## Agreement

**CITY OF JOPLIN AND BENNETT INC.**

**THIS AGREEMENT**, made and entered into this 10th day of April, 2018, by the parties identified above.

**WITNESSETH**: That whereas, the Contractor **(BENNETT, INC.)** has become the lowest responsible bidder for furnishing the supervision, labor, tools, equipment, materials and supplies and for constructing the following City improvements:
The

STORMWATER DRAINAGE AND STREET INFRASTRUCTURE IMPROVEMENTS
YELLOW AREA
CDBG-DR GRANT No. B-13-MS-29-0001/B-12-MT-29-0001

- Roadway and Drainage Improvements – W. 23rd St. & S. McCoy Ave.
- Storm Sewer System – Adele Drive
- Storm Sewer System – Sunset Drive
- South McCoy Ave. – Pipe Replacement
- LMI Street Improvements (included in the Bid Alternates)
- Non-LMI Street Improvements (included in the Bid Alternates)

The City and Contractor agree to the following:

1. **Manner and Time for Completion.** The Contractor will furnish all supervision, labor, tools, equipment, materials and supplies necessary to perform, and to perform said work at Contractor's own expense in accordance with the contract documents and any applicable City ordinances and state and federal laws by October 12, 2018.

2. **Prevailing Wages.** The Contractor shall be required to pay their laborers and mechanics no less than the more stringent of either that required by the Department of Labor and Industrial Relations of the State of Missouri or the Department of Labor as defined in the Davis-Bacon Act.

   a. **Missouri Wage Rate:** All labor utilized in the construction of the aforementioned improvements shall be paid a wage of no less than the "prevailing hourly rate of wages" for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri. At any time the contractor is found to not have paid prevailing wages, the contractor shall forfeit as a penalty to the city one hundred dollars for each underpaid worker employed, for each calendar day,

or portion thereof such worker is paid less than the said stipulated rates for any work done under this contract.

b. **Davis Bacon:** The Davis-Bacon Act, as amended (40 U.S.C. 3141-3148) requires that for all prime construction contracts in excess of $2,000 awarded by non-Federal entities, the Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor shall pay wages not less than once a week. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The Contractor shall report all suspected or reported violations to the Federal awarding agency. Apprentices may be employed at less than predetermined rates if they are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department. Trainees may be employed at less than predetermined rates if they are in a training program certified by the Department.

3. **Contract Work Hours and Safety Standards Act**. (40 U.S.C. 3701-3708). Where applicable, in all contracts awarded in excess of $100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. **Insurance Requirements**. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City of Joplin, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City of Joplin against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City of Joplin. Regardless of such approval, it shall be the responsibility of the contractor to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under the Contract Documents.

   The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the City within ten (10) days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. All insurance policies shall require that the insurance company in question provide thirty (30) days written notice prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to:

   City of Joplin - Public Works, 602 S. Main Street, Joplin, MO 64801

Such policies shall name the City as an additional insured, with limits of liability not less than the sovereign immunity limits for Missouri public entities calculated by the Missouri Department of Insurance as of January 1 each calendar year and published annually in the Missouri Register pursuant to Section 537.610, RSMo. (See, http://insurance.mo.gov/industry/sovimmunity.php)

As of January 1, 2018, the minimum coverage for the insurance referred to herein shall be as set out below:

a. **Workers' Compensation**....Statutory coverage per RSMo 287.010 et seq
**Employer's Liability**..... $1,000,000.00

b. **Commercial General Liability Insurance**, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and endorsed for blasting if blasting required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Two Million Eight Hundred Four Thousand Forty Six and no/100 Dollars ($2,804,046.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Twenty Thousand Six Hundred Six and no/100 Dollars ($420,606.00) with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least $1,000,000 for all claims to property arising out of a single occurrence and at least $100,000 to any one owner with respect to damages to property. Contractor agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorneys' fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorneys' fees of Contractor, its employees, officers or agents. Contractor agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.

c. **Automobile Liability Insurance** covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at least Two Million Eight Hundred Four Thousand Forty Six and no/100 Dollars ($2,804,046.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Twenty Thousand Six Hundred Six and no/100 Dollars ($420,606.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

d. **Owner's and Contractor's Protective Liability Insurance** to protect the City, its agents, servants and employees from claims which may arise from the performance of this Contract, with limits of at least Two Million Eight Hundred Four Thousand Forty Six and no/100 Dollars ($2,804,046.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Twenty Thousand Six Hundred Six and no/100 Dollars ($420,606.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

The Owner's and Contractor's Protective Liability Insurance must:

(1) Be a separate policy with the named insured being: The City of Joplin, and

(2) Contain an endorsement that disclaims coverage for any claim barred by the doctrines of sovereign immunity or official immunity, except attorney's fees and other litigation costs incurred in defending a claim. Nothing contained in this policy (or this endorsement thereto) shall constitute any waiver of whatever kind of these defenses or sovereign immunity or official immunity for any monetary amount whatsoever.

e. **Builders Risk Insurance** for contracts involving unoccupied structures. The Contractor shall secure All Risk Builder's Risk Insurance. Unless specifically authorized by the City, the amount of such insurance shall not be less than the total contract price.

f. **Subcontracts**. In case any or all of this work is sublet, the Contractor shall require the subcontractor to procure and maintain all insurance required in subparagraphs (a), (b) and (c) hereof and in like amounts. Contractor shall require any and all subcontractors with whom it enters into a contract to perform work on this project to protect the City of Joplin through insurance against applicable hazards or risks and shall, upon request of the City, provide evidence of such insurance.

g. **Notice**. The Contractor and/or subcontractor shall furnish the City prior to beginning the work, the policy as specified in subparagraph (d), and satisfactory proof of carriage of all the insurance required by this contract, with the provision that policies shall not be canceled, modified or non-renewed without thirty (30) days written notice to the City of Joplin.

h. **Legislative or Judicial Changes.** In the event the scope or extent of the City's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo is broadened or increased during the term of this agreement by legislative or judicial action, the City may require Contractor, upon 10 days written notice, to execute a contract addendum whereby the Contractor agrees to provide, at a price not exceeding Contractor's actual increased premium cost, additional liability insurance coverage as the City may require to protect the City from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

5. **Performance, Labor, and Materials Payment Bond:** The Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the City and on the forms approved by the City, each bond shall be in the amount of **Two Million Two Hundred Forty Three Thousand Four Hundred Seventy Four and 75/100 ($2,243,474.75)** dollars conditioned upon the full and faithful performance of all major terms and conditions of this contract and payment of all labor and material suppliers. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bond(s) hereto attached for its faithful performance and payment of labor and material suppliers, the City shall deem the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the City to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event no further payment to the Contractor shall be deemed to be due under this contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the City. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds $25,000.00 must be listed in United States Treasury Circular 570.

6. **Certification Regarding Disbarment, Eligibility, Indictments, Convictions or Civil Judgements for all Federal Aid Projects**: By signing and submitting the bid, the president or authorized official of the bidder, under penalty of perjury under the laws of the USA, shall certify that, except as noted in the exceptions, the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor or any position involving the administration of this project:

a. Is not currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency.

b. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years.

c. Does not have a proposed debarment or suspension pending.

d. Has not been indicted, convicted or had a civil judgment rendered against any of the listed parties by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

e. Has not been in breach of contract with the City of Joplin within the last two years.

**6.1** If there are any exceptions, the bidder shall submit the exceptions on company letterhead, signed by the bidder and inserted inside the bid submitted. Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, the bidder shall indicate to whom it applies, the initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

**6.2** By signing the contract, the contractor shall further certify that all related subcontracts of $25,000 shall comply with this requirement. This includes all subcontractors, material suppliers and vendors.

7. **Debarment and Suspension (Executive Orders 12549 and 12689)**—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 2 CFR §2424 (government debarment and suspension regulations) or by the City of Joplin.

8. **Contractor's Responsibility for Subcontractors.**

a. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs.

b. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract.

c. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City or between any subcontractors.

9. **General Independent Contractor Clause.** This agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri Revenue and Taxation laws, Missouri Workers' Compensation and Unemployment Insurance laws. The Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

10. **Personnel.** The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner. All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

11. **Changes.** The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

12. **Breach of Contract Terms.** Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

13. **Liquidated Damages.** Time of completion of work by the Contractor is of the essence. Should Contractor, or in the case of default, the surety, fail to complete the work within the time specified in the contract, or within such extra time as may be allowed in accordance with City of Joplin Standard Specifications, Division 0000, General Requirements and Provisions, Section 0400.19, Contractor (or surety) shall be liable to the City in the amount of $2,500 per day for each and every calendar day that the contract remains uncompleted after the time allowed for completion as liquidated damages, and not as a penalty, it being stipulated that actual damages to the City and the public arising from Contractor's failure to timely complete the work would be difficult, if not impossible, to ascertain. The amount assessed as liquidated damages may be withheld from any moneys otherwise due to Contractor from the City.

14. **Termination.** The City reserves the right to terminate this contract by giving at least five (5) days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly

skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the contract. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

15. **City's Right to Proceed**. In the event this contract is terminated pursuant to Paragraph 14, then the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

16. **Termination for Convenience of City**. The City shall have the right at any time by providing at least ten (10) days written notice to Contractor to terminate and cancel this contract, without cause, for the convenience of the City, and Contractor shall immediately stop work. In such event City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

17. **Guards and Lights**. The Contractor agrees that during the performance of said work, adequate barricades, guards and warning signs, lights or devices consistent with the requirements contained in the Manual on Uniform Traffic Control Devices shall be provided by Contractor during construction.

18. **Energy Efficiency.** The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

19. **Liability and Indemnity**.

    a. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this contract.

b. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

c. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law. The City can require additional documentation as needed to ensure that the appropriate wage rates are being paid in order to ensure compliance to all state and federal rules, regulations and statutes.

d. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

e. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

f. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its contract price. Contractor's obligation under this agreement to defend, indemnify, and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance required of the Contractor under this agreement.

g. The Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

h. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.

i. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.

j. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall

indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

20. **Copyright.** No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

21. **Architectural Barriers.** This Act requires that certain federally funded buildings or facilities be designed, constructed or altered to ensure accessibility to, and use by, physically handicapped persons. Buildings or facilities allocated or reallocated GLO-DR funds after December 11, 1995, that meet the definition of "residential structure" (as defined in 24 CFR 40.2) or the definition of "building" [as defined in 41 CFR 101-19.602(a)] are subject to the Architectural Barriers Act and must comply with the Uniform Federal Accessibility Standards.

