



**Roll Call Number**

**Agenda Item Number**

20-16216

58 A

DATE October 5, 2020

APPROVAL OF CONTRACT AND BOND  
DES MOINES RIVER LEVEE PUMP STATION REHABILITATIONS  
\$5,222,900.00

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the contract and bond, in the amount of \$5,222,900.00, executed by Minturn, Inc., Clinton M. Rhoads, President, 144 W. Front Street, Brooklyn, IA, 52211 dated October 5, 2020, for the construction of the following improvement:

Des Moines River Levee Pump Station Rehabilitations, 082020005

The improvement includes rehabilitation of four storm water pump stations including installation of mechanical screens, control buildings, sluice gate electrical actuators, electrical and controls, standby generator, refurbishing existing pumps, miscellaneous metals, Portland Cement Concrete (PCC) pavement, fencing, and miscellaneous associated work including demolition, cleanup, erosion control, seeding of disturbed areas and other incidental items; all in accordance with the contract documents, including Plan File Nos. 616-116/168, with improvements located at 601 Robert D. Ray Drive, 601 S.W. 5th Street, 700 S.W. 7th Street, and 420 S.W. 14th Street in 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.

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 20-434 attached)



**Roll Call Number**

20-1026

**Agenda Item Number**

58A

DATE October 5, 2020

Moved by Gatto to adopt.

FORM APPROVED s/ Kathleen Vanderpool

Kathleen Vanderpool  
Deputy City Attorney

SLN

Funding Source: 2020-2021 CIP, Page Storm – 13, Storm Water Pump Station Rehabilitation, SM073, Being: Storm Revenue bonds to be issued

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

MOTION CARRIED

APPROVED

J. M. Franklin Cownie  
Mayor

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

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

P. Kay Cmelik

City Clerk

581A

20-1626

Department of Engineering  
City of Des Moines, Iowa



**CONTRACTOR'S ANTICIPATED DBE/TSB UTILIZATION**  
**Des Moines River Levee Pump Station Rehabilitations**

**Activity ID 082020005**

On September 15, 2020, Minturn, Inc., Clinton M. Rhoads, President, 144 W. Front Street, Brooklyn, IA 52211 submitted a proposal for construction of the Des Moines River Levee Pump Station Rehabilitations, Activity ID 082020005, which the City Council has determined to be the lowest responsible, responsive bid for said project in the amount of \$5,222,900.00. 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 Minturn, 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
	Minturn, Inc. Amount	\$5,222,900.00
	Percentage of DBE/TSB Participation	0.00%



ENGINEERING DEPARTMENT  
CITY OF DES MOINES, IOWA

CONTRACT NO.  
DATE  
ROLL CALL NO.

15395  
10/5/2020  
20-1626

**CONTRACT**

THIS CONTRACT, made and entered into at Des Moines, Iowa, on October 5, 2020, by and between the City of Des Moines, by its Mayor, upon order of its City Council, hereinafter called the "Jurisdiction", and Minturn, 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:

Des Moines River Levee Pump Station Rehabilitations, 082020005

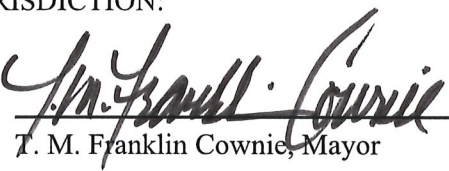
The improvement includes rehabilitation of four storm water pump stations including installation of mechanical screens, control buildings, sluice gate electrical actuators, electrical and controls, standby generator, refurbishing existing pumps, miscellaneous metals, Portland Cement Concrete (PCC) pavement, fencing, and miscellaneous associated work including demolition, cleanup, erosion control, seeding of disturbed areas and other incidental items; all in accordance with the contract documents, including Plan File Nos. 616-116/168, with improvements located at 601 Robert D. Ray Drive, 601 S.W. 5th Street, 700 S.W. 7th Street, and 420 S.W. 14th Street in Des Moines, Iowa

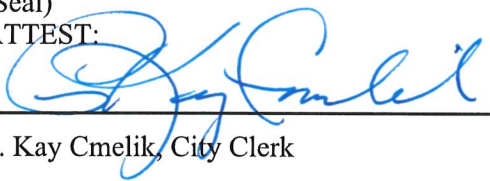
The Contractor agrees to perform said work for and in consideration of the Jurisdiction's payment of the bid amount of Five Million Two Hundred Twenty Two Thousand Nine Hundred and 00/100dollars (\$5,222,900.00) which amount shall constitute the required amount of the performance, payment, and maintenance 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 June 1, 2022; and to pay liquidated damages for noncompliance with said completion provisions in the amount of One Thousand and 00/100 dollars(\$1,000.00), for each calendar day thereafter that the work remains incomplete.

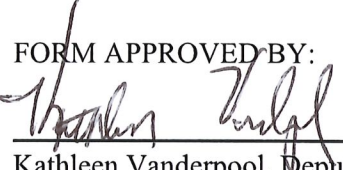


IN WITNESS WHEREOF, the Parties hereto have executed this instrument, in triplicate on the date first shown written.

JURISDICTION:


By   
 T. M. Franklin Cownie, Mayor

(Seal)  
 ATTEST:   
 P. Kay Cmelik, City Clerk

FORM APPROVED BY:  
  
 Kathleen Vanderpool, Deputy City Attorney

CONTRACTOR:

Minturn, Inc.  
 \_\_\_\_\_  
 Contractor

By   
 Signature Clinton M. Rhoads

President  
 \_\_\_\_\_  
 Title

144 W. Front Street  
 \_\_\_\_\_  
 Street Address

Brooklyn, IA  
 \_\_\_\_\_  
 City, State - Zip Code

52211  
 \_\_\_\_\_  
 City, State - Zip Code

(641) 455-0331 / clintr@minturninc.com mi  
 Telephone Number / Email Address

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 C126356
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 )  
 ) SS  
Poweshiek County )

On this 29th day of September, 2020, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Clinton M. Rhoads 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; Clinton M. Rhoads and \_\_\_\_\_ acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



Clinton M. Rhoads  
Notary Public in and for the State Iowa  
My commission March 8, 2022

