



Roll Call Number

22-0115

Agenda Item Number

30 A

DATE January 24, 2022

APPROVAL OF CONTRACT AND BOND
AND PERMISSION TO SUBLET ON
2022 MIDBLOCK PEDESTRIAN SIGNAL IMPROVEMENTS
\$434,210.00

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the contract and bond, in the amount of \$434,210.00, executed by Ti-Zack Concrete, Inc., Steve J. Rutt, President, 39352 221st Avenue, Le Center, MN, 56057 dated January 24, 2022, for the construction of the following improvement:

2022 Midblock Pedestrian Signal Improvements, 042021015

The improvement includes new traffic signals, new High-Intensity Activated Cross Walk (HAWK) pedestrian signal, Portland Cement Concrete (PCC) sidewalk, pavement markings, and other incidental items; all in accordance with the contract documents, including Plan File No. 636-166/206, located on S.W. 9th Street at Lincoln High School, E. 33rd Street at Stowe Elementary, and Beaver Avenue at Holy Trinity Catholic School, 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 attached Permission to Sublet form, from said Contractor requesting permission to sublet designated items, be and is hereby approved, subject to receipt of the contract and bond approved as to form by the Legal Department, and certificate of insurance acceptable to the Engineering Department; and each subcontractor is hereby granted permission to work on said improvement.



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BE IT FURTHER RESOLVED: That the Director of Finance 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 22-016 attached)

Moved by Gatto to adopt. Second by Sheumaker.

FORM APPROVED s/Kathleen Vanderpool
Kathleen Vanderpool
Deputy City Attorney

Funding Source: 2021-2022 CIP, Page 138, Midblock Pedestrian Signal Upgrades, ST287, G. O. Bonds

SLN
pw

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

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.

MOTION CARRIED APPROVED
J. M. Frankhu Cownie
Mayor

P. Kay Cmelik
City Clerk

ENGINEERING DEPARTMENT
CITY OF DES MOINES, IOWA

CONTRACT NO.
DATE
ROLL CALL NO.

15869
1/24/2022
22- 0115

CONTRACT

THIS CONTRACT, made and entered into at Des Moines, Iowa, on January 24, 2022, by and between the City of Des Moines, by its Mayor, upon order of its City Council, hereinafter called the "Jurisdiction", and Ti-Zack Concrete, 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, 2021 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:

2022 Midblock Pedestrian Signal Improvements, 042021015

The improvement includes new traffic signals, new High-Intensity Activated Cross Walk (HAWK) pedestrian signal, Portland Cement Concrete (PCC) sidewalk, pavement markings, and other incidental items; all in accordance with the contract documents, including Plan File No. 636-166/206, located on S.W. 9th Street at Lincoln High School, E. 33rd Street at Stowe Elementary, and Beaver Avenue at Holy Trinity Catholic School, Des Moines, Iowa

The Contractor agrees to perform said work for and in consideration of the Jurisdiction's payment of the bid amount of Four Hundred Thirty Four Thousand Two Hundred Ten and 00/100 dollars (\$434,210.00) 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 September 30, 2023, and in accordance with the Completion Provisions; and to pay liquidated damages for noncompliance with said completion provisions in the amount of Five Hundred and 00/100 dollars(\$500.00), for each calendar day thereafter that the work remains incomplete.

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

JURISDICTION:

By T. M. Franklin Cownie
T. M. Franklin Cownie, Mayor

(Seal)
ATTEST:

P. Kay Cmelik
P. Kay Cmelik, City Clerk

FORM APPROVED BY:

Kathleen Vanderpool
Kathleen Vanderpool, Deputy City Attorney

CONTRACTOR:

Ti-Zack Concrete, Inc.