22. **Payment for Labor and Materials.** The Contractor agrees and binds itself to pay for all labor done, and for all the materials used in the construction of the work to be completed pursuant to this contract.

23. **Payment.** The City will pay the Contractor in accordance with the rate set forth in the contract documents on file in the Public Works Department and by this reference made a part hereof, which shall constitute full and complete compensation for the Contractor's work provided hereunder. Such compensation will be paid in progress payments (less five (5) percent retainage), as established by the City, subject to receipt of a requisition for payment and a statement of work provided by the Contractor and agreement by both the City and the Contractor that the Contractor has fully performed the work to be paid for in such progress payments in conformance with the contract. If the City or the architect or engineer determines that a higher rate of retainage is required to ensure performance of the contract, the City may withhold up to ten (10) percent retainage until the work is fully completed and accepted by the City.

24. **Contract Documents.** The contract documents shall consist of the following:

    a. This Contract
    b. All Change Orders
    c. Bid Plans and Specifications
    d. City of Joplin Standard Specifications (February 1, 2017 Edition)
    e. Special Conditions
    f. Proposal
    g. Statement of Bidder's Qualifications
    h. Acknowledgment
    i. Performance Bond
    j. Payment and Material Bond
    k. Instructions to Bidders
    l. Non-collusion Affidavit
    m. Notice to Proceed
    n. Restriction on Lobbying
    o. Affidavit for Federal Work Authorization Program
    p. Certification Regarding Government-Wide Waiver and Release of Liens
    q. Certificate of Contractor

r. Subcontractor Disclosure Form
s. Affidavit of Compliance with Prevailing Wage Law
t. Certification of Bidder of Equal Employment Opportunity

**Notice to Contractors:** This contract, together with the other documents enumerated in this paragraph, forms the contract between the parties. These documents are as fully a part of the contract as if attached hereto or repeated herein. The Contractor agrees to perform all of the work described in the contract documents and to comply with the terms and conditions defined therein for a total sum of **Two Million Two Hundred Forty Three Thousand Four Hundred Seventy Four and 75/100 ($2,243,474.75)** dollars, said amount being subject to any approved addenda or change order.

25. **Subsurface Conditions**: Contractor agrees that information contained in the published reports and public actions of the Missouri Division of Geology and Land Survey shall be conclusive and binding upon the Contractor as to what subsurface conditions at the job site are reasonably anticipated or reasonably foreseeable.

26. **Flood Disaster Protection:** This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L.93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

27. **Environmental Compliance (24 CFR 85.36(i)(12)):** For contracts of amounts in excess of $150,000, the Contractor shall agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

    In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

    a. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.

    b. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports

and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

c. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.

d. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. **Procurement of Recovered Materials.** The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

29. **Lead Based Paint Poisoning Prevention Act.** Required the Secretary of Health, Education, and Welfare (now Health and Human Services) to prohibit lead-based paint in residential structures constructed or rehabilitated by the Federal government or with Federal assistance. Major components included: defining lead-based paint chips as the primary health hazard of lead-based paint, setting the level of lead in blood warranting concern at 60 µg/dL, requiring abatement standards that were less rigorous compared to today's standards, and Defining lead-based paint as paint containing more than 1 percent lead by weight.

30. **Contractor Conflict of Interest**. In accepting this contract, Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Joplin, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest, direct or indirect, in this contract. All applicable federal regulations and provisions of R.S.Mo. Section 105.450 et seq. shall not be violated.

    a. The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

31. **Assignment.** The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto, provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment

shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement.

32. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.

    a. The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

    b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

33. **Anti-Kickback Rules.** The Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that the Contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Contractor shall report all suspected or reported violations to the Federal awarding agency.

34. **Nondiscrimination**. The Contractor agrees in the performance of this contract not to discriminate on the grounds of race, creed, color, national origin or ancestry, sex, religion, handicap, gender identity, sexual orientation, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a)ii and 41 C.F.R. § 60-741.5(a), if applicable.

    a. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

    b. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

    c. No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

35. **Nonresident/Foreign Contractors.** The Contractor shall procure and maintain during the life of this contract:

    a. If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 R.S.Mo.

    b. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

36. **Notices.** All notices required or permitted hereinunder and required to be in writing may be given by FAX or by first class mail addressed to City and Contractor at the addresses shown above. The date of delivery of any notice given by mail shall be the date falling on the second full day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

37. **Statement that Project is Federally Funded:** It is understood that this contract is funded in whole or in part with CDBG-DR funds through the City of Joplin Community Development Block Grant Program as administered by HUD and is subject to those regulations and restrictions normally associated with federally-funded programs and any other requirements that the state may prescribe.

38. **Records and Audits.** The Contractor shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds. These records will be made available for audit purposes to the City or any authorized representative, and will be retained for three years after the final grant report is submitted by the City to HUD. The City of Joplin, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

    a. All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

39. **Federal Labor Standards Provisions.** The contractor shall comply with the Federal Labor Standards Provisions pursuant to the U.S. Department of Housing and Urban Development Form 4010 and the Office of Labor Relations.

40. **Equal Employment Opportunity.** During the performance of this Contract, the Contractor agrees as follows:

    a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be

limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

d. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section

204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States Government to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings (including Section 3 businesses).

i. Contractor shall ensure that the hours of minority and female employment and training must be substantially uniform throughout the length of the contract and throughout each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hour performed.

41. **Women and Minority Business:** The Contractor will use its best efforts to afford small businesses, minority business enterprises, women's business enterprises and veteran –owned businesses the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans and American Indians. The Sub recipient and/or borrower may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation. The contractor must demonstrate to the City of Joplin's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the City of Joplin contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

a. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development;

b. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;

c. The Contractor shall actively solicit and shall provide the City of Joplin with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media.

**42. Civil Rights Act of 1964.** Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**43. Civil Rights Act of 1968.** Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin.

**44. Section 3 of the Housing and Urban Development Act of 1968.**

a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

c. The Contractor agrees to send to each labor organization or representative of workers with which the Engineer has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

e. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected by before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part

135 require employment opportunities to be directed, were not filled to circumvent the Engineer's obligations under 24 CFR part 135.

f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

g. The Contractor shall assist the City of Joplin in obtaining all necessary documentation to support Section 3 goals. The Contractor will complete and submit the Section 3 tables in Attachment A in the Architect's required periodic reporting to the City. Frequently Asked Questions related to Section 3 are also included in Attachment A.

**45. Section 109(a) of the Housing and Community Development Act of 1974.** No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, shall also apply to any such program or activity.

**46. Section 110 of the Housing and Community Development Act of 1974**

a. All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a--276a-5): Provided, That this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40.

b. Subsection (a) of this section shall not apply to any individual that:

i. performs services for which the individual volunteered;
ii. does not receive compensation for such services; or
iii. is paid expenses, reasonable benefits, or a nominal fee for such services; and
iv. is not otherwise employed at any time in the construction work.

**47. Affirmative Action for Handicapped Workers (Section 503 of the Rehabilitation Act of 1973 (USC793))**

a. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and to otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices, such as employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

b. The Contractor agrees to comply with the rules, regulations, and relevant orders of

the Secretary of Labor issued pursuant to the Act.

c. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

d. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of the applicants and employees.

e. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by terms of Section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

f. The Contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

48. **Section 504 of the Rehabilitation Act of 1973**, as amended, provides for nondiscrimination of an otherwise qualified individual solely on the basis of his handicap in benefiting from any program or activity receiving Federal financial assistance. All recipients must certify to compliance with all provisions of this Section.

49. **Age Discrimination Act of 1975**. No person in the United States, on the basis of age, be excluded from participation in, be denied benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

50. **Authorized Employees**. Contractor acknowledges that Section285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Contractor therefore covenants that is not knowingly in violation of subsection 1 or Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully to work in the United States.

51. **Interest of Contractor and Employees.** The Contractor covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed.

52. **City of Joplin Conflict of Interest.**

a. No member of the governing body of the City and no other officer, employee, agent of the City and no other public official of the locality while employed or for one year thereafter, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract,

and the Contractor shall take appropriate steps to assure compliance.

b. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

53. **Affidavit for Contracts Over $5,000.00**. That pursuant to Missouri Revised Statute Sections 285.525 through 285.550, if this contract exceeds the amount of $5,000.00 and Contractor is associated with a business entity, Contractor shall provide an acceptable notarized affidavit stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, Contractor must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

54. **City Benefits.** The Contractor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

55. **Inspection.** The authorized representative and agents of the City of Joplin and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

56. **Reporting Requirements.** The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

57. **Occupational License.** The Contractor shall obtain and maintain an occupational license with the City of Joplin, Missouri, if required by city code and any required state or federal license. The cost for this occupational license shall be borne by the Contractor. No contract will be executed by the City until this occupational license has been obtained and that the Contractor is current on any City taxes is verified.

58. **Safety Training.** Pursuant to Missouri Revised Statute Section 292.675, Contractors and subcontractors who sign a contract to work on public works projects must provide a 10-hour OSHA construction safety program, or similar program approved by the Department of Labor and Industrial Relations, to be completed by their on-site employees within sixty (60) days of beginning work on the construction project. Contractors and subcontractors in violation of this provision will forfeit to the public body $2,500 plus $100 a day for each employee who is employed without training. Public bodies and contractors may withhold/assess these penalties from the payment due to those contractors and subcontractors if found to be in non-compliance.

59. **Compliance with Laws.** Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by Contractor is current.

    a. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

60. **Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

61. **Remedies.** Except as may be otherwise found in the contract documents, all claims, disputes, counter-claims, and other matters in question between the Owner and Contractor arising out of or related to this agreement or the breech thereof, will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the state in which the Owner is located.

62. **Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be adjudicated, venue shall be proper only in the Circuit Court of Jasper County, Missouri.

**IN WITNESS WHEREOF,** the parties hereto have set their hands and seals on the day and year herein stated.

**CONTRACTOR:** Bennett Inc.
103 NE 15th Ln
Lamar, MO 64759

By: Sheri L. McWilliams

Printed Name: SHERI L. McWILLIAMS

Title: PRESIDENT

Date: 4/10/18

**CERTIFICATE OF DIRECTOR OF FINANCE**

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefore.