**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 2

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

Activity ID 08-2020-005  
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	1ST & DES MOINES STR. PUMP STATION-STEEL MECHANICAL SCREEN	EACH	2.00	\$220,000.00	\$440,000.00
2	SW 5TH STR. PUMP STATION-STEEL MECHANICAL SCREEN	EACH	2.00	\$260,000.00	\$520,000.00
3	SW 7TH STR. PUMP STATION-STEEL MECHANICAL SCREEN	EACH	2.00	\$250,000.00	\$500,000.00
4	MLK JR. PARKWAY STR. PUMP STATION-STEEL MECHANICAL SCREEN	EACH	3.00	\$280,000.00	\$840,000.00
5	1ST & DES MOINES STR. PUMP STATION-CONTROL BUILDING	LS	1.00	\$130,000.00	\$130,000.00
6	SW 5TH STR. PUMP STATION-CONTROL BUILDING	LS	1.00	\$160,000.00	\$160,000.00
7	SW 7TH STR. PUMP STATION-CONTROL BUILDING	LS	1.00	\$160,000.00	\$160,000.00
8	MLK JR. PARKWAY PUMP STATION-CONTROL BUILDING	LS	1.00	\$190,000.00	\$190,000.00
9	1ST & DES MOINES STR. PUMP STATION-SLUICE GATE ELECTRIC ACTUATOR MODIFICATIONS	EACH	1.00	\$10,000.00	\$10,000.00
10	SW 5TH STR. PUMP STATION-SLUICE GATE ELECTRIC ACTUATOR MODIFICATIONS	EACH	2.00	\$30,000.00	\$60,000.00
11	SW 7TH STR. PUMP STATION-SLUICE GATE ELECTRIC ACTUATOR MODIFICATIONS	EACH	2.00	\$25,000.00	\$50,000.00
12	MLK JR. PARKWAY PUMP STATION-SLUICE GATE ELECTRIC ACTUATOR MODIFICATIONS	EACH	2.00	\$25,000.00	\$50,000.00
13	1ST & DES MOINES STR. PUMP STATION-STANDBY GENERATOR	LS	1.00	\$160,000.00	\$160,000.00
14	1ST & DES MOINES STR. PUMP STATION-ELECTRICAL AND CONTROLS	LS	1.00	\$175,000.00	\$175,000.00
15	SW 5TH STR. PUMP STATION-ELECTRICAL AND CONTROLS	LS	1.00	\$175,000.00	\$175,000.00
16	SW 7TH STR. PUMP STATION-ELECTRICAL AND CONTROLS	LS	1.00	\$275,000.00	\$275,000.00
17	MLK JR. PARKWAY PUMP STATION-ELECTRICAL AND CONTROLS	LS	1.00	\$775,000.00	\$775,000.00
18 *	1ST & DES MOINES STR. PUMP STATION-MISCELLANEOUS METALS	LS	1.00	\$10,000.00	\$10,000.00
19 *	SW 5TH STR. PUMP STATION-MISCELLANEOUS METALS	LS	1.00	\$10,000.00	\$10,000.00
20 *	SW 7TH STR. PUMP STATION-MISCELLANEOUS METALS	LS	1.00	\$10,000.00	\$10,000.00
21 *	MLK JR. PARKWAY PUMP STATION-MISCELLANEOUS METALS	LS	1.00	\$10,000.00	\$10,000.00
22	SUBMERSIBLE VERTICAL PROPELLER PUMP REFURBISHMENTS	LS	1.00	\$250,000.00	\$250,000.00
23 *	TOPSOIL, ON-SITE, STRIP, SALVAGE & SPREAD	CY	280.00	\$15.00	\$4,200.00
24 *	DRIVEWAY REMOVAL, P.C. CONCRETE	SY	60.00	\$30.00	\$1,800.00
25 *	DRIVEWAY REMOVAL, GRAVEL	TON	140.00	\$10.00	\$1,400.00

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNITS</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
26	SIDEWALK, P.C. CONCRETE, 4"	SY	66.00	\$75.00	\$4,950.00
27	DRIVEWAY, P.C. CONCRETE, 7"	SY	81.00	\$100.00	\$8,100.00
28	* DRIVEWAY, GRANULAR SURFACING, CLASS A, 6"	TON	75.00	\$50.00	\$3,750.00
29	* HYDRAULIC SEEDING, FERTILIZING, MULCHING, AND WATERING, TYPE 1	SY	1452.00	\$5.00	\$7,260.00
30	* SILT FENCE, INSTALLATION, MAINTENANCE, AND REMOVAL	LF	450.00	\$5.00	\$2,250.00
31	* CHAIN LINK FENCE, BLACK VINYL COATED, 8' HEIGHT	LF	290.00	\$30.00	\$8,700.00
32	* GATE, CHAIN LINK FENCE, BLACK VINYL COATED, 8' HEIGHT, 18' WIDE DOUBLE SWING	EACH	1.00	\$2,000.00	\$2,000.00
33	* GATE, CHAIN LINK FENCE, BLACK VINYL COATED, 8' HEIGHT, 26' WIDE DOUBLE SWING	EACH	1.00	\$2,500.00	\$2,500.00
34	* PEDESTRIAN GATE, CHAIN LINK FENCE, BLACK VINYL COATED, 8' HEIGHT, 4' WIDE	EACH	1.00	\$500.00	\$500.00
35	* BARBED WIRE, TYPE I SLANTED SUPPORTING ARM	LF	312.00	\$5.00	\$1,560.00
36	* REMOVAL AND REINSTALLATION OF EXISTING FENCE	LF	30.00	\$50.00	\$1,500.00
37	* REMOVAL OF FENCE	LF	13.00	\$10.00	\$130.00
38	* DEMOLITION/REMOVALS EXISTING STORM WATER PUMP STATION, 1ST & DES MOINES STR.	LS	1.00	\$40,000.00	\$40,000.00
39	* DEMOLITION/REMOVALS EXISTING STORM WATER PUMP STATION, SW 5TH STR.	LS	1.00	\$30,000.00	\$30,000.00
40	* DEMOLITION/REMOVALS EXISTING STORM WATER PUMP STATION, SW 7TH STR.	LS	1.00	\$30,000.00	\$30,000.00
41	* DEMOLITION/REMOVALS EXISTING STORM WATER PUMP STATION, MLK JR PARKWAY	LS	1.00	\$50,000.00	\$50,000.00
42	* CONSTRUCTION SURVEY	LS	1.00	\$6,000.00	\$6,000.00
43	* MOBILIZATION	LS	1.00	\$50,000.00	\$50,000.00
44	* BOLLARD, SCH 40, GALVANIZED, 4" DIA	EACH	9.00	\$700.00	\$6,300.00
TOTAL CONSTRUCTION COST					\$5,222,900.00
*TOTAL=					\$289,850.00

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

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



**PERFORMANCE, PAYMENT & MAINTENANCE BOND**

KNOW ALL BY THESE PRESENTS:

That we, Minturn, Inc. , as Principal (the "Contractor" or "Principal"), and Merchants National Bonding, Inc., as Surety, are held and firmly bound unto the City of Des Moines, as Oblige (the "Jurisdiction"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of Five Million Two Hundred Twenty Two Thousand Nine Hundred and 00/100 dollars (\$5,222,900.00), 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 October 5, 2020, (the "Contract") wherein the Contractor undertakes and agrees to construct the following described improvements:

Des Moines River Levee Pump Station Rehabilitations, 082020005

The improvement includes rehabilitation of four storm water pump stations including installation of mechanical screens, control buildings, sluice gate electrical actuators, electrical and controls, standby generator, refurbishing existing pumps, miscellaneous metals, Portland Cement Concrete (PCC) pavement, fencing, and miscellaneous associated work including demolition, cleanup, erosion control, seeding of disturbed areas and other incidental items; all in accordance with the contract documents, including Plan File Nos. 616-116/168, with improvements located at 601 Robert D. Ray Drive, 601 S.W. 5th Street, 700 S.W. 7th Street, and 420 S.W. 14th Street in 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 Four Million Nine Hundred Thirty Three Thousand Fifty and 00/100 dollars (\$4,933,050.00), which is the cost associated with those items shown on the Proposal and in the Contract which require a maintenance bond period in excess of one year.