Contractor

By Jason R. Eager
Signature Jason R. Eager

Vice President

Title

39352 221st Avenue

Street Address

Le Center, MN

56057

City, State - Zip Code

(507) 357-6463 / admin@tizack.com

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 C004144
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 MINNESOTA)
) SS
LE SUEUR County)

On this 24TH day of JANUARY, 20 22, before me, the undersigned, a Notary Public in and for the State of MINNESOTA, personally appeared Jason R. Eager and _____, to me known, who, being by me duly sworn, did say that they are the Vice 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; Jason R. Eager and _____ acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



Susan Simonette
Notary Public in and for the State Minnesota
My commission expires 1-31-2027

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 04-2021-015

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNITS</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
1 *	CLEARING AND GRUBBING	LS	1.00	\$1,000.00	\$1,000.00
2 *	TOPSOIL, OFFSITE	CY	3.00	\$45.00	\$135.00
3 *	EXCAVATION, CLASS 10 WASTE	CY	3.00	\$200.00	\$600.00
4	CURB AND GUTTER, 2.0 FT, 9 IN.	LF	129.00	\$45.00	\$5,805.00
5	CONCRETE MEDIAN, DOWELLED, 6 IN.	SY	25.90	\$135.00	\$3,496.50
6 *	REMOVAL OF SIDEWALK	SY	198.50	\$30.00	\$5,955.00
7 *	REMOVAL OF DRIVEWAY	SY	6.40	\$40.00	\$256.00
8	SIDEWALK, PCC, 4 IN.	SY	92.60	\$90.00	\$8,334.00
9	SIDEWALK, PCC, 6 IN.	SY	80.30	\$150.00	\$12,045.00
10	SIDEWALK, PCC, 8 IN.	SY	12.80	\$180.00	\$2,304.00
11	DETECTABLE WARNING	SF	120.00	\$50.00	\$6,000.00
12	DRIVEWAY, PAVED, PCC, 6 IN.	SY	3.90	\$135.00	\$526.50
13 *	PAVEMENT REMOVAL (MEDIAN PAVEMENT)	SY	28.60	\$20.00	\$572.00
14 *	CURB AND GUTTER REMOVAL	LF	129.00	\$20.00	\$2,580.00
15	TRAFFIC SIGNALIZATION	LS	1.00	\$293,500.00	\$293,500.00

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

Activity ID 04-2021-015

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNITS</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
16	PAINTED PAVEMENT MARKINGS, DURABLE EPOXY	STA	31.64	\$350.00	\$11,074.00
17 *	PAVEMENT MARKINGS REMOVED	STA	15.78	\$350.00	\$5,523.00
18 *	GROOVES CUT FOR PAVEMENT MARKINGS	STA	31.64	\$350.00	\$11,074.00
19 *	TRAFFIC CONTROL	LS	1.00	\$6,500.00	\$6,500.00
20 *	HYDRAULIC SEEDING, SEEDING, FERTILIZING, AND MULCHING, TYPE 4 (URBAN TEMPORARY EROSION CONTROL MIXTURE)	AC	0.04	\$16,000.00	\$640.00
21 *	SOD	SQ	12.00	\$150.00	\$1,800.00
22 *	FILTER SOCK, 6 IN.	LF	140.00	\$5.00	\$700.00
23 *	FILTER SOCK, REMOVAL	LF	140.00	\$1.00	\$140.00
24 *	MULCH, LANDSCAPE	CF	5.00	\$30.00	\$150.00
25 *	CONSTRUCTION SURVEY	LS	1.00	\$5,500.00	\$5,500.00
26 *	MOBILIZATION	LS	1.00	\$40,000.00	\$40,000.00
27 *	CONCRETE WASHOUT	LS	1.00	\$1,000.00	\$1,000.00
28 *	UNIFORMED POLICE OFFICER	DAY	12.00	\$500.00	\$6,000.00
29 *	REMOVE AND REINSTALL TRASH RECEPTACLE	EACH	1.00	\$1,000.00	\$1,000.00
TOTAL CONSTRUCTION COST					\$434,210.00

*TOTAL= \$91,125.00

*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.

