you are required to use them. We will pay for expenses you incur to reduce the amount that otherwise would 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.

**4. Limit**

The most we will pay for "loss" arising out of one covered "auto" is \$10,000 per loss with an annual aggregate of \$20,000. Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto".

**5. Definitions**

a. "Business Income" means the:

- 1.). Net income (Net profit or loss before income taxes) that would have been earned or incurred if no loss would have occurred; and
- 2.). Continuing normal operating expenses incurred, including payroll.

b. "Period of Restoration" means the period of time that:

- 1.). Begins:
  - (a) 24 hours after the time of loss for Business Income Coverage; or
  - (b) Immediately after the time of loss for Extra Expense Coverage; and
- 2.). Ends at the earliest of:

(a) The time required to resume your normal business operations; or

(b) The time that is reasonably necessary to repair or replace the covered auto with a maximum time period of 180 days. 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.

**V. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

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

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" because of payments we make for damages under this coverage form.

**W. NOTICE OF AND KNOWLEDGE OF OCCURRENCE**

SECTION IV - BUSINESS AUTO CONDITIONS, Paragraph A is amended as follows:

**6. NOTICE OF AND KNOWLEDGE OF OCCURRENCE**

a. Your obligation in the Duties in the Event of Accident, Claim, Suit or Loss Condition relative to notification requirements applies only when the "accident" or "loss" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

b. Your obligation in the Duties in the Event of Accident, Claim, Suit or Loss Condition relative to providing us with documents concerning a claim or "suit" will not be

**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 WITH WHOM YOU HAVE ENTERED INTO A WRITTEN CONTRACT WHERE A CONDITION OF THIS CONTRACT REQUIRES YOU TO OBTAIN THIS AGREEMENT.**

**THIS ENDORSEMENT IS EFFECTIVE ONLY WHERE PERMITTED BY STATUTE OR REGULATION.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective  
Insured

Policy No.

Endorsement No.  
Premium

Insurance Company

Countersigned by \_\_\_\_\_

WC 00 03 13  
(Ed. 04-84)

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADVANCE NOTICE OF CANCELLATION, NONRENEWAL  
OR COVERAGE REDUCTION OR RESTRICTION  
PROVIDED BY US**

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL CRIME COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
COMMERCIAL UMBRELLA LIABILITY POLICY  
FARM UMBRELLA LIABILITY POLICY  
LIQUOR LIABILITY COVERAGE PART  
MERCANTILE UMBRELLA LIABILITY POLICY

**SCHEDULE**

Person(s) or Organization(s)	Address
CITY OF DES MOINES ENGINEERING DEPARTMENT	400 ROBERT D RAY DRIVE, DES MOINES, IA 50309

Number of Days Notice \_\_\_\_\_

If this policy is cancelled (other than nonpayment of premium) or nonrenewed or if the coverage provided by this policy is reduced or restricted (except for any reduction in the Limits of Insurance due to claims payments), we will provide written notice to the person(s) or organization(s) listed in the Schedule.

We will provide this notice by mail 30 days in advance of any policy cancellation, nonrenewal or coverage reduction or restriction or as indicated in the Number of Days Notice in the Schedule.

**All terms and conditions of this policy apply unless modified by this endorsement.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – IOWA GOVERNMENTAL IMMUNITIES ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

**Municipality:**  
CITY OF DES MOINES  
ENGINEERING DEPARTMENT

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II – Who Is An Insured** is amended to include as an additional insured the Municipality shown in the Schedule of this endorsement.

**1. Nonwaiver of Governmental Immunity.**

We expressly agree and state that the purchase of this policy and the including of the Municipality shown in the schedule does not waive any of the defenses of governmental immunity available to the Municipality 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 shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exist and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.

**3. Assertion of Governmental Immunity.** The Municipality shown in the Schedule shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request from us.

**4. Non-Denial of Coverage.** We shall not deny coverage under this policy and we shall not deny any of the rights and benefits accruing to the Municipality shown in the Schedule 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 Municipality shown in the Schedule.

**No Other Change in Policy:** The above preservation of governmental immunities shall not otherwise change or alter the coverage available under this policy.

All terms and conditions of this policy apply unless modified by this endorsement.