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

1. **PERFORMANCE:** The Contractor shall well and faithfully observe, perform, fulfill and abide by each and every covenant, condition and part of the Contract and Contract Documents, by reference made a part hereof, and shall indemnify and save harmless the Jurisdiction from all outlay and expense incurred by the Jurisdiction by reason of the Contractor's default or failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.



2. **PAYMENT:** The Contractor and Surety on this bond hereby agree to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the contract price which the Jurisdiction is required to retain until completion of the improvement, but the Contractor and Surety shall not be liable unless the claims have been established as provided by law. The Contractor and Surety hereby bind themselves to the obligations and conditions set forth in Iowa Code Chapter 573.
  
3. **MAINTENANCE:** The Contractor and the Surety shall, at their own expense:
  - A. Remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of four (4) year(s) from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of the work;
  
  - B. Keep all work in continuous good repair; and
  
  - C. Pay the Jurisdiction's reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

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

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

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

- A. That no provision of this Bond or of any other contract shall be valid which limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.



- B. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the Jurisdiction including interest, benefits and overhead as applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorneys fees (including overhead expenses of the Jurisdiction's staff attorneys), and all costs and expenses of litigation as they are incurred by the Jurisdiction. It is intended the Contractor and Surety will defend and indemnify the Jurisdiction on all claims made against the Jurisdiction on account of Contractor's failure to perform as required in the Contract and Contract Documents, that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the Jurisdiction will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.
- C. In the event the Jurisdiction incurs any "outlay and expense" in defending itself with respect to any claim as to which the Contractor or Surety should have provided the defense, or in the enforcement of the promises given by the Contractor in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the Contractor and Surety in this Bond, the Contractor and Surety agree that they will make the Jurisdiction whole for all such outlay and expense, provided that the Surety's obligation under this Bond shall not exceed 125% of the penal sum of this Bond.

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


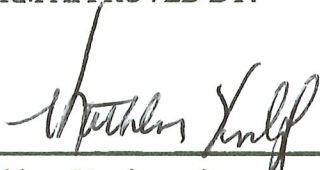
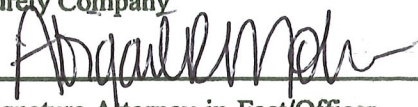
NOW THEREFORE, the condition of this obligation is such that if the Principal shall faithfully perform all of the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in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

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



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

Witness our hands, in triplicate, this 5th day of October, 2020

<p><b>PRINCIPAL:</b></p> <p><u>Minturn, Inc.</u></p> <p style="text-align: center;">Contractor</p> <p>By </p> <p>Signature <u>Clinton M. Rhoads</u></p> <p><u>President</u></p> <p style="text-align: center;">Title</p> <p><b>FORM APPROVED BY:</b></p> <p></p> <p><u>Kathleen Vanderpool</u> Deputy City Attorney</p>	<p><b>SURETY:</b></p> <p><u>Merchants National Bonding, Inc.</u></p> <p>Surety Company</p> <p>By </p> <p>Signature Attorney-in-Fact/Officer</p> <p><u>Abigail R. Mohr</u></p> <p>Name of Attorney-in-Fact/Officer</p> <p><u>Merchants National Bonding, Inc.</u></p> <p>Company Name</p> <p><u>P. O. Box 14498</u></p> <p>Company Address</p> <p><u>Des Moines, IA 50306</u></p> <p>City, State Zip Code</p> <p><u>515-243-8171</u></p> <p>Company Telephone Number</p>
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**NOTE:**

1. All signatures on this performance, payment & maintenance bond must be original signatures in ink; copies or facsimile of any signature will not be accepted.
2. This bond must be sealed with the Surety's raised, embossed seal.
3. The Certificate or Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.
4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.
5. This bond form must be utilized as printed; no additions/deletions/alterations are permitted, other than providing the required information.

**MERCHANTS**  
**BONDING COMPANY™**  
**POWER OF ATTORNEY**

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

**Abigail R. Mohr**

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

Surety Bond #: NIA3541  
Principal: Minturn, Inc.  
Obligee: City of Des Moines

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

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

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

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

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

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

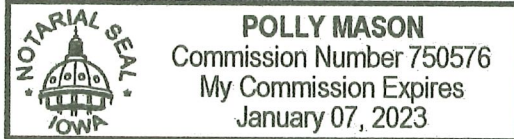


MERCHANTS BONDING COMPANY (MUTUAL)  
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*  
President

STATE OF IOWA  
COUNTY OF DALLAS ss.

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



*Polly Mason*  
Notary Public

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

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

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 5th day of October, 2020.



*William Warner Jr.*  
Secretary





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/5/2020

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 have ADDITIONAL INSURED provisions or 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).

<b>PRODUCER</b> TrueNorth Companies, L.C. 500 1st St SE Cedar Rapids IA 52401	<b>CONTACT NAME:</b> RM Home Office <b>PHONE (A/C, No, Ext):</b> 319-366-2723 <b>E-MAIL ADDRESS:</b> certs@truenorthcompanies.com	<b>FAX (A/C, No):</b> 877-810-6374
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Minturn Inc. 144 W Front St. Brooklyn IA 52211	MINTINC-01 <b>INSURER A:</b> BITCO General Insurance Corpor	NAIC # 20095
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER:** 966792627                      **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	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	CLP 3 689 687	1/1/2020	1/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	CAP 3 689 686	1/1/2020	1/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP 2 817 537	1/1/2020	1/1/2021	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC 3 689 685	1/1/2020	1/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A	Rented Equipment Installation Floater			CLP 3 689 687 CLP36968789B	1/1/2020 10/1/2020	1/1/2021 12/31/2021	Limit 500,000 Limit 3,500,000 Deductible 10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
If Yes is indicated above for add'l insd forms Gen Liab #(GL3084) (premises & completed operations), Auto Liab #(AP0401) applies. If Yes is indicated above for waiver of subrogation forms Gen Liab #(GL3084), Auto Liab #(AP0401) and WC #WC000313 04/84 applies. Coverage is extended for work performed and required under written contract with the above named insured.  
Project: Des Moines River Levee Pump Station Rehabilitations  
Activity ID. 08-2020-005

Approved  
10/5/2020  
Rose Olson

<b>CERTIFICATE HOLDER</b>  City of Des Moines Engineering Dept. City Hall 400 Robert D Ray Drive Des Moines IA 50309	<b>CANCELLATION</b>  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 
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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BROADENED COVERAGE - AUTOMOBILES**

The following modifies insurance provided under:

**BUSINESS AUTO COVERAGE FORM**

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

- |   |  |
|---|--|
| 1 - Broad Form Named Insured                                | 11 - Bodily Injury Extension                           |
| 2 - Automatic Waiver of Subrogation                         | 12 - Hired Auto Physical Damage                        |
| 3 - Automatic Additional Insured                            | 13 - Enhanced Supplementary Payments                   |
| 4 - Primary and Noncontributory - Other Insurance Condition | 14 - Fellow Employee Coverage for Designated Positions |
| 5 - Unintentional Failure to Disclose Hazards               | 15 - Physical Damage – Transportation Expenses         |
| 6 - Extended Notice of Cancellation, Non-Renewal            | 16 - Rental Reimbursement Coverage                     |
| 7 - When We Do Not Renew                                    | 17 - Loan/Lease Gap Coverage                           |
| 8 - Notice of Knowledge of Accident or Loss                 | 18 - Accidental Air Bag Discharge Coverage             |
| 9 - Employees as Insured                                    | 19 - Glass Repair – Waiver of Deductible               |
| 10 - Employee Hired Autos                                   |  |

**1. BROAD FORM NAMED INSURED**

**SECTION II. A. 1. -WHO IS AN INSURED** - Paragraph **d.** is added:

- d.** Any organization you newly acquire or form, except for a partnership, joint venture or limited liability company, and over which you maintain majority ownership or interest (51% or more) or for which you have assumed the active management, will qualify as a Named Insured if there is no other similar insurance available to that organization. However, coverage under this provision is only afforded until the end of the policy period or the 12-month anniversary of the policy inception date, whichever is earlier.

**2. AUTOMATIC WAIVER OF SUBROGATION**

**Section IV – Business Auto Conditions, Paragraph A.5., Transfer of Rights of Recovery Against Others to Us**, is deleted and replaced with the following:

- a.** If the insured has rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. The insured must do nothing after loss to impair those rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.
- b.** If required by a written contract executed prior to loss, we waive any right of recovery we may have against any person or organization because of payments we make for damages under this coverage form.

**3. AUTOMATIC ADDITIONAL INSURED**

**SECTION II – WHO IS AN INSURED, Paragraph A.1,** is amended to include as an "insured" any person or organization who is required by written contract or agreement to be an additional insured on your policy, but only with respect to liability arising out of operations performed by you or on your behalf for the additional insured.

**4. PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION**

The following is added to the Other Insurance Condition in the Business Auto Coverage Form and the Other Insurance - Primary And Excess Insurance Provisions in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

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

**5. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

Although we relied on your representations as to existing and past hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

**6. EXTENDED NOTICE OF CANCELLATION, NON-RENEWAL**

The **COMMON POLICY CONDITIONS**, Item **A.2.b.** is deleted and replaced with the following:

**A.2.b.** 60 days before the effective date of the cancellation if we cancel for any other reason.

**7. WHEN WE DO NOT RENEW**

**SECTION IV – BUSINESS AUTO CONDITIONS**, is amended to add Item **B.9.**:

- a. If we choose to nonrenew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 60 days before the expiration date.
- b. If we do not give notice of our intent to nonrenew as prescribed in **a.** above, it is agreed that you may extend the period of this policy for a maximum additional sixty (60) days from its scheduled expiration date. Where not otherwise prohibited by law, the existing terms, conditions and rates will remain in effect during that extension period. It is further agreed that so long as it is not otherwise prohibited by law, this one-time sixty-day extension is the sole remedy and liquidated damages available to the insured as a result of our failure to give the notice as prescribed in **9. a.** above.

**8. NOTICE OF KNOWLEDGE OF ACCIDENT OR LOSS**

**SECTION IV - BUSINESS AUTO CONDITIONS**, Item **A.2.a.** is deleted and replaced with the following:

**2. Duties in the Event of Accident, Claim Suit or Loss:**

- a. You must see to it that we are notified of an "accident", "claim", "suit" or "loss" which may result in a claim as soon as practicable after the "occurrence" has been reported to you, a partner, a member, an officer, or an employee designated to give notice to us. Notice should include:

- (1) How, when and where the "accident" or "loss" occurred;



- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

## 9. EMPLOYEES AS INSURED

The following is added to the **Section II - Covered Autos Liability Coverage**, Paragraph **A.1. Who Is An Insured** provision:

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.

## 10. EMPLOYEE HIRED AUTOS

### A. Changes In Covered Autos Liability Coverage

The following is added to the **Who Is An Insured** Provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

### B. Changes In General Conditions

Paragraph **5.b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **5.f.** of the **Other Insurance - Primary And Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

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

1. Any covered "auto" you lease, hire, rent or borrow; and
2. Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

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

## 11. BODILY INJURY EXTENSION

**SECTION V - DEFINITIONS**, Paragraph **C.** is deleted and replaced by the following:

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

## 12. HIRED AUTO PHYSICAL DAMAGE

**SECTION III.A.4. - Coverage Extensions** - Paragraph **c.** is added:

### c. Hired Auto Physical Damage

If Comprehensive, Specified Causes of Loss or Collision coverage is provided under this policy, then Hired Auto Physical Damage is provided for that coverage part subject to the following:

- (1) The most we will pay for any one "accident" or "loss" under this Hired Auto Physical Damage Coverage is the lesser of:
  - (a) The any one "Accident" or "Loss" amount of \$100,000;
  - (b) The actual cash value; or



**(c)** Cost of repair.

Our obligation to pay for a loss in c.(1) above will be reduced by a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. The deductible will be waived for "loss" caused by fire or lightning.

- (2)** Subject to paragraph c.(1). above, we will provide coverage equal to the broadest physical damage coverage applicable to any covered "auto" shown in the declarations.
- (3)** When you are required by written contract to indemnify a lessor for actual financial loss because of loss of use of a hired "auto" resulting from a covered "accident" or "loss", we will cover that financial loss subject to the limit specified in paragraph c.(1).

**13. ENHANCED SUPPLEMENTARY PAYMENTS**

**SECTION II.A.2.a. COVERAGE EXTENSIONS**, Supplementary Payments **(2)** and **(4)** are replaced by the following:

- (2)** Up to \$2,500 for the cost of bail bonds (including bonds for related traffic laws violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4)** All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$350 a day because of time off from work.

**14. FELLOW EMPLOYEE COVERAGE FOR DESIGNATED POSITIONS**

The **Fellow Employee Exclusion contained in Section II.B.5.** does not apply to the following positions or job titles: foreman, supervisor, manager, officer, partner or other senior level "employee". Coverage is excess over all other collectible insurance.

**15. PHYSICAL DAMAGE - TRANSPORTATION EXPENSES**

**SECTION III.A.4.a. Transportation Expenses** is replaced by the following:

**a. Transportation Expenses**

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto". We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Cause of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expirations, when the covered "auto" is returned to use or we pay for its "loss".

For autos provided with temporary transportation expense, the following physical damage coverage will apply:

- (1)** The most we will pay for any one "accident" or "loss" under the temporary transportation expense physical damage coverage is the lesser of:
  - (a)** The any one "Accident" or "Loss" amount of \$100,000;
  - (b)** The actual cash value; or
  - (c)** Cost of repair.

Our obligation to pay for a loss in a.(1) above will be reduced by a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. The deductible will be waived for "loss" caused by fire or lightning.