CONTRACT ATTACHMENT: ITEM 3 – COMPLETION PROVISIONS

The Contractor hereby agrees to:

1. Commence the work on the project no earlier than June 7, 2022 and fully complete the project by September 30, 2022; and to pay liquidated damages for noncompliance with said completion provision in the amount of five hundred and no/100 dollars (\$500.00) for each calendar day thereafter.
2. Undertake and schedule work in compliance with intermediate completion provisions as described below. The work to be completed by the intermediate completion date shall be such work as required to satisfy the intermediate completion date description.

Intermediate Completion Date:

The Contractor shall commence the work no earlier than June 7, 2022, or the day after school is dismissed for the summer of 2022, whichever is earlier, and to complete construction of all work except permanent turf establishment work by August 5, 2022, before school starts.

Liquidated damages for noncompliance with said completion provisions in the amount of one thousand and no/100 dollars (\$1,000.00) per calendar day will be assessed for each day after August 5, 2022, that the work is not completed with the above described Intermediate Completion Date description and items.

3. Pay separate sums of liquidated damages that will be assessed for each of the conditions described hereinbefore, and they shall be cumulative if multiple conditions have not been satisfied.

PERFORMANCE, PAYMENT & MAINTENANCE BOND

KNOW ALL BY THESE PRESENTS:

That we, Ti-Zack Concrete, Inc. , as Principal (the "Contractor" or "Principal"), and Atlantic Specialty Insurance Company, as Surety, are held and firmly bound unto the City of Des Moines, as Obligee (the "Jurisdiction"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of Four Hundred Thirty Four Thousand Two Hundred Ten and 00/100 dollars (\$434,210.00), 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 January 24, 2022, (the "Contract") wherein the Contractor undertakes and agrees to construct the following described improvements:

2022 Midblock Pedestrian Signal Improvements, 042021015

The improvement includes new traffic signals, new High-Intensity Activated Cross Walk (HAWK) pedestrian signal, Portland Cement Concrete (PCC) sidewalk, pavement markings, and other incidental items; all in accordance with the contract documents, including Plan File No. 636-166/206, located on S.W. 9th Street at Lincoln High School, E. 33rd Street at Stowe Elementary, and Beaver Avenue at Holy Trinity Catholic School, 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 Three Hundred Fourty Three Thousand Eighty Five and 00/100 dollars (\$343,085.00), 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.
5. 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 24th day of January, 2022

PRINCIPAL:

Ti-Zack Concrete, Inc.

Contractor

By 

Signature Jason R. Eager

Vice President

Title

FORM APPROVED BY:



Kathleen Vanderpool
Deputy City Attorney

SURETY:

Atlantic Specialty Insurance Company
Surety Company

By 

Signature Attorney-in-Fact/Officer

Troy Staples

Name of Attorney-in-Fact/Officer

Atlantic Specialty Insurance Company

Company Name

605 Highway 169 North, Suite 800

Company Address

Plymouth, MN 55441

City, State Zip Code

(952) 852-2431

Company Telephone Number

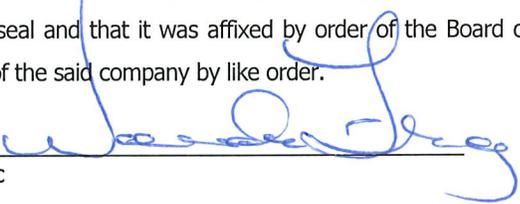
NOTE:

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

ACKNOWLEDGMENT OF SURETY

State of Minnesota)
)
County of Dakota)

On this 24th day of January, in the year 2022, before me personally come(s) Troy Staples, Attorney(s)-in-Fact of Atlantic Specialty Insurance Company with whom I am personally acquainted, and who, being by me duly sworn, says that he/she is (are) the Attorney(s)-in-Fact of Atlantic Specialty Insurance Company company described in and which executed the within instrument; that he/she know(s) the corporate seal of such company; and that seal affixed to the within instrument is such corporate seal and that it was affixed by order of the Board of Directors of said company, and that he/she signed said instrument as Attorney(s)-in-Fact of the said company by like order.