Leslie Haase

Leslie Haase, Director of Finance

**APPROVED AS TO FORM**

Peter Edwards, City Attorney

**CITY OF JOPLIN, MISSOURI**

By: David W. Hertzberg

David Hertzberg, P.E.
Public Works Director

Date: 4/24/2018

**APPROVED AS TO CDBG-DR**

Troy Bolander, Director of Planning, Development & Neighborhood Services

## Agreement

**CITY OF JOPLIN AND BENNETT INC.**

**THIS AGREEMENT**, made and entered into this 10th day of April, 2018, by the parties identified above.

**WITNESSETH**: That whereas, the Contractor **(BENNETT, INC.)** has become the lowest responsible bidder for furnishing the supervision, labor, tools, equipment, materials and supplies and for constructing the following City improvements:
**The**

STORMWATER DRAINAGE AND STREET INFRASTRUCTURE IMPROVEMENTS
YELLOW AREA
CDBG-DR GRANT No. B-13-MS-29-0001/B-12-MT-29-0001

- Roadway and Drainage Improvements – W. 23rd St. & S. McCoy Ave.
- Storm Sewer System – Adele Drive
- Storm Sewer System – Sunset Drive
- South McCoy Ave. – Pipe Replacement
- LMI Street Improvements (included in the Bid Alternates)
- Non-LMI Street Improvements (included in the Bid Alternates)

The City and Contractor agree to the following:

1. **Manner and Time for Completion.** The Contractor will furnish all supervision, labor, tools, equipment, materials and supplies necessary to perform, and to perform said work at Contractor's own expense in accordance with the contract documents and any applicable City ordinances and state and federal laws by October 12, 2018.

2. **Prevailing Wages.** The Contractor shall be required to pay their laborers and mechanics no less than the more stringent of either that required by the Department of Labor and Industrial Relations of the State of Missouri or the Department of Labor as defined in the Davis-Bacon Act.

   a. **Missouri Wage Rate:** All labor utilized in the construction of the aforementioned improvements shall be paid a wage of no less than the "prevailing hourly rate of wages" for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri. At any time the contractor is found to not have paid prevailing wages, the contractor shall forfeit as a penalty to the city one hundred dollars for each underpaid worker employed, for each calendar day,

or portion thereof such worker is paid less than the said stipulated rates for any work done under this contract.

b. **Davis Bacon:** The Davis-Bacon Act, as amended (40 U.S.C. 3141-3148) requires that for all prime construction contracts in excess of $2,000 awarded by non-Federal entities, the Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor shall pay wages not less than once a week. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The Contractor shall report all suspected or reported violations to the Federal awarding agency. Apprentices may be employed at less than predetermined rates if they are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department. Trainees may be employed at less than predetermined rates if they are in a training program certified by the Department.

3. **Contract Work Hours and Safety Standards Act**. (40 U.S.C. 3701-3708). Where applicable, in all contracts awarded in excess of $100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. **Insurance Requirements**. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City of Joplin, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City of Joplin against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City of Joplin. Regardless of such approval, it shall be the responsibility of the contractor to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under the Contract Documents.

   The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the City within ten (10) days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. All insurance policies shall require that the insurance company in question provide thirty (30) days written notice prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to:

   City of Joplin - Public Works, 602 S. Main Street, Joplin, MO 64801

Such policies shall name the City as an additional insured, with limits of liability not less than the sovereign immunity limits for Missouri public entities calculated by the Missouri Department of Insurance as of January 1 each calendar year and published annually in the Missouri Register pursuant to Section 537.610, RSMo. (See, http://insurance.mo.gov/industry/sovimmunity.php)

As of January 1, 2018, the minimum coverage for the insurance referred to herein shall be as set out below:

a. **Workers' Compensation....**Statutory coverage per RSMo 287.010 et seq
**Employer's Liability.....** $1,000,000.00

b. **Commercial General Liability Insurance**, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and endorsed for blasting if blasting required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Two Million Eight Hundred Four Thousand Forty Six and no/100 Dollars ($2,804,046.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Twenty Thousand Six Hundred Six and no/100 Dollars ($420,606.00) with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least $1,000,000 for all claims to property arising out of a single occurrence and at least $100,000 to any one owner with respect to damages to property. Contractor agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorneys' fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorneys' fees of Contractor, its employees, officers or agents. Contractor agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.

c. **Automobile Liability Insurance** covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at least Two Million Eight Hundred Four Thousand Forty Six and no/100 Dollars ($2,804,046.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Twenty Thousand Six Hundred Six and no/100 Dollars ($420,606.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

d. **Owner's and Contractor's Protective Liability Insurance** to protect the City, its agents, servants and employees from claims which may arise from the performance of this Contract, with limits of at least Two Million Eight Hundred Four Thousand Forty Six and no/100 Dollars ($2,804,046.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Twenty Thousand Six Hundred Six and no/100 Dollars ($420,606.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

The Owner's and Contractor's Protective Liability Insurance must:

(1) Be a separate policy with the named insured being: The City of Joplin, and

(2) Contain an endorsement that disclaims coverage for any claim barred by the doctrines of sovereign immunity or official immunity, except attorney's fees and other litigation costs incurred in defending a claim. Nothing contained in this policy (or this endorsement thereto) shall constitute any waiver of whatever kind of these defenses or sovereign immunity or official immunity for any monetary amount whatsoever.

e. **Builders Risk Insurance** for contracts involving unoccupied structures. The Contractor shall secure All Risk Builder's Risk Insurance. Unless specifically authorized by the City, the amount of such insurance shall not be less than the total contract price.

f. **Subcontracts.** In case any or all of this work is sublet, the Contractor shall require the subcontractor to procure and maintain all insurance required in subparagraphs (a), (b) and (c) hereof and in like amounts. Contractor shall require any and all subcontractors with whom it enters into a contract to perform work on this project to protect the City of Joplin through insurance against applicable hazards or risks and shall, upon request of the City, provide evidence of such insurance.

g. **Notice.** The Contractor and/or subcontractor shall furnish the City prior to beginning the work, the policy as specified in subparagraph (d), and satisfactory proof of carriage of all the insurance required by this contract, with the provision that policies shall not be canceled, modified or non-renewed without thirty (30) days written notice to the City of Joplin.

h. **Legislative or Judicial Changes.** In the event the scope or extent of the City's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo is broadened or increased during the term of this agreement by legislative or judicial action, the City may require Contractor, upon 10 days written notice, to execute a contract addendum whereby the Contractor agrees to provide, at a price not exceeding Contractor's actual increased premium cost, additional liability insurance coverage as the City may require to protect the City from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

5. **Performance, Labor, and Materials Payment Bond:** The Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the City and on the forms approved by the City, each bond shall be in the amount of **Two Million Two Hundred Forty Three Thousand Four Hundred Seventy Four and 75/100 ($2,243,474.75)** dollars conditioned upon the full and faithful performance of all major terms and conditions of this contract and payment of all labor and material suppliers. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bond(s) hereto attached for its faithful performance and payment of labor and material suppliers, the City shall deem the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the City to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event no further payment to the Contractor shall be deemed to be due under this contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the City. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds $25,000.00 must be listed in United States Treasury Circular 570.

6. **Certification Regarding Disbarment, Eligibility, Indictments, Convictions or Civil Judgements for all Federal Aid Projects**: By signing and submitting the bid, the president or authorized official of the bidder, under penalty of perjury under the laws of the USA, shall certify that, except as noted in the exceptions, the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor or any position involving the administration of this project:

a. Is not currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency.

b. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years.

c. Does not have a proposed debarment or suspension pending.

d. Has not been indicted, convicted or had a civil judgment rendered against any of the listed parties by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

e. Has not been in breach of contract with the City of Joplin within the last two years.

**6.1** If there are any exceptions, the bidder shall submit the exceptions on company letterhead, signed by the bidder and inserted inside the bid submitted. Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, the bidder shall indicate to whom it applies, the initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

**6.2** By signing the contract, the contractor shall further certify that all related subcontracts of $25,000 shall comply with this requirement. This includes all subcontractors, material suppliers and vendors.

7. **Debarment and Suspension (Executive Orders 12549 and 12689)**—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 2 CFR §2424 (government debarment and suspension regulations) or by the City of Joplin.

8. **Contractor's Responsibility for Subcontractors.**

a. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs.

b. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract.

c. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City or between any subcontractors.

9. **General Independent Contractor Clause.** This agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri Revenue and Taxation laws, Missouri Workers' Compensation and Unemployment Insurance laws. The Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

10. **Personnel.** The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner. All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

11. **Changes.** The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

12. **Breach of Contract Terms.** Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

13. **Liquidated Damages.** Time of completion of work by the Contractor is of the essence. Should Contractor, or in the case of default, the surety, fail to complete the work within the time specified in the contract, or within such extra time as may be allowed in accordance with City of Joplin Standard Specifications, Division 0000, General Requirements and Provisions, Section 0400.19, Contractor (or surety) shall be liable to the City in the amount of $2,500 per day for each and every calendar day that the contract remains uncompleted after the time allowed for completion as liquidated damages, and not as a penalty, it being stipulated that actual damages to the City and the public arising from Contractor's failure to timely complete the work would be difficult, if not impossible, to ascertain. The amount assessed as liquidated damages may be withheld from any moneys otherwise due to Contractor from the City.

14. **Termination.** The City reserves the right to terminate this contract by giving at least five (5) days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly

skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the contract. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

15. **City's Right to Proceed.** In the event this contract is terminated pursuant to Paragraph 14, then the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

16. **Termination for Convenience of City**. The City shall have the right at any time by providing at least ten (10) days written notice to Contractor to terminate and cancel this contract, without cause, for the convenience of the City, and Contractor shall immediately stop work. In such event City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

17. **Guards and Lights**. The Contractor agrees that during the performance of said work, adequate barricades, guards and warning signs, lights or devices consistent with the requirements contained in the Manual on Uniform Traffic Control Devices shall be provided by Contractor during construction.