- (2) Subject to paragraph a.(1). above, we will provide coverage equal to the broadest physical damage coverage applicable to any covered "auto" shown in the declarations.
- (3) When you are required by written contract to indemnify a lessor for actual financial loss because of loss of use of a hired "auto" resulting from a covered "accident" or "loss", we will cover that financial loss subject to the limit specified in paragraph a.(1).

## 16. RENTAL REIMBURSEMENT COVERAGE

### SECTION III.A.4. - Coverage Extensions - Paragraph d. is added.

- d. If you carry Comprehensive, Specified Causes of Loss or Collision coverage for the damaged covered "auto" as provided under this policy, then Rental Reimbursement Coverage is provided for that coverage part subject to the following:
  1. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" other than theft, to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.
  2. We will only pay for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:
    - (a) The number of days reasonably required to repair or replace the covered "auto"; or,
    - (b) 30 days.
    - (c) Our payment is limited to the lesser of the following amounts:
      - (1) Necessary and actual expenses incurred; or
      - (2) \$50 per day.

## 17. LOAN/LEASE GAP COVERAGE

**Physical Damage Coverage** is amended by the addition of the following:

In the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the loss and the "outstanding balance" of the loan/lease, not to exceed \$2,500 for any one vehicle or \$25,000 annually in aggregate.

For the purposes of this endorsement, "outstanding balance" means the amount you owe on the loan/lease at the time of loss less any amounts representing taxes, overdue payments, penalties, interest or charges resulting from overdue payments, additional mileage charges, excess wear and tear charges or lease termination fees, costs for extended warranties, credit Life Insurance; Health, Accident or Disability Insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

## 18. ACCIDENTAL AIR BAG DISCHARGE COVERAGE

**SECTION III.B.3.a - Exclusions.** This exclusion does not apply to the accidental discharge of an air bag.

## 19. GLASS REPAIR - WAIVER OF DEDUCTIBLE

**SECTION III.D - Deductible** is replaced with the following:

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning. The deductible does not apply to glass damage if the glass is repaired rather than replaced.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BUILDERS EXTENDED LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

It is agreed that the provisions listed below apply only upon the entry of an  in the box next to the caption of such provision.

- |  |   |
|--|---|
| A. <input checked="" type="checkbox"/> Partnership and Joint Venture Extension                                   | N. <input checked="" type="checkbox"/> Construction Project General Aggregate Limits  |
| B. <input checked="" type="checkbox"/> Contractors Automatic Additional Insured Coverage – Ongoing Operations    | O. <input checked="" type="checkbox"/> Fellow Employee Coverage   |
| C. <input checked="" type="checkbox"/> Automatic Waiver of Subrogation   | P. <input checked="" type="checkbox"/> Property Damage Liability - Elevators  |
| D. <input checked="" type="checkbox"/> Extended Notice of Cancellation, Nonrenewal                               | Q. <input checked="" type="checkbox"/> Property Damage to the Named Insured's Work  |
| E. <input checked="" type="checkbox"/> Unintentional Failure to Disclose Hazards                                 | R. <input checked="" type="checkbox"/> Care, Custody or Control   |
| F. <input checked="" type="checkbox"/> Broadened Mobile Equipment  | S. <input checked="" type="checkbox"/> Concrete Rework Labor Reimbursement Coverage   |
| G. <input checked="" type="checkbox"/> Personal and Advertising Injury - Contractual Coverage                    | T. <input checked="" type="checkbox"/> Lost Key Coverage  |
| H. <input checked="" type="checkbox"/> Nonemployment Discrimination  | U. <input checked="" type="checkbox"/> Electronic Data Liability Coverage   |
| I. <input checked="" type="checkbox"/> Liquor Liability  | V. <input checked="" type="checkbox"/> Consolidated Insurance Program Residual Liability Coverage   |
| J. <input checked="" type="checkbox"/> Broadened Conditions  | W. <input checked="" type="checkbox"/> Automatic Additional Insureds – Managers or Lessors of Premises  |
| K. <input checked="" type="checkbox"/> Automatic Additional Insureds – Equipment Leases                          | X. <input checked="" type="checkbox"/> Automatic Additional Insureds – State or Governmental Agency or Political Subdivisions – Permits or Authorizations |
| L. <input checked="" type="checkbox"/> Insured Contract Extension - Railroad Property and Construction Contracts | Y. <input checked="" type="checkbox"/> Contractors Automatic Additional Insured Coverage – Completed Operations   |
| M. <input checked="" type="checkbox"/> Turnkey Jobs - Coverage For Alienated Premises                            | Z. <input checked="" type="checkbox"/> Additional Insured – Engineers, Architects or Surveyors  |

### A. PARTNERSHIP AND JOINT VENTURE EXTENSION

The following provision is added to **SECTION II - WHO IS AN INSURED:**

The last full paragraph which reads as follows:

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.



is deleted and replaced with the following:

With respect to the conduct of any past or present joint venture or partnership not shown as a Named Insured in the Declarations and of which you are or were a partner or member, you are an insured, but only with respect to liability arising out of "your work" on behalf of any partnership or joint venture not shown as a Named Insured in the Declarations, provided no other similar liability insurance is available to you for "your work" in connection with your interest in such partnership or joint venture.

## **B. CONTRACTORS AUTOMATIC ADDITIONAL INSURED COVERAGE – ONGOING OPERATIONS**

**SECTION II – WHO IS AN INSURED** is amended to include as an additional insured any person or organization who is required by written contract to be an additional insured on your policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the project(s) designated in the written contract.

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

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

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

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

## **C. AUTOMATIC WAIVER OF SUBROGATION**

Item 8. of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, is deleted and replaced with the following:

8. **Transfer of Rights of Recovery Against Others to Us and Automatic Waiver of Subrogation.**
  - a. If the insured has rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. The insured must do nothing after loss to impair those rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

- b. If required by a written contract executed prior to loss, we waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of "your work" for that person or organization.

#### **D. EXTENDED NOTICE OF CANCELLATION, NONRENEWAL**

Item **A.2.b.** of the **COMMON POLICY CONDITIONS**, is deleted and replaced with the following:

**A.2.b.** 60 days before the effective date of the cancellation if we cancel for any other reason.

Item **9.** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, is deleted and replaced with the following:

#### **9. WHEN WE DO NOT RENEW**

- a. If we choose to nonrenew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 60 days before the expiration date.
- b. If we do not give notice of our intent to nonrenew as prescribed in **a.** above, it is agreed that you may extend the period of this policy for a maximum additional sixty(60) days from its scheduled expiration date. Where not otherwise prohibited by law, the existing terms, conditions and rates will remain in effect during that extension period. It is further agreed that so long as it is not otherwise prohibited by law, this one time sixty day extension is the sole remedy and liquidated damages available to the insured as a result of our failure to give the notice as prescribed in **9. a.** above.

#### **E. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

Although we relied on your representations as to existing and past hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

#### **F. BROADENED MOBILE EQUIPMENT**

Item **12.b.** of **SECTION V - DEFINITIONS**, is deleted and replaced with the following:

**12.b.** Vehicles maintained for use solely on or next to premises, sites or locations you own, rent or occupy.

#### **G. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL COVERAGE**

**Exclusion 2.e.** of **SECTION I, COVERAGE B** is deleted.

#### **H. NONEMPLOYMENT DISCRIMINATION**

Unless "personal and advertising injury" is excluded from this policy:

Item **14.** of **SECTION V - DEFINITIONS**, is amended to include:

"Personal and advertising injury" also means embarrassment or humiliation, mental or emotional distress, physical illness, physical impairment, loss of earning capacity or monetary loss, which is caused by "discrimination."