Notary Public





Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: **Jonathan Pate, Zachary Pate, Jennifer Boyles, Nicholas Hochban, Thomas Lahl, Thomas Kemp, Troy Staples**, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **unlimited** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this twenty-seventh day of April, 2020.

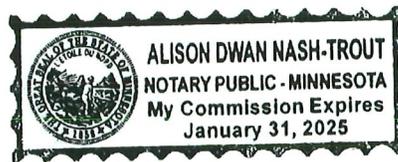


By

Paul J. Brehm, Senior Vice President

STATE OF MINNESOTA
HENNEPIN COUNTY

On this twenty-seventh day of April, 2020, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.



Notary Public

I, the undersigned, Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated 24th day of January, 2022.



Kara Barrow, Secretary

This Power of Attorney expires
January 31, 2025

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GOVERNMENTAL IMMUNITY ENDORSEMENT – IOWA JURISDICTION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Iowa Jurisdiction:

CITY OF DES MOINES

Description Of Project:

2022 Midblock Pedestrian Signal Improvements 040021015

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

IOWA GOVERNMENTAL IMMUNITY

- a. For any claim or "suit" seeking damages from the Iowa jurisdiction scheduled in this endorsement because of "bodily injury", "property damage", "personal injury" or "advertising injury" caused by "your work" on or for any project that is scheduled in this endorsement and located in such Iowa jurisdiction, this insurance applies only to the extent that such claim or "suit" is not subject to any defense of governmental immunity under Iowa Code Section 670.4 and any amendment to that section.
- b. For any claim or "suit" seeking damages from the Iowa jurisdiction scheduled in this endorsement because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies and caused by "your work" on or for any project that is scheduled in this endorsement and located in such Iowa jurisdiction, that Iowa jurisdiction will be responsible for asserting any defense of governmental immunity and must do so if requested in writing by us. Nothing contained in this endorsement shall prevent us from asserting any defense of govern-

mental immunity on behalf of that Iowa jurisdiction.

- c. For any claim or "suit" seeking damages from the Iowa jurisdiction scheduled in this endorsement because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies and caused by "your work" on or for any project that is scheduled in this endorsement and located in such Iowa jurisdiction, we agree that:
 - (1) The purchase of this policy and including the Iowa jurisdiction as an additional insured under this policy does not waive any defense of governmental immunity available to such Iowa jurisdiction under Iowa Code Section 670.4 and any amendment to that section; and
 - (2) We will take the position that this insurance does not apply because of governmental immunity only after a court of law having jurisdiction over such claim or "suit" has ruled in favor of any defense of governmental immunity asserted by such Iowa jurisdiction.
- d. This preservation of governmental immunity does not change the coverage otherwise available under this policy.

COMMERCIAL GENERAL LIABILITY

C. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph b. of the definition of "occurrence" in the DEFINITIONS Section:

b. An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph 2.a.(1) of SECTION II - WHO IS AN INSURED:

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide:

(a) "incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician or paramedic; or

(b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following replaces the last sentence of Paragraph 5. of SECTION III - LIMITS OF INSURANCE:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph 2., Exclusions, of SECTION I - COVERAGES - COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of

pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the DEFINITIONS Section:

"Incidental medical services" means:

a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or

b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

6. The following is added to Paragraph 4.b., Excess Insurance, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II - Who Is An Insured.



BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

a. "Bodily injury" or "property damage" that occurs; or

b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

E. CONTRACTUAL LIABILITY - RAILROADS

1. The following replaces Paragraph c. of the definition of "insured contract" in the DEFINITIONS Section:

c. Any easement or license agreement;

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED PERSON OR ORGANIZATION – NOTICE OF
CANCELLATION PROVIDED BY US**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION:

Number of Days Notice: 30

**PERSON OR
ORGANIZATION:**

**ANY PERSON OR ORGANIZATION TO WHOM
CONTINUED ON IL T8 03**

ADDRESS:

CONTINUED ON IL T8 03

**LE CENTER
MN
56057**

PROVISIONS

If we cancel this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for Cancellation in the Schedule above, we will mail notice of cancellation to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for Cancellation in such Schedule before the effective date of cancellation.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED
(Includes Products-Completed Operations If Required By Contract)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