18. **Energy Efficiency.** The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

19. **Liability and Indemnity**.

    a. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this contract.

b. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

c. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law. The City can require additional documentation as needed to ensure that the appropriate wage rates are being paid in order to ensure compliance to all state and federal rules, regulations and statutes.

d. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

e. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

f. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its contract price. Contractor's obligation under this agreement to defend, indemnify, and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance required of the Contractor under this agreement.

g. The Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

h. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.

i. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.

j. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall

indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

20. **Copyright.** No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

21. **Architectural Barriers.** This Act requires that certain federally funded buildings or facilities be designed, constructed or altered to ensure accessibility to, and use by, physically handicapped persons. Buildings or facilities allocated or reallocated GLO-DR funds after December 11, 1995, that meet the definition of "residential structure" (as defined in 24 CFR 40.2) or the definition of "building" [as defined in 41 CFR 101-19.602(a)] are subject to the Architectural Barriers Act and must comply with the Uniform Federal Accessibility Standards.

22. **Payment for Labor and Materials.** The Contractor agrees and binds itself to pay for all labor done, and for all the materials used in the construction of the work to be completed pursuant to this contract.

23. **Payment.** The City will pay the Contractor in accordance with the rate set forth in the contract documents on file in the Public Works Department and by this reference made a part hereof, which shall constitute full and complete compensation for the Contractor's work provided hereunder. Such compensation will be paid in progress payments (less five (5) percent retainage), as established by the City, subject to receipt of a requisition for payment and a statement of work provided by the Contractor and agreement by both the City and the Contractor that the Contractor has fully performed the work to be paid for in such progress payments in conformance with the contract. If the City or the architect or engineer determines that a higher rate of retainage is required to ensure performance of the contract, the City may withhold up to ten (10) percent retainage until the work is fully completed and accepted by the City.

24. **Contract Documents.** The contract documents shall consist of the following:

    a. This Contract
    b. All Change Orders
    c. Bid Plans and Specifications
    d. City of Joplin Standard Specifications (February 1, 2017 Edition)
    e. Special Conditions
    f. Proposal
    g. Statement of Bidder's Qualifications
    h. Acknowledgment
    i. Performance Bond
    j. Payment and Material Bond
    k. Instructions to Bidders
    l. Non-collusion Affidavit
    m. Notice to Proceed
    n. Restriction on Lobbying
    o. Affidavit for Federal Work Authorization Program
    p. Certification Regarding Government-Wide Waiver and Release of Liens
    q. Certificate of Contractor

r. Subcontractor Disclosure Form
s. Affidavit of Compliance with Prevailing Wage Law
t. Certification of Bidder of Equal Employment Opportunity

**Notice to Contractors:** This contract, together with the other documents enumerated in this paragraph, forms the contract between the parties. These documents are as fully a part of the contract as if attached hereto or repeated herein. The Contractor agrees to perform all of the work described in the contract documents and to comply with the terms and conditions defined therein for a total sum of **Two Million Two Hundred Forty Three Thousand Four Hundred Seventy Four and 75/100 ($2,243,474.75)** dollars, said amount being subject to any approved addenda or change order.

25. **Subsurface Conditions**: Contractor agrees that information contained in the published reports and public actions of the Missouri Division of Geology and Land Survey shall be conclusive and binding upon the Contractor as to what subsurface conditions at the job site are reasonably anticipated or reasonably foreseeable.

26. **Flood Disaster Protection:** This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L.93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

27. **Environmental Compliance (24 CFR 85.36(i)(12)):** For contracts of amounts in excess of $150,000, the Contractor shall agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

    In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

    a. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.

    b. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports

and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

c. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.

d. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. **Procurement of Recovered Materials.** The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

29. **Lead Based Paint Poisoning Prevention Act.** Required the Secretary of Health, Education, and Welfare (now Health and Human Services) to prohibit lead-based paint in residential structures constructed or rehabilitated by the Federal government or with Federal assistance. Major components included: defining lead-based paint chips as the primary health hazard of lead-based paint, setting the level of lead in blood warranting concern at 60 µg/dL, requiring abatement standards that were less rigorous compared to today's standards, and Defining lead-based paint as paint containing more than 1 percent lead by weight.

30. **Contractor Conflict of Interest.** In accepting this contract, Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Joplin, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest, direct or indirect, in this contract. All applicable federal regulations and provisions of R.S.Mo. Section 105.450 et seq. shall not be violated.

    a. The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

31. **Assignment.** The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto, provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment

shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement.

32. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.

    a. The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

    b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

33. **Anti-Kickback Rules.** The Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that the Contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Contractor shall report all suspected or reported violations to the Federal awarding agency.

34. **Nondiscrimination.** The Contractor agrees in the performance of this contract not to discriminate on the grounds of race, creed, color, national origin or ancestry, sex, religion, handicap, gender identity, sexual orientation, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a)ii and 41 C.F.R. § 60-741.5(a), if applicable.

    a. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

    b. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

    c. No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

35. **Nonresident/Foreign Contractors.** The Contractor shall procure and maintain during the life of this contract:

    a. If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 R.S.Mo.

    b. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

36. **Notices.** All notices required or permitted hereinunder and required to be in writing may be given by FAX or by first class mail addressed to City and Contractor at the addresses shown above. The date of delivery of any notice given by mail shall be the date falling on the second full day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

37. **Statement that Project is Federally Funded:** It is understood that this contract is funded in whole or in part with CDBG-DR funds through the City of Joplin Community Development Block Grant Program as administered by HUD and is subject to those regulations and restrictions normally associated with federally-funded programs and any other requirements that the state may prescribe.

38. **Records and Audits.** The Contractor shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds. These records will be made available for audit purposes to the City or any authorized representative, and will be retained for three years after the final grant report is submitted by the City to HUD. The City of Joplin, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

    a. All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

39. **Federal Labor Standards Provisions.** The contractor shall comply with the Federal Labor Standards Provisions pursuant to the U.S. Department of Housing and Urban Development Form 4010 and the Office of Labor Relations.

40. **Equal Employment Opportunity**. During the performance of this Contract, the Contractor agrees as follows:

    a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be

limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

d. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section

204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States Government to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings (including Section 3 businesses).

i. Contractor shall ensure that the hours of minority and female employment and training must be substantially uniform throughout the length of the contract and throughout each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hour performed.

41. **Women and Minority Business:** The Contractor will use its best efforts to afford small businesses, minority business enterprises, women's business enterprises and veteran –owned businesses the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans and American Indians. The Sub recipient and/or borrower may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation. The contractor must demonstrate to the City of Joplin's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the City of Joplin contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

a. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development;

b. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;

c. The Contractor shall actively solicit and shall provide the City of Joplin with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media.

**42. Civil Rights Act of 1964.** Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**43. Civil Rights Act of 1968.** Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin.

**44. Section 3 of the Housing and Urban Development Act of 1968.**

a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

c. The Contractor agrees to send to each labor organization or representative of workers with which the Engineer has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

e. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected by before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part

135 require employment opportunities to be directed, were not filled to circumvent the Engineer's obligations under 24 CFR part 135.

f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

g. The Contractor shall assist the City of Joplin in obtaining all necessary documentation to support Section 3 goals. The Contractor will complete and submit the Section 3 tables in Attachment A in the Architect's required periodic reporting to the City. Frequently Asked Questions related to Section 3 are also included in Attachment A.

**45. Section 109(a) of the Housing and Community Development Act of 1974.** No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, shall also apply to any such program or activity.

**46. Section 110 of the Housing and Community Development Act of 1974**

a. All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a--276a-5): Provided, That this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40.

b. Subsection (a) of this section shall not apply to any individual that:

i. performs services for which the individual volunteered;
ii. does not receive compensation for such services; or
iii. is paid expenses, reasonable benefits, or a nominal fee for such services; and
iv. is not otherwise employed at any time in the construction work.

**47. Affirmative Action for Handicapped Workers (Section 503 of the Rehabilitation Act of 1973 (USC793))**

a. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and to otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices, such as employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

b. The Contractor agrees to comply with the rules, regulations, and relevant orders of

the Secretary of Labor issued pursuant to the Act.

c. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

d. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of the applicants and employees.

e. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by terms of Section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

f. The Contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

48. **Section 504 of the Rehabilitation Act of 1973**, as amended, provides for nondiscrimination of an otherwise qualified individual solely on the basis of his handicap in benefiting from any program or activity receiving Federal financial assistance. All recipients must certify to compliance with all provisions of this Section.

49. **Age Discrimination Act of 1975.** No person in the United States, on the basis of age, be excluded from participation in, be denied benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

50. **Authorized Employees.** Contractor acknowledges that Section285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Contractor therefore covenants that is not knowingly in violation of subsection 1 or Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully to work in the United States.

51. **Interest of Contractor and Employees.** The Contractor covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed.

52. **City of Joplin Conflict of Interest.**

a. No member of the governing body of the City and no other officer, employee, agent of the City and no other public official of the locality while employed or for one year thereafter, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract,

and the Contractor shall take appropriate steps to assure compliance.

b. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

53. **Affidavit for Contracts Over $5,000.00.** That pursuant to Missouri Revised Statute Sections 285.525 through 285.550, if this contract exceeds the amount of $5,000.00 and Contractor is associated with a business entity, Contractor shall provide an acceptable notarized affidavit stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, Contractor must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

54. **City Benefits.** The Contractor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

55. **Inspection.** The authorized representative and agents of the City of Joplin and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

56. **Reporting Requirements.** The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

57. **Occupational License.** The Contractor shall obtain and maintain an occupational license with the City of Joplin, Missouri, if required by city code and any required state or federal license. The cost for this occupational license shall be borne by the Contractor. No contract will be executed by the City until this occupational license has been obtained and that the Contractor is current on any City taxes is verified.

58. **Safety Training.** Pursuant to Missouri Revised Statute Section 292.675, Contractors and subcontractors who sign a contract to work on public works projects must provide a 10-hour OSHA construction safety program, or similar program approved by the Department of Labor and Industrial Relations, to be completed by their on-site employees within sixty (60) days of beginning work on the construction project. Contractors and subcontractors in violation of this provision will forfeit to the public body $2,500 plus $100 a day for each employee who is employed without training. Public bodies and contractors may withhold/assess these penalties from the payment due to those contractors and subcontractors if found to be in non-compliance.

59. **Compliance with Laws.** Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by Contractor is current.

    a. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

60. **Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

61. **Remedies.** Except as may be otherwise found in the contract documents, all claims, disputes, counter-claims, and other matters in question between the Owner and Contractor arising out of or related to this agreement or the breech thereof, will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the state in which the Owner is located.