**SECTION V - DEFINITIONS**, is amended to include:

"Discrimination" means the unlawful treatment of individuals based on race, color, ethnic origin, age, gender or religion.



Item **2. Exclusions** of **SECTION I, COVERAGE B**, is amended to include:

"Personal and advertising injury" arising out of "discrimination" directly or indirectly related to the past employment, employment or prospective employment of any person or class of persons by any insured.

"Personal and advertising injury" arising out of "discrimination" by or at your, your agents or your "employees" direction or with your, your agents or your "employees" knowledge or consent.

"Personal and advertising injury" arising out of "discrimination" directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any dwelling, permanent lodging or premises by or at the direction of any insured.

Fines, penalties, specific performance or injunctions levied or imposed by a governmental entity, or governmental code, law, or statute because of "discrimination."

#### **I. LIQUOR LIABILITY**

**Exclusion 2.c.** of **SECTION I, COVERAGE A**, is deleted.

#### **J. BROADENED CONDITIONS**

Items **2.a.** and **2.b.** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, are deleted and replaced with the following:

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

- a. You must see to it that we are notified of an "occurrence" or an offense which may result in a claim as soon as practicable after the "occurrence" has been reported to you, one of your officers or an "employee" designated to give notice to us. Notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Record the specifics of the claim or "suit" and the date received as soon as you, one of your officers, or an "employee" designated to record such information is notified of it; and
  - (2) Notify us in writing as soon as practicable after you, one of your officers, your legal department or an "employee" you designate to give us such notice learns of the claims or "suit."

Item **2.e.** is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- 2.e.** If you report an "occurrence" to your workers compensation insurer which develops into a liability claim for which coverage is provided by the Coverage Form, failure to report such "occurrence" to us at the time of "occurrence" shall not be deemed in violation of paragraphs **2.a.**, **2.b.**, and **2.c.** However, you shall give written notice of this "occurrence" to us as soon as you are made aware of the fact that this "occurrence" may be a liability claim rather than a workers compensation claim.

## K. AUTOMATIC ADDITIONAL INSURED - EQUIPMENT LEASES

**SECTION II - WHO IS AN INSURED** is amended to include any person or organization with whom you agree in a written equipment lease or rental agreement to name as an additional insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, at least in part, by your maintenance, operation, or use by you of the equipment leased to you by such person or organization, subject to the following additional exclusions.

The insurance provided to the additional insured does not apply to:

1. "Bodily injury" or "property damage" occurring after you cease leasing the equipment.
2. "Bodily injury" or "property damage" arising out of the sole negligence of the additional insured.
3. "Property damage" to:
  - a. Property owned, used or occupied by or rented to the additional insured; or
  - b. Property in the care, custody or control of the additional insured or over which the additional insured is for any purpose exercising physical control.

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

## L. INSURED CONTRACT EXTENSION - RAILROAD PROPERTY AND CONSTRUCTION CONTRACTS

Item 9. of **SECTION V - DEFINITIONS**, is deleted and replaced with the following.

9. "Insured Contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.



Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

#### M. TURNKEY JOBS - COVERAGE FOR ALIENATED PREMISES

It is agreed that:

**Exclusion 2.j.(2) of SECTION I, COVERAGE A**, does not apply if the premises are "your work" and were not occupied, rented or held for rental by you for more than 12 months after completion.

#### N. CONSTRUCTION PROJECT GENERAL AGGREGATE LIMITS

This modifies **SECTION III - LIMITS OF INSURANCE**.

- A. For all sums which can be attributed only to ongoing operations at a single construction project for which the insured becomes legally obligated to pay as damages caused by an "occurrence" under **SECTION I - COVERAGE A**, and for all medical expenses caused by accidents under **SECTION I - COVERAGE C**:
  1. A separate Construction Project General Aggregate Limit applies to each construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  2. The Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under **COVERAGE A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard," and for medical expenses under **COVERAGE C** regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits."
  3. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the Construction Project General Aggregate Limit for that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Construction Project General Aggregate Limit for any other construction project.
  4. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Construction Project General Aggregate Limit.

- B.** For all sums which cannot be attributed only to ongoing operations at a single construction project for which the insured becomes legally obligated to pay as damages caused by an "occurrence" under **SECTION I - COVERAGE A**, and for all medical expenses caused by accidents under **SECTION I - COVERAGE C**:
1. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Construction Project General Aggregate Limit.
- C.** Payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Construction Project General Aggregate Limit.
- D.** If a construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of **SECTION III - LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to be applicable.

**O. FELLOW EMPLOYEE COVERAGE**

**Exclusion 2.e. Employers Liability** of **SECTION I, COVERAGE A**, is deleted and replaced with the following:

**2.e.** "Bodily injury" to

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

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract"; or
- (2) Liability arising from any action or omission of a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business.



Item 2.a.(1)(a) of SECTION II - WHO IS AN INSURED, is deleted and replaced with the following:

2.a.(1)(a) To you, to your partners or members (if you are a partnership or joint venture) or to your members (if you are a limited liability company), or to your "volunteer workers" while performing duties related to the conduct of your business.

**P. PROPERTY DAMAGE LIABILITY - ELEVATORS**

"Property damage" liability is changed as follows:

1. Exclusions 2.j.(3) and 2.j.(4) of SECTION I, COVERAGE A, do not apply to the use of elevators.
2. The insurance afforded by reason of this provision is excess over any valid and collectible property insurance (including any deductible portion thereof) available to the insured whether primary, excess, contingent or on any other basis, and the **OTHER INSURANCE** condition is changed accordingly.

**Q. PROPERTY DAMAGE TO THE NAMED INSURED'S WORK**

Exclusion I of SECTION I, COVERAGE A. is deleted and replaced with the following:

**I. Damage to Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products completed operation hazard."

This exclusion applies only to that portion of any loss in excess of \$50,000 per occurrence if the damaged work and the work out of which the damage arises was performed by you.

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.