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

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. If, and only to the extent that, such injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits of Insurance.
- b. The insurance provided to such additional insured does not apply to:

- (1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

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

- (2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

- c. The additional insured must comply with the following duties:

- (1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

- (a) How, when and where the "occurrence" or offense took place;
- (b) The names and addresses of any injured persons and witnesses; and

- (c) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- (2) If a claim is made or "suit" is brought against the additional insured:

COMMERCIAL GENERAL LIABILITY

- (a) Immediately record the specifics of the claim or "suit" and the date received; and
 - (b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
- (3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- (4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.

TRAVELERS
ONE TOWER SQUARE
HARTFORD CT 06183

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 00 03 13 (00) - 001

POLICY NUMBER: UB-8K74574A-21-26-G

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.)

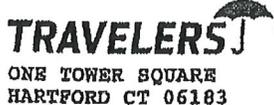
This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

**ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS
WAIVER.**



WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY ENDORSEMENT WC 99 06 R3 (00) - 001

POLICY NUMBER: UB-8K74574A-20-26-G

NOTICE OF CANCELLATION TO DESIGNATED PERSONS OR ORGANIZATIONS

The following is added to PART SIX - CONDITIONS : Notice Of Cancellation To Designated Persons Or Organizations

If we cancel this policy for any reason other than non-payment of premium by you, we will provide notice of such cancellation to each person or organization designated in the Schedule below. We will mail or deliver such notice to each person or organization at its listed address at least the number of days shown for that person or organization before the cancellation is to take effect.

You are responsible for providing us with the information necessary to accurately complete the Schedule below. If we cannot mail or deliver a notice of cancellation to a designated person or organization because the name or address of such designated person or organization provided to us is not accurate or complete, we have no responsibility to mail, deliver or otherwise notify such designated person or organization of the cancellation.

SCHEDULE

Table with 2 columns: Name and Address of Designated Persons or Organizations, Number of Days Notice. Row 1: ANY PERSON OR ORGANIZATION WITH WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF: 1. YOU SEE TO IT THAT WE RECEIVE A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND 2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS ENDORSEMENT. ADDRESS: THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US. 30

All other terms and conditions of this policy remain unchanged.

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

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

Endorsement Effective Insured Policy No. Endorsement No. Premium \$ Insurance Company Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- A. BROAD FORM NAMED INSURED
- * B. BLANKET ADDITIONAL INSURED
- C. EMPLOYEE HIRED AUTO
- D. EMPLOYEES AS INSURED
- E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS
- F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS
- G. WAIVER OF DEDUCTIBLE – GLASS
- H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT
- I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT
- J. PERSONAL PROPERTY
- K. AIRBAGS
- L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS
- * M. BLANKET WAIVER OF SUBROGATION
- N. UNINTENTIONAL ERRORS OR OMISSIONS

PROVISIONS

A. BROAD FORM NAMED INSURED

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

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

* B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph c. in A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

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

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.

2. The following replaces Paragraph b. in B.5., Other Insurance, of SECTION IV – BUSINESS AUTO CONDITIONS:

b. 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

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph D., Deductible, of SECTION III – PHYSICAL DAMAGE COVERAGE:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph A.4.b., Loss Of Use Expenses, of SECTION III – PHYSICAL DAMAGE COVERAGE:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., Transportation Expenses, of SECTION III – PHYSICAL DAMAGE COVERAGE:

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" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph B.3., Exclusions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
 - b. The airbags are not covered under any warranty; and
 - c. The airbags were not intentionally inflated.
- We will pay up to a maximum of \$1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph A.2.a., of SECTION IV – BUSINESS AUTO CONDITIONS:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph A.5., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV – BUSINESS AUTO CONDITIONS:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph B.2., Concealment, Misrepresentation, Or Fraud, of SECTION IV – BUSINESS AUTO CONDITIONS:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