62. **Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be adjudicated, venue shall be proper only in the Circuit Court of Jasper County, Missouri.

**IN WITNESS WHEREOF,** the parties hereto have set their hands and seals on the day and year herein stated.

**CONTRACTOR:** Bennett Inc.
103 NE 15th Ln
Lamar, MO 64759

By: Sheri L. McWilliams
Printed Name: SHERI L. McWILLIAMS
Title: PRESIDENT
Date: 4/10/18

**CERTIFICATE OF DIRECTOR OF FINANCE**

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefore.

Leslie Haase
Leslie Haase, Director of Finance

**APPROVED AS TO FORM**

Peter Edwards, City Attorney

**CITY OF JOPLIN, MISSOURI**

By: David W. Hertzberg
David Hertzberg, P.E.
Public Works Director

Date: 4/24/2018

**APPROVED AS TO CDBG-DR**

Troy Bolander, Director of Planning, Development & Neighborhood Services

Duplicate Original (4)

Bond No. NMO3135

**CONTRACTOR'S BOND NO.**
**FOR CITY CONTRACTS**

## Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS: That
Bennett, Inc.
{Contractor Name}

of 103 NE 15th Lane, Lamar, MO 64759,

a Corporation, hereinafter called Principal, and

Merchants National Bonding, Inc.
(Name of Surety)

PO Box 14498, Des Moines, IA 50306-3498
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

THE CITY OF JOPLIN, MISSOURI
602 S. MAIN STREET, JOPLIN, MO 64801

hereinafter called OWNER, in the total aggregate penal sum of *~~{total aggregate penal sum in performance bond spelled out}~~ AND ~~{total aggregate penal sum in performance bond $XXX.00}~~ in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. *Two Million Two Hundred Forty Three Thousand Four Hundred Seventy Four & 75/100 Dollars ($2,243,474.75)

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the 10th day of April, 20 18, a copy of which is hereto attached and made a part hereof for the construction of:

STORMWATER DRAINAGE AND STREET INFRASTRUCTURE IMPROVEMENTS
YELLOW AREA

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, or any extensions thereof, which may be granted by the OWNER, with or with-out notice to the SURETY and during the one year guaranty period and if the PRINCIPAL shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended

automatically and immediately, without formal and separate amendments hereto, upon amendment of the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the CONTRACT as so amended. The term "Amendment", wherever used in this BOND, and whether referring to this BOND, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and PRINCIPAL shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The OWNER are the only beneficiaries hereunder.

IN WITNESS, this instrument is executed in 4 ( ) counterparts, each one of which shall be deemed an original, whereof, this the 11th day of April, 2018.

ATTEST: (SEAL)

Secretary

Approved as to form this 25th day of April, 2018.

City Attorney

Bennett, Inc.

Principal

By Sheri L. McWilliams
SHERI L. McWILLIAMS

By

ATTEST: (SEAL)

Amy Nordaune ~~Secretary~~ Account Specialist

Merchants National Bonding, inc.

Surety

Approved this 24th day of April, 2018.

Director of Finance

By Ronald Kaihoi
Ronald Kaihoi

By Attorney-in-Fact
(Title)

NOTE: Date of BOND must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners should execute BOND.
IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

**CONTRACTOR'S BOND NO.**
**FOR CITY CONTRACTS**

## Payment Bond

KNOW ALL MEN BY THESE PRESENTS: That
Bennett, Inc.
{CONTRACTOR NAME}
of 103 NE 15th Lane, Lamar, MO 64759
a Corporation, hereinafter called Principal, and

Merchants National Bonding, Inc.
(Name of Surety)

hereinafter called Surety, are held and firmly bound unto

THE CITY OF JOPLIN, MISSOURI
602 S. MAIN STREET, JOPLIN, MO 64801

hereinafter called OWNER, and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum ~~{total aggregate penal sum in payment bond spelled out} ({total aggregate penal sum in payment bond $XXX.00})~~ in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
(Two Million Two Hundred Forty Three Thousand Four Hundred Seventy Four & 75/100 Dollars ($2,243,474.75)

THE CONDITION OF THIS OBLIGATION is such that whereas, the principal entered into a certain contract with the OWNER, dated the 10th day of April, 20 18, a copy of which is hereto attached and made a part hereof for the construction of:

STORMWATER DRAINAGE AND STREET INFRASTRUCTURE IMPROVEMENTS
YELLOW AREA

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extensions or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal or coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, all insurance premiums on said work, and for all labor cost incurred in such WORK including the stipulation in said contract requiring the payment of not less than the prevailing hourly rate of wages as found by the Department of Labor and Industrial Relations of the State of Missouri or by final judicial determination of the Courts of the State of Missouri, including that by a SUBCONTRACTOR, and to any mechanic or material man lien holder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, any persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect

its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no suit or action shall be commended hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the PRINCIPAL, shall have given written notice to any two of the following: The PRINCIPAL, the OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER, or SURETY, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need to be made by a public officer. (b) After the expiration of one (1) year following the date of which PRINCIPAL ceased work on said CONTRACT, it being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction thereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the contract or the loan documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The OWNER are the only beneficiaries hereunder.

IN WITNESS, this instrument is executed in 4 ( ) counterparts, each one of which shall be deemed an original whereof, this the 11th day of April, 2018.

ATTEST: (SEAL)

Secretary

Bennett, Inc.
Principal

By Sheri L. McWilliams
SHERI L. MCWILLIAMS

By _____

Approved as to form this 25th day of April, 2018.

City Attorney

ATTEST: (SEAL)

Amy Nordaune Secretary Account Specialist

Merchants National Bonding, Inc.
Surety

Approved this 24th day of April, 2018.

By Ronald Kaihoi
Ronald Kaihoi

Leslie Haase
Director of Finance

By Attorney-in-Fact
(Title)

NOTE: Date of BOND must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

## ACKNOWLEDGMENT OF PRINCIPAL (Individual)

State of _____ }
County of _____ }

On this _____ day of _____, in the year _____, before me personally comes _____, to me known and known to me to be the person who is described in and executed the foregoing instrument, and acknowledges to me that he/she executed the same.

_____
Notary Public

## ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

State of _____ }
County of _____ }

On this _____ day of _____, in the year _____, before me personally come(s) _____, a member of the co-partnership of _____, to me known and known to me to be the person who is described in and executed the foregoing instrument, and acknowledges to me that he/she executed the same as the act and deed of the said co-partnership.

_____
Notary Public

## ACKNOWLEDGMENT OF PRINCIPAL (Corporation/LLC)

State of Missouri }
County of Barton }

On this 11th day of April, in the year 2018, before me personally come(s) Sheri McWilliams, to me known, who being duly sworn, deposes and says that he/she resides in the City of Jasper that he/she is the President of the Bennett, Inc., the corporation described in and which executed the foregoing instrument, and that he/she signed his/her name thereto by like order.

CHLOE ANNE TALLY
Comm. Exp. July, 06, 2021
NOTARY PUBLIC NOTARY SEAL
# 17390262
Barton County
STATE OF MISSOURI

Chloe anne Tally
Notary Public

Bond Number NMO3135

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,

Jack Anderson; Ronald Kaihoi

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

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of MerchantsNational 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 aut hority 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 25th day of July , 2017 .

MERCHANTS NATIONAL BONDING, INC. INCORPORATED -o- 2003

MERCHANTS BONDING COMPANY (MUTUAL) INCORPORATED -o- 1933

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

By Larry Taylor
*President*

STATE OF IOWA
COUNTY OF DALLAS ss.
On this this 25th day of July 2017 , 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.

NOTARIAL SEAL IOWA

**ALICIA K. GRAM**
Commission Number 767430
My Commission Expires
April 1, 2020

Alicia K. Gram
*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 11th day of April ,2018 .

MERCHANTS NATIONAL BONDING, INC. INCORPORATED -o- 2003

MERCHANTS BONDING COMPANY (MUTUAL) INCORPORATED -o- 1933

William Warner Jr.
*Secretary*

POA 0018 (3/17)

# ACKNOWLEDGEMENT OF SURETY

STATE OF MINNESOTA

COUNTY OF CHIPPEWA

On this 11th day of April , 2018 , before me, a Notary Public within and for said County, personally appeared **Ronald Kaihoi** to me personally known, who being by me duly sworn he/she did say that he/she is the attorney-in-fact of **Merchants National Bonding, Inc.** , the corporation named in the foregoing instrument, and the seal affixed to said instrument is the corporation seal of said corporation, and sealed on behalf of said corporation by authority of its Board of Directors and said **Ronald Kaihoi** acknowledged said instrument to be the free act and deed of said corporation.

Leanne C. Duis

***NOTARY PUBLIC***

My Commission Expires

1/31/2023

LEANNE C. DUIS
Notary Public-Minnesota
My Commission Expires Jan 31, 2023

ACORD®

# INSURANCE BINDER

DATE (MM/DD/YYYY): 4/17/2018

**THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON PAGE 2 OF THIS FORM.**

| | |
|---|---|
| AGENCY<br>Beimdiek Insurance Agency, Inc.<br>303 W Third Street<br>PO Box 612<br>Carthage MO 64836 | COMPANY<br>ADDISON FARMERS<br>BINDER #<br>B1841705737 |
| PHONE (A/C, No, Ext): (417) 358-4007 FAX (A/C, No): (417) 358-4052 | EFFECTIVE DATE: 4/18/2018 TIME: 12:01 X AM / PM<br>EXPIRATION DATE: 5/18/2018 TIME: X 12:01 AM / NOON |
| CODE: 08-0366 SUB CODE: | ☐ THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY<br>PER EXPIRING POLICY #: 20323362 |
| AGENCY CUSTOMER ID: 00001813 | DESCRIPTION OF OPERATIONS / VEHICLES / PROPERTY (Including Location) |
| INSURED AND MAILING ADDRESS<br>City of Joplin<br>602 S Main St<br>Joplin MO 64801 | SW Quadrant of City Limits (Yellow Area)<br>Joplin, MO 64804 |