**R. CARE, CUSTODY OR CONTROL**

Exclusion 2.j.4 of SECTION I, COVERAGE A. is deleted and replaced with the following:

2.j.4 Personal property in the care, custody or control of the insured. However, for personal property in the care, custody or control of you or your "employees," this exclusion applies only to that portion of any loss in excess of \$25,000 per occurrence, subject to the following terms and conditions;

- (a) The most that we will pay under this provision as an annual aggregate is \$100,000, regardless of the number of occurrences.
- (b) This provision does not apply to "employee" owned property or any property that is missing where there is not physical evidence to show what happened to the property.
- (c) The aggregate limit for this coverage provision is part of the General Aggregate Limit and **SECTION III - LIMITS OF INSURANCE** is changed accordingly.
- (d) In the event of damage to or destruction of property covered by this exception, you shall, if requested by us, replace the property or furnish the labor and materials necessary for repairs thereto, at actual cost to you, exclusive of prospective profit or overhead charges of any nature.
- (e) \$2,500 shall be deducted from the total amount of all sums you became obligated to pay as damages on account of damage to or destruction of all property of each person or

organization, including the loss of use of that property, as a result of each "occurrence." Our limit of liability under the endorsement as being applicable to each "occurrence" shall be reduced by the amount of the deductible indicated above; however, our aggregate limit of liability under this provision shall not be reduced by the amount of such deductible. The conditions of the policy, including those with respect to duties in the event of "occurrence," claims or "suit" apply irrespective of the application of the deductible amount. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

## **S. CONCRETE REWORK LABOR REIMBURSEMENT COVERAGE**

As it applies to this coverage,

### **SECTION I - COVERAGE A is amended as follows:**

1. Insuring Agreement, is deleted and replaced by the following:

We will reimburse you for your direct labor expense associated with your "concrete rework" which was performed by you during the policy period due to the original "concrete product" failing to meet contractual specifications as ordered for the job or accepted industry standards for its specific intended use, verified by testing by an ASTM (American Society of Testing & Materials) accredited independent testing agency.

2. Exclusions, is deleted and replaced by the following:

The insurance provided by this endorsement does not apply to:

- a. "Cosmetic Defects"
- b. Loss of use
- c. Changes to the "concrete product" contractual specifications not acknowledged by the named insured in writing prior to the beginning of the job
- d. "Loss" arising from the "subsidence" of land
- e. "Loss" arising from work performed on your behalf by a subcontractor, except for the supply of the "concrete product"
- f. Cost of materials used in the installation of the "concrete product" or "concrete rework"
- g. Damages or "loss" that is covered by a Property or Inland Marine coverage form for your financial interest in your project and structures
- h. "Loss" unless the "concrete rework" is completed within one year from the completion of the original "concrete product" installation performed by you
- i. "Loss" caused by the failure to order the "concrete product" as required:
  - a. In the contractual specifications; or
  - b. By accepted industry standards for its specific intended use
- j. "Loss" expected or intended from the standpoint of the insured
- k. "Concrete product" supplied by you



**SECTION III - LIMITS OF INSURANCE is amended to include the following:**

1. The Limits of Insurance as shown and the rules below fix the most we will pay regardless of the number of

- a. Insureds covered under this insurance;
- b. "Concrete rework" projects to which this insurance applies.

"Concrete Rework" Project Limit	\$50,000
"Concrete Rework" Policy Aggregate Limits	\$50,000
"Concrete Rework" Deductible	\$ 1,000

- 2. The "Concrete Rework" Project Limit shown above is the most we will reimburse you for your direct labor expense arising out of any single "concrete rework" project.
- 3. Subject to 2. above, the "Concrete Rework" Policy Aggregate Limit shown above is the most we will reimburse you for your direct labor expenses for the sum of all "concrete rework" projects.
- 4. The "Concrete Rework" Project Limit and the "Concrete Rework" Policy Aggregate Limits shall be included within and not be in addition to the General Aggregate Limit or the Products-Completed Operations Aggregate Limit (whichever applies), as stated in the declarations and as described in **SECTION III - LIMITS OF INSURANCE**.
- 5. Our obligation to reimburse you applies only to the amount of your direct labor expense in excess of the "Concrete Rework" Deductible stated above. This deductible shall apply separately to each "concrete rework" project.

The Limits of Insurance of this coverage apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with either the beginning of the policy period shown in the Declarations, or the effective date of the endorsement, whichever is less. If the policy period is extended after issuance for an additional period of less than 12 months the additional period will be deemed part of the preceding period for purposes of determining the Limits of Insurance.

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

**Item 2.** Duties in The Event Of Occurrence, Offense, Claim Or Suit is deleted and replaced by the following:

- 2. Duties in The Event Of Occurrence, Offense, Claim Or Suit
  - a. You must see to it that we are notified prior to completing the "concrete rework" which may result in labor reimbursement. Notice should include:
    - (1) How, when and where the incident took place;
    - (2) The names and addresses of any witnesses, and
    - (3) The estimated labor expense for the "concrete rework"
  - b. You must promptly take all steps to minimize the expenses involved.
  - c. You must cooperate with us and upon request, assist in enforcing any right of contribution or indemnity against any person or organization.

- d. You must provide us with proof of loss and any other required documents within 60 days of our request. You must also permit us to examine and copy any of your books and records at any reasonable time. You, your "employees" and your agents must, if we require you to, submit to examination under oath at such times as may be required, and sign a copy of the examination.
- e. No insureds will, except at their own cost, assume any obligation, or incur any expense without our consent.

**SECTION V - DEFINITIONS is amended to add the following:**

"Concrete rework" means the alteration, repair, removal or replacement of a "concrete product"

"Concrete product" means any product you directly install consisting of concrete, cement, sand, mortar mix or related materials

"Cosmetic defects" means a superficial or surface defect that does not affect the structural integrity of the "concrete product"

"Loss" means your direct labor expense associated with a "concrete rework" project

"Subsidence" means earth movement, including but not limited to:

- a. Landslide;
- b. Mud flow;
- c. Earth sinking;
- d. Earth rising;
- e. Collapse or movement of fill;
- f. Improper compaction;
- g. Earth settling, slipping, falling away, caving in, eroding, tilting or shifting;
- h. Earthquake; or
- i. Any other movement of land or earth.

**T. LOST KEY COVERAGE**

As it applies to this coverage,

**SECTION I, COVERAGE A**, is amended to include as follows:

We will pay those sums, subject to the limits of liability and deductible stated herein, that you become legally obligated to pay as damages due to the loss or mysterious disappearance of keys entrusted to or in the care, custody or control of you or your "employees" or anyone acting on your behalf. The damages covered by this endorsement are limited to the:

- 1. Actual cost of the keys;
- 2. Cost to adjust locks to accept new keys; or
- 3. Cost of new locks, if required, including the cost of installation.



Item 2. Exclusions of SECTION I, COVERAGE A, is amended to include the following:

1. Keys owned by any insured, employees of any insured, or anyone acting on behalf of any insured.
2. Any resulting loss of use from the loss or mysterious disappearance of keys; or
3. Any of the following acts by any insured, employees of any insured, or anyone acting on behalf of any insureds:
  - a. Misappropriation;
  - b. Concealment;
  - c. Conversion;
  - d. Fraud; or
  - e. Dishonesty

Exclusions 2.j.(3) and 2.j.(4) of SECTION I, COVERAGE A do not apply to Lost Key Coverage.

SECTION III - LIMITS OF INSURANCE is amended to include the following:

1. The Lost Key Coverage Occurrence Limit shown below is the most we will pay for each occurrence for damages for Lost Key Coverage provided in this endorsement.
2. The Lost Key Coverage Policy Aggregate Limit shown below is the most we will pay for all occurrences covered by this endorsement during the policy period.