## COVERAGES

| TYPE OF INSURANCE | COVERAGE / FORMS | LIMITS: DEDUCTIBLE | COINS % | AMOUNT |
|---|---|---|---|---|
| PROPERTY — CAUSES OF LOSS: ☐ BASIC ☐ BROAD ☐ SPEC | | | | |
| GENERAL LIABILITY | Policy Effective 04/18/2018 at 12:01 a.m.<br>Policy Expiration 04/18/2019 at 12:01 a.m. | EACH OCCURRENCE | | $ 3,000,000 |
| ☐ COMMERCIAL GENERAL LIABILITY | | DAMAGE TO RENTED PREMISES | | $ |
| ☐ CLAIMS MADE ☒ OCCUR | | MED EXP (Any one person) | | $ |
| ☒ Owner's and Contractor's Protective Liability | | PERSONAL & ADV INJURY | | $ |
| | | GENERAL AGGREGATE | | $ 3,000,000 |
| | RETRO DATE FOR CLAIMS MADE: | PRODUCTS - COMP/OP AGG | | $ |
| VEHICLE LIABILITY | | COMBINED SINGLE LIMIT | | $ |
| ☐ ANY AUTO | | BODILY INJURY (Per person) | | $ |
| ☐ ALL OWNED AUTOS | | BODILY INJURY (Per accident) | | $ |
| ☐ SCHEDULED AUTOS | | PROPERTY DAMAGE | | $ |
| ☐ HIRED AUTOS | | MEDICAL PAYMENTS | | $ |
| ☐ NON-OWNED AUTOS | | PERSONAL INJURY PROT | | $ |
| | | UNINSURED MOTORIST | | $ |
| | | | | $ |
| VEHICLE PHYSICAL DAMAGE DED | ☐ ALL VEHICLES ☐ SCHEDULED VEHICLES | ☐ ACTUAL CASH VALUE | | |
| ☐ COLLISION: | | ☐ STATED AMOUNT | | $ |
| ☐ OTHER THAN COL: | | | | |
| GARAGE LIABILITY | | AUTO ONLY - EA ACCIDENT | | $ |
| ☐ ANY AUTO | | OTHER THAN AUTO ONLY: | | |
| | | EACH ACCIDENT | | $ |
| | | AGGREGATE | | $ |
| EXCESS LIABILITY | | EACH OCCURRENCE | | $ |
| ☐ UMBRELLA FORM | | AGGREGATE | | $ |
| ☐ OTHER THAN UMBRELLA FORM | RETRO DATE FOR CLAIMS MADE: | SELF-INSURED RETENTION | | $ |
| WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY | | ☐ PER STATUTE | | |
| | | E.L. EACH ACCIDENT | | $ |
| | | E.L. DISEASE - EA EMPLOYEE | | $ |
| | | E.L. DISEASE - POLICY LIMIT | | $ |
| SPECIAL CONDITIONS / OTHER COVERAGES: Includes Waiver of Governmental Immunity Endorsement | | FEES | | $ |
| | | TAXES | | $ |
| | | ESTIMATED TOTAL PREMIUM | | $ 2,880.00 |

## NAME & ADDRESS

Bennet Inc
103 NE 15th Ln
Lamar, MO 64759

☐ MORTGAGEE ☐ ADDITIONAL INSURED
☐ LOSS PAYEE

LOAN #:

AUTHORIZED REPRESENTATIVE

Tina Osborne/TDO

G Stephen Beimdiek / tdo


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AGENCY CUSTOMER ID: _____

# CONDITIONS

This Company binds the kind(s) of insurance stipulated on page 1 of this form. The Insurance is subject to the terms, conditions and limitations of the policy(ies) in current use by the Company.

This binder may be cancelled by the Insured by surrender of this binder or by written notice to the Company stating when cancellation will be effective. This binder may be cancelled by the Company by notice to the Insured in accordance with the policy conditions. This binder is cancelled when replaced by a policy. If this binder is not replaced by a policy, the Company is entitled to charge a premium for the binder according to the Rules and Rates in use by the Company.

## Applicable in Arizona

Binders are effective for no more than ninety (90) days.

## Applicable in California

When this form is used to provide insurance in the amount of one million dollars ($1,000,000) or more, the title of the form is changed from "Insurance Binder" to "Cover Note".

## Applicable in Colorado

With respect to binders issued to renters of residential premises, home owners, condo unit owners and mobile home owners, the insurer has thirty (30) business days, commencing from the effective date of coverage, to evaluate the issuance of the insurance policy.

## Applicable in Delaware

The mortgagee or Obligee of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by an authorized insurer or its agent if the binder includes or is accompanied by: the name and address of the borrower; the name and address of the lender as loss payee; a description of the insured real property; a provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least ten (10) days prior to the cancellation; except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt of the full amount of the applicable premium, and the amount of insurance coverage.

Chapter 21 Title 25 Paragraph 2119

## Applicable in Florida

Except for Auto Insurance coverage, no notice of cancellation or nonrenewal of a binder is required unless the duration of the binder exceeds 60 days. For auto insurance, the insurer must give 5 days prior notice, unless the binder is replaced by a policy or another binder in the same company.

## Applicable in Maryland

The insurer has 45 business days, commencing from the effective date of coverage to confirm eligibility for coverage under the insurance policy.

## Applicable in Michigan

The policy may be cancelled at any time at the request of the insured.

## Applicable in Nevada

Any person who refuses to accept a binder which provides coverage of less than $1,000,000.00 when proof is required: (A) Shall be fined not more than $500.00, and (B) is liable to the party presenting the binder as proof of insurance for actual damages sustained therefrom.

## Applicable in Oklahoma

All policies shall expire at 12:01 a.m. standard time on the expiration date stated in the policy.

## Applicable in Oregon

Binders are effective for no more than ninety (90) days. A binder extension or renewal beyond such 90 days would require the written approval by the Director of the Department of Consumer and Business Services.

## Applicable in the Virgin Islands

This binder is effective for only ninety (90) days. Within thirty (30) days of receipt of this binder, you should request an insurance policy or certificate (if applicable) from your agent and/or insurance company.

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/13/2018

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).

| | |
|---|---|
| PRODUCER<br>Beimdiek Insurance Agency, Inc.<br>303 W Third Street<br>PO Box 612<br>Carthage MO 64836 | CONTACT NAME: Tina Osborne<br>PHONE (A/C, No, Ext): (417)358-4007 FAX (A/C, No): (417)358-4052<br>E-MAIL ADDRESS: tina.osborne@beimdiek.com |
| INSURED<br>BENNETT INC<br>103 NE 15TH LN<br>LAMAR MO 64759-8121 | INSURER(S) AFFORDING COVERAGE — NAIC #<br>INSURER A : United Fire & Casualty Company — 13021<br>INSURER B : American Interstate Ins Co — 31895<br>INSURER C :<br>INSURER D :<br>INSURER E :<br>INSURER F : |

COVERAGES CERTIFICATE NUMBER: 18 Mstr AL,GL,Umb,WC 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 | [X] COMMERCIAL GENERAL LIABILITY<br>[ ] CLAIMS-MADE [X] OCCUR<br>[X] Blanket AI, WOS<br>[X] Comp Ops<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>[ ] POLICY [X] PRO-JECT [ ] LOC<br>[ ] OTHER: | | | 60486804 | 01/27/2018 | 01/27/2019 | EACH OCCURRENCE<br>DAMAGE TO RENTED PREMISES (Ea occurrence)<br>MED EXP (Any one person)<br>PERSONAL & ADV INJURY<br>GENERAL AGGREGATE<br>PRODUCTS - COMP/OP AGG<br>$ | $ 1,000,000<br>$ 500,000<br>$ 5,000<br>$ 1,000,000<br>$ 2,000,000<br>$ 2,000,000<br>$ |
| A | AUTOMOBILE LIABILITY<br>[X] ANY AUTO<br>[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS<br>[X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY | | | 60486804 | 01/27/2018 | 01/27/2019 | COMBINED SINGLE LIMIT (Ea accident)<br>BODILY INJURY (Per person)<br>BODILY INJURY (Per accident)<br>PROPERTY DAMAGE (Per accident)<br>Uninsured motorist | $ 1,000,000<br>$<br>$<br>$<br>$ 1,000,000 |
| A | [X] UMBRELLA LIAB [X] OCCUR<br>[ ] EXCESS LIAB [ ] CLAIMS-MADE<br>[ ] DED [ ] RETENTION $ | | | 60486804 | 01/27/2018 | 01/27/2019 | EACH OCCURRENCE<br>AGGREGATE<br>$ | $ 6,000,000<br>$ 6,000,000<br>$ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N]<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | | AVWCMO2669792018 | 01/27/2018 | 01/27/2019 | [X] PER STATUTE [ ] OTH-ER<br>E.L. EACH ACCIDENT<br>E.L. DISEASE - EA EMPLOYEE<br>E.L. DISEASE - POLICY LIMIT | <br>$ 1,000,000<br>$ 1,000,000<br>$ 1,000,000 |

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

Included: CG2414 - Waiver of Governmental Immunity Form; Extended Ultra Liability Plus Endt (CG7201 07/17) includes Blanket Completed Operations, Blanket Additional Insured, Blanket Waiver of Subrogation and Per Project Limit when required in a written contract; Business Auto Ultra Endt (CA7109 01/17) includes Blanket Additional Insured when required in a written contract.

CERTIFICATE HOLDER

City of Joplin
602 Main Street
Joplin MO 64801

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

G Stephen Beimdiek / tdo

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

# BUSINESS AUTO ULTRA ENDORSEMENT

This endorsement modifies insurance provided under the following:
BUSINESS AUTO COVERAGE FORM
COMMON POLICY CONDITIONS

**COVERAGE INDEX**


| DESCRIPTION | PAGE |
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| Temporary Substitute Auto Physical Damage | 2 |
| Broad Form Insured | 2 |
| Employee as Insureds | 2 |
| Additional Insured Status by Contract, Agreement or Permit | 2 |
| Bail Bond Coverage | 3 |
| Loss of Earnings Coverage | 3 |
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| Towing and Labor | 3 |
| Physical Damage Additional Transportation Expense Coverage | 3 |
| Extra Expense - Theft | 3 |
| Rental Reimbursement and Additional Transportation Expense | 4 |
| Personal Effects Coverage | 4 |
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| Vehicle Wrap Coverage | 5 |
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| Amended Duties in the Event of Accident, Claim, Suit or Loss | 6 |
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| Extended Cancellation Condition | 7 |


The COVERAGE INDEX set forth above is informational only and grants no coverage.
Terms set forth in ***(Bold Italics)*** are likewise for information only and by themselves shall be deemed to grant no coverage.

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*(Temporary Substitute Auto Physical Damage)*

**A. TEMPORARY SUBSTITUTE AUTO PHYSICAL DAMAGE**

**SECTION I – COVERED AUTOS, paragraph C. Certain Trailers, Mobile Equipment and Temporary Substitute Autos is amended by adding the following at the end of the existing language:**

If Physical Damage Coverage is provided under this Coverage form for an "auto" you own, the Physical Damage coverages provided for that owned "auto" are extended to any "auto" you do not own while used with the permission of its owner as a temporary substitute for the covered "auto" you own that is out of service because of its breakdown, repair, servicing, "loss", or destruction

**B. BROADENED LIABILITY COVERAGES**

**SECTION II – LIABILITY COVERAGE** in Paragraph **A. Coverage** at **1. Who Is An Insured** is amended to include the following:

*(Broad Form Insured)*

**d.** Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.

**e.** Any organization that is acquired or formed by you, during the term of this policy and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:

**(1)** That is a joint venture or partnership,

**(2)** That is an "insured" under any other policy,

**(3)** That has exhausted its Limits of Insurance under any other policy, or

**(4)** 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation

Coverage does not apply to "bodily injury" or "property damage" that results from an accident that occurred before you formed or acquired the organization.

*(Employee as Insureds)*

**f.** Any employee of yours while acting in the course of your business or your personal affairs while using a covered "auto" you do not own, hire or borrow.

*(Additional Insured Status by Contract, Agreement or Permit)*

**g.** Any person or organization whom you are required to add as an additional insured on this policy under a written contract or agreement; but the written contract or agreement must be:

**(1)** Currently in effect or becoming effective during the term of this policy; and

**(2)** Executed prior to the "bodily injury" or "property damage."

The additional insured status will apply only with respect to your liability for "bodily injury" or "property damage" which may be imputed to that person(s) or organization(s) directly arising out of the ownership, maintenance or use of the covered "autos" at the location(s) designated, if any.

Coverage provided by this endorsement will not exceed the limits of liability required by the written contract or written agreement even if the limits of liability stated in the policy exceed those limits. This endorsement shall not increase the limits stated in **Section II. C. Limits of Insurance.**

For any covered "auto" you own this Coverage Form provides primary coverage.

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**C. BROADENED SUPPLEMENTARY PAYMENTS**

**SECTION II. LIABILITY A. Coverage 2. Coverage Extensions a. Supplementary Payments (2)** and **(4)** are replaced by the following:

***(Bail Bond Coverage)***

**(2)** Up to $5,000 for cost of bail bonds (including bonds for related traffic violations) required because of an "accident" we cover. We do not have to furnish these bonds.

***(Loss of Earnings Coverage)***

**(4)** All reasonable expenses incurred by the "insured" at our request, including actual loss of earning up to $500 a day because of time off from work.

***(Amended Fellow Employee Exclusion)***

**D. AMENDED FELLOW EMPLOYEE EXCLUSION**

Only with respect to your "employees" who occupy positions which are supervisory in nature, **SECTION II. LIABILITY B. Exclusion 5. Fellow Employee** is replaced by:

**5. Fellow Employee**

"Bodily Injury":

**a.** To you, or your partners or members (if you are a partnership or joint venture), or to your members (if you are a limited liability company);

**b.** To your "executive officers" and directors (if you are an organization other than a partnership, joint venture, or limited liability company) but only with respect to performance of their duties as your officers or directors;

**c.** For which there is an obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph a and b above; or

**d.** Arising out of his or her providing or failing to provide professional health care services.

For purposes of this endorsement, a position is deemed to be supervisory in nature if that person performs principle work which is substantially different from that of his or her subordinates and has authority to hire, transfer, direct, discipline or discharge.

**E. BROADENED PHYSICAL DAMAGE COVERAGES**

**SECTION III – PHYSICAL DAMAGE COVERAGE A. Coverage** is amended as follows:

***(Towing and Labor)***

**2. Towing** is deleted and replaced with the following:

**2. Towing and Labor**

We will pay towing and labor costs incurred, up to the limits shown below, each time a covered "auto" is disabled:

**a.** For private passenger type vehicles we will pay up to $100 per disablement.

**b.** For all other covered "auto's" we will pay up to $500 per disablement

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

***(Physical Damage Additional Transportation Expense Coverage)***

**4. Coverage Extensions**

**a. Transportation Expenses** is amended to provide the following limits:

We will pay up to $60 per day to a maximum of $1,800. All other terms and provisions of this section remain applicable.

The following language is added to **4. Coverage Extensions:**

***(Extra Expense – Theft)***

**c. Theft Recovery Expense**

If you have purchased Comprehensive Coverage on an "auto" that is stolen, we will pay the expense of returning that stolen auto to you. The limit for this coverage extension is $5,000.

*(Rental Reimbursement and Additional Transportation Expense)*

**d. Rental Reimbursement**

We will provide Rental Reimbursement and Additional Expense coverage only for those Physical Damage coverages for which a premium is shown in the Declarations or schedule pages. Coverage applies only to a covered "auto".

(1) We will pay for auto rental expense and the expense incurred by you because of "loss" to remove and transfer your materials and equipment from a covered "auto" to a covered "auto." Payment applies in addition to the otherwise applicable coverage you have on a covered "auto." No deductible applies to this coverage.

(2) We will pay only for expenses incurred during the policy period and 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." If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you, or

(b) 30 days.

(3) Our payment is limited to the lesser of the following amounts:

(a) Necessary and actual expenses incurred; or

(b) $75 per day.

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

(d) If "loss" results from the total theft of a covered "auto" of the private passenger or light truck type, we will pay under this coverage only that amount of your rental reimbursement expense which is not already provided for under the **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions, a. Transportation Expenses.**

*(Personal Effects Coverage)*

**e. Personal Effects**

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to $500 for Personal Effects stolen with the "auto". The insurance provided under this provision is excess over any other collectible insurance. For this coverage extension, Personal Effects means tangible property that is worn or carried by an "insured".

*(Personal Property of Others)*

**f. Personal Property of Others**

We will pay up to $500 for loss to personal property of others in or on your covered "auto." This coverage applies only in the event of "loss" to your covered "auto" caused by fire, lightning, explosion, theft, mischief or vandalism, the covered "auto's" collision with another object, or the covered "auto's" overturn. No deductibles apply to this coverage.

*(Locksmith Coverage)*

**g. Locksmith Coverage**

We will pay up to $250 per occurrence for necessary locksmith services for keys locked inside a covered private passenger "auto". The deductible is waived for these services.





*(Vehicle Wrap Coverage)*

**h. Vehicle Wrap Coverage**

If you have Comprehensive or Collision coverage on an "auto" that is a total loss, in addition to the actual cash value of the "auto", we will pay up to $1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage for any one "loss" is $5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

*(Airbag Accidental Discharge)*

**F. SECTION III – PHYSICAL DAMAGE COVERAGE, B. Exclusions** is amended at **3.** to include the following language:

If you have purchased Comprehensive or Collision Coverage under this policy, this exclusion does not apply to mechanical breakdown relating to the accidental discharge of an air bag. This coverage applies only to a covered auto you own and is excess of any other collectible insurance or warranty. No deductible applies to this coverage.

**G. BROADENED LIMITS OF INSURANCE**

*(Audio, Visual and Data Electronic Equipment Coverage)*

**SECTION III – PHYSICAL DAMAGE COVERAGE – C. Limit of Insurance** at **1.b.** is amended to provide the following limits:

**b.** Limits of $1,000 per "loss" is increased to $5,000 per "loss". All other terms and provisions of this section remain applicable.

*(Auto Loan/Lease Total Loss Protection)*

**SECTION III – PHYSICAL DAMAGE COVERAGE – C. Limit of Insurance** is amended by adding the following language:

**4.** In the event of a total "loss" to a covered "auto" shown in the Schedule pages, subject at the time of the "loss" to a loan or lease, we will pay any unpaid amount due including up to a maximum of $500 for early termination fees or penalties on the lease or loan for a covered"auto" less:

**a.** The amount paid under the Physical Damage Coverage Section of the policy; and

**b.** Any;

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

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

**(3)** Security deposits not returned by the lessor;

**(4)** Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

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

*(Glass Repair – Deductible Amendment)*

**H. GLASS REPAIR – DEDUCTIBLE**

**SECTION III – PHYSICAL DAMAGE COVERAGE – D. Deductible** is amended by adding the following:

Any deductible shown in the Declarations as applicable to the covered "auto" will not apply to glass breakage if the damaged glass is repaired, rather than replaced.

*(Amended Duties in the Event of Accident, Claim, Suit or Loss)*

**I. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

Under **SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions**, the following is added to paragraph **2. Duties In The Event of Accident, Suit or Loss:**

**d.** Knowledge of any "accident", "claim", "suit" or "loss" will be deemed knowledge by you when notice of such "accident", "claim", "suit" or "loss" has been received by:

**(1)** You, if you are an individual;

**(2)** Any partner or insurance manager if you are a partnership;

**(3)** An executive officer or insurance manager, if you are a corporation;

**(4)** Your members, managers or insurance manager, if you are a limited liability company; or

**(5)** Your officials, trustees, board members or insurance manager, if you are a not-for-profit organization.

*(Waiver of Subrogation by Contract)*

**J. WAIVER OF SUBROGATION REQUIRED BY CONTRACT**

Under **SECTION IV, BUSINESS AUTO CONDITIONS, A. Loss Conditions 5. Transfer of Rights of Recovery Against Others to Us** the following language is added:

However, we waive any rights of recovery we may have against the person or organization with whom you have agreed in writing in a contract, agreement or permit, to provide insurance such as is afforded under the policy to which this endorsement is attached. This provision does not apply unless the written contract or written agreement has been executed, or permit has been issued, prior to the "bodily injury" or "property damage."

*(Unintentional Failure to Disclose)*

**K. UNINTENTIONAL FAILURE TO DISCLOSE**

**Under SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions**, the following is added to **2. Concealment, Misrepresentation Or Fraud:**

Your unintentional error in disclosing, or failing to disclose, any material fact existing at the effective date of this Coverage Form, or during the policy period in connection with any additional hazards, will not prejudice your rights under this Coverage Form.