Lost Key Coverage Occurrence Limit	\$50,000
Lost Key Coverage Policy Aggregate Limit	\$50,000
Lost Key Coverage Deductible	\$ 1,000
3. The Lost Key Coverage Policy Aggregate Limit shall be included within and not be in addition to the General Aggregate Limit or the Products-Completed Operations Aggregate Limit (whichever applies), as stated in the declarations and as described in SECTION III - LIMITS OF INSURANCE.

Our obligation under this coverage to pay damages on your behalf applies only to the amount of damages in excess of the Lost Key Coverage Deductible stated above. The deductible applies on an "occurrence" basis.

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

#### U. ELECTRONIC DATA LIABILITY COVERAGE

1. Exclusion 2.p. Electronic Data of SECTION I, COVERAGE A, is deleted and replaced with the following:
  - 2.p. Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

2. The following definition is added to **SECTION V – DEFINITIONS**:

"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.

3. For the purposes of this coverage, the definition of "property damage" in **SECTION V – DEFINITIONS** is replaced by the following:

"Property damage" means:

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

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

#### **V. CONSOLIDATED INSURANCE PROGRAM RESIDUAL LIABILITY COVERAGE**

With respect to "bodily injury", "property damage", or "personal and advertising injury" arising out of your ongoing operations; or operations included within the "products-completed operations hazard", the policy to which this coverage is attached shall apply as excess insurance over coverage available to "you" under a Consolidated Insurance Program (such as an Owner Controlled Insurance Program or Contractors Controlled Insurance Program).

Coverage afforded by this endorsement does not apply to any Consolidated Insurance Program involving a "residential project" or any deductible or insured retention, specified in the Consolidated Insurance Program.

The following is added to **Section V – Definitions**

"Residential project" means any project where 30% or more of the total square foot area of the structures on the project is used or is intended to be used for human residency. This includes but is not limited to single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments and appurtenant structures (including pools, hot tubs, detached garages, guest houses or any similar structures). A "residential project" does not include military owned housing, college/university owned housing or dormitories, long term care facilities, hotels, motels, hospitals or prisons.

All other terms, provisions, exclusions and limitations of this policy apply.

#### **W. AUTOMATIC ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES**

**SECTION II – WHO IS AN INSURED** is amended to include:

Any person or organization with whom you agree in a written contract or written agreement to name as an additional insured but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises, designated in the written contract or written agreement, that is leased to you and subject to the following additional exclusions:



This insurance does not apply to:

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

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

**X. AUTOMATIC ADDITIONAL INSURED - STATE OR GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISIONS – PERMITS OR AUTHORIZATIONS**

**SECTION II – WHO IS AN INSURED** is amended to include any state or governmental agency or subdivision or political subdivision with whom you are required by written contract, ordinance, law or building code to name as an additional insured subject to the following provisions:

This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

This insurance does not apply to:

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

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

**Y. CONTRACTORS AUTOMATIC ADDITIONAL INSURED COVERAGE – COMPLETED OPERATIONS**

**SECTION II – WHO IS AN INSURED** is amended to include as an additional insured any person or organization who is required by written contract to be an additional insured on your policy for completed operations, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the project designated in the contract, performed for that additional insured and included in the "products-completed operations hazard".

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

## Z. ADDITIONAL INSURED – ENGINEERS, ARCHITECTS OR SURVEYORS

**SECTION II – WHO IS AN INSURED** is amended to include as an additional insured any architect, engineer or surveyor who is required by written contract to be an additional insured on your policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations performed by you or on your behalf.

This includes such architect, engineer or surveyor, who may not be engaged by you, but is contractually required to be added as an additional insured to your policy.

With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services, including:

1. The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
2. Supervisory, inspection or engineering services.

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.



**MANUSCRIPT ENDORSEMENT**

MAN#1-CITY OF DES MOINES-GOV. IMM.

CITY OF DES MOINES, IOWA  
GOVERNMENTAL IMMUNITIES ENDORSEMENT  
(FOR USE WHEN INCLUDING THE CITY AS AN ADDITIONAL INSURED)

1. NONWAIVER OF GOVERNMENTAL IMMUNITY. THE INSURANCE CARRIER EXPRESSLY AGREES AND STATES THAT THE PURCHASE OF THIS POLICY AND THE INCLUDING OF THE CITY OF DES MOINES, IOWA AS AN ADDITIONAL INSURED DOES NOT WAIVE ANY OF THE DEFENSES OF GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY OF DES MOINES, IOWA UNDER CODE OF IOWA SECTION 670.4 AS IT NOW EXISTS AND AS IT MAY BE AMENDED FROM TIME TO TIME.
2. CLAIMS COVERAGE. THE INSURANCE CARRIER FURTHER AGREED THAT THIS POLICY OF INSURANCE SHALL COVER ONLY THOSE CLAIMS NOT SUBJECT TO THE DEFENSE OF GOVERNMENTAL IMMUNITY UNDER THE CODE OF IOWA SECTION 670.4 AS IT NOW EXISTS AND AS MAY BE AMENDED FROM TIME TO TIME.
3. ASSERTION OF GOVERNMENT IMMUNITY. THE CITY OF DES MOINES, IOWA SHALL BE RESPONSIBLE FOR ASSERTING ANY DEFENSE OF GOVERNMENTAL IMMUNITY, AND MAY DO SO AT ANY TIME AND SHALL DO SO UPON THE TIMELY WRITTEN REQUEST OF THE INSURANCE CARRIER. NOTHING CONTAINED IN THIS ENDORSEMENT SHALL PREVENT THE CARRIER FROM ASSERTING THE DEFENSE OF GOVERNMENTAL IMMUNITY ON BEHALF OF THE CITY OF DES MOINES, IOWA.
4. NON-DENIAL OF COVERAGE. THE INSURANCE CARRIER SHALL NOT DENY COVERAGE UNDER THIS POLICY AND THE INSURANCE CARRIER SHALL NOT DENY ANY OF THE RIGHTS AND BENEFITS ACCRUING TO THE CITY OF DES MOINES, IOWA UNDER THIS POLICY FOR REASONS OF GOVERNMENTAL IMMUNITY UNLESS AND UNTIL A COURT OF COMPETENT JURISDICTION HAS RULED IN FAVOR OF THE DEFENSE(S) OF GOVERNMENTAL IMMUNITY ASSERTED BY THE CITY OF DES MOINES, IOWA.
5. NO OTHER CHANGE IN POLICY. THE INSURANCE CARRIER AND THE CITY OF DES MOINES, IOWA AGREE THAT THE ABOVE PRESERVATION OF GOVERNMENTAL IMMUNITIES SHALL NOT OTHERWISE CHANGE OR ALTER THE COVERAGE AVAILABLE UNDER THE POLICY.

**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 FOR WHOM YOU ARE PERFORMING OPERATIONS IF YOU AND SUCH PERSON OR ORGANIZATION HAVE AGREED TO A WAIVER OF SUBROGATION IN A WRITTEN CONTRACT OR AGREEMENT SIGNED BY YOU AND ALL OTHER PARTIES TO THAT WRITTEN CONTRACT OR AGREEMENT PRIOR TO ANY LOSS FOR WHICH A WAIVER IS REQUIRED.

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. 4-84)