*(Hired, Leased, Rented or Borrowed Auto Physical Damage)*

**L. HIRED, LEASED, RENTED OR BORROWED AUTO PHYSICAL DAMAGE**

**Under SECTION IV – BUSINESS AUTO CONDITIONS B. General Conditions 5. Other Insurance** Paragraph **5.b.** is replaced by the following:

**b.** **(1)** For "Comprehensive" and "Collision" Auto Physical Damage coverage provided by this endorsement, the following are deemed to be covered "autos" you own:

**(a)** Any Covered "auto" you lease, hire, rent or borrow; and

**(b)** Any Covered "auto" hired or rented by your "employee" under a contract in that individual "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"

**(2) Limit of Insurance For This Section**

The most we will pay for any one "loss" is the lesser of the following:

**(a)** $75,000 per accident, or

**(b)** actual cash value at the time of loss, or

**(c)** cost of repair.

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Minus a $500 deductible. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss. No deductible applies to "loss" caused by fire or lightning.

(3) This Hired Auto Physical Damage coverage is excess over any other collectible insurance.

(4) **Definitions For This Section**

(a) Comprehensive Coverage: from any cause except the covered "auto's" collision with another object or the covered "auto's" overturn. We will pay glass breakage, "loss" caused by hitting a bird or animal and, "loss" caused by falling objects or missiles.

(b) Collision Coverage: caused by the covered "auto's" collision with another object or by the covered "auto's" overturn.

***(Mental Anguish)***

**M. MENTAL ANGUISH**

Under **SECTION V – DEFINITIONS, C.** is replaced by the following:

**C.** "Bodily injury" means bodily injury, sickness or disease sustained by a person including mental anguish or death resulting from bodily injury, sickness, or disease.

***(Extended Cancellation Condition)***

**N. EXTENDED CANCELLATION CONDITION**

Under **CANCELLATION,** of the **COMMON POLICY CONDITIONS** form, item **2.b.** is replaced by the following:

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

## EXTENDED ULTRA LIABILITY PLUS ENDORSEMENT
## COMMERCIAL GENERAL LIABILITY EXTENSION ENDORSEMENT SUMMARY OF COVERAGES

**This is a summary of the various additional coverages and coverage modifications provided by this endorsement. No coverage is provided by this summary.**

* Extended Property Damage
* Expanded Fire Legal Liability to include Explosion, Lightning and Sprinkler Leakage
* Coverage for non-owned watercraft is extended to 51 feet in length
* Property Damage - Borrowed Equipment
* Property Damage Liability - Elevators
* Coverage D - Voluntary Property Damage Coverage
  $5,000 Occurrence with a $10,000 Aggregate
* Coverage E - Care, Custody and Control Property Damage Coverage
  $25,000 Occurrence with a $100,000 Aggregate - $500 Deductible
* Coverage F - Electronic Data Liability Coverage - $50,000
* Coverage G - Product Recall Expense
  $25,000 Each Recall Limit with a $50,000 Aggregate - $1,000 Deductible
* Coverage H - Water Damage Legal Liability - $25,000
* Coverage I - Designated Operations Covered by a Consolidated (Wrap-Up) Insurance Program - Limited Coverage
* Increase in Supplementary Payments: Bail Bonds to $1,000
* Increase in Supplementary Payments: Loss of Earnings to $500
* For newly formed or acquired organizations - extend the reporting requirement to 180 days
* Broadened Named Insured
* Automatic Additional Insured - Owners, Lessees or Contractors - Automatic Status When Required in Construction Agreement With You – Including Upstream Parties
* Contractors Blanket Additional Insured - Products - Completed Operations Coverage – Including Upstream Parties
* Automatic Additional Insured - Vendors
* Automatic Additional Insured- Lessor of Leased Equipment Automatic Status When Required in Lease Agreement With You
* Automatic Additional Insured - Managers or Lessor of Premises
* Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured
* Additional Insured - State or Governmental Agency or Subdivision or Political Subdivision - Permits or Authorizations
* Additional Insured - Consolidated Insurance Program (Wrap-Up) Off-Premises Operations Only - Owners, Lessees or Contractors Automatic Status When Required in Construction Agreement With You
* Additional Insured - Employee Injury to Another Employee
* Automatically Included - Aggregate Limits of Insurance (per location)
* Automatically Included - Aggregate Limits of Insurance (per project)
* Knowledge of occurrence - Knowledge of an "occurrence", "claim or suit" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee
* Blanket Waiver of Subrogation
* Liberalization Condition
* Unintentional failure to disclose all hazards. If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.
* "Insured Contract" redefined for Limited Railroad Contractual Liability
* Mobile equipment to include snow removal, road maintenance and street cleaning equipment less than 1,000 lbs GVW
* Bodily Injury Redefined

**REFER TO THE ACTUAL ENDORSEMENT FOLLOWING ON PAGES 2 THROUGH 13 FOR CHANGES AFFECTING YOUR INSURANCE PROTECTION**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# EXTENDED ULTRA LIABILITY PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

## SECTION I - COVERAGES

A. The following changes are made at **COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

1. **Extended Property Damage**

   At **2. Exclusions** exclusion **a. Expected or Intended Injury** is replaced with the following:

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

2. **Expanded Fire Legal Liability**

   At **2. Exclusions** the last paragraph is deleted and replaced by the following:

   Exclusions **c.** through **n.** do not apply to damage by fire; explosion, lightning, smoke resulting from such fire, explosion, or lightning or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III - LIMITS OF INSURANCE**.

3. **Non-Owned Watercraft**

   At **2. Exclusions** exclusion **g. Aircraft, Auto Or Watercraft (2) (a)** is deleted and replaced by the following:

   **(a)** Less than 51 feet long;

4. **Property Damage – Borrowed Equipment**

   At **2. Exclusions** the following is added to paragraph **(4)** of exclusion **j. Damage To Property:**

   This exclusion does not apply to "property damage" to borrowed equipment while at a jobsite and while not being used to perform operations. The most we will pay for "property damage" to any one piece of borrowed equipment under this coverage is $25,000 per occurrence. The insurance afforded under this provision is excess over any valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

5. **Property Damage Liability – Elevators**

   At **2. Exclusions** the following is added to paragraphs **(3), (4)** and **(6)** of exclusion **j. Damage To Property:**

   This exclusion does not apply to "property damage" resulting from the use of elevators. However, any insurance provided for such "property damage" is excess over any valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

B. The following coverages are added:

1. **COVERAGE D - VOLUNTARY PROPERTY DAMAGE COVERAGE**

   "Property damage" to property of others caused by the insured:

   **a.** While in your possession; or

   **b.** Arising out of "your work".

   Coverage applies at the request of the insured, whether or not the insured is legally obligated to pay.

   For the purposes of this **Voluntary Property Damage Coverage** only:

   Exclusion **j. Damage to Property** is deleted and replaced by the following:

   **j. Damage to Property**

   "Property damage" to:

   **(1)** Property held by the insured for servicing, repair, storage or sale at premises you own, rent, lease, operate or use;

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(2) Property transported by or damage caused by any "automobile", "watercraft" or "aircraft" you own, hire or lease;

(3) Property you own, rent, lease, borrow or use.

The amount we will pay is limited as described below in **SECTION III - LIMITS OF INSURANCE**

**For the purposes of this Voluntary Property Damage Coverage, our right and duty to defend ends when we have paid the Limit of Liability or the Aggregate Limit for each coverage, and we are granted discretion in making payments under this coverage.**

2. **COVERAGE E - CARE, CUSTODY AND CONTROL PROPERTY DAMAGE COVERAGE**

For the purpose of this **Care, Custody and Control Property Damage Coverage** only:

a. Item (4) of exclusion j. does not apply.

The amount we will pay is limited as described below in **SECTION III - LIMITS OF INSURANCE**

**For the purposes of this Care, Custody and Control Property Damage Coverage, our right and duty to defend ends when we have paid the Limit of Liability or the Aggregate Limit for each coverage, and we are granted discretion in making payments under this coverage.**

3. **COVERAGE F - ELECTRONIC DATA LIABILITY COVERAGE**

For the purposes of this **Electronic Data Liability Coverage** only:

a. Exclusion **p. of Coverage A – Bodily Injury And Property Damage Liability** in **Section I – Coverages** is replaced by the following:

**2. Exclusions**

This insurance does not apply to:

**p. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

However, this exclusion does not apply to liability for damages because of "bodily injury".

b. "Property damage" means:

(1) Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

(2) 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

(3) 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 **Electronic Data Liability Coverage**, "electronic data" is not tangible property.

The amount we will pay is limited as described below in **SECTION III - LIMITS OF INSURANCE**

4. **COVERAGE G - PRODUCT RECALL EXPENSE**

a. **Insuring Agreement**

(1) We will pay 90% of "product recall expense" you incur as a result of a "product recall" you initiate during the coverage period.

(2) We will only pay for "product recall expense" arising out of "your products" which have been physically relinquished to others.

The amount we will pay is limited as described below in **SECTION III - LIMITS OF INSURANCE**

**b. Exclusions**

This insurance does not apply to "product recall expense" arising out of:

**(1)** Any fact, circumstance or situation which existed at the inception date of the policy and which you were aware of, or could reasonably have foreseen that would have resulted in a "product recall".

**(2)** Deterioration, decomposition or transformation of a chemical nature, except if caused by an error in the manufacture, design, processing, storage, or transportation of "your product".

**(3)** The withdrawal of similar products or batches that are not defective, when a defect in another product or batch has been found.

**(4)** Acts, errors or omissions of any of your employees, done with prior knowledge of any of your officers or directors.

**(5)** Inherent vice, meaning a natural condition of property that causes it to deteriorate or become damaged.

**(6)** "Bodily injury" or "property damage".

**(7)** Failure of "your product" to accomplish its intended purpose, including any breach of warranty of fitness, quality, efficacy or efficiency, whether written or implied.

**(8)** Loss of reputation, customer faith or approval, or any costs incurred to regain customer market, or any other consequential damages.

**(9)** Legal fees or expenses.

**(10)** Damages claimed for any loss, cost or expense incurred by you or others for the loss of use of "your product".

**(11)** "Product recall expense" arising from the "product recall" of any of "your products" for which coverage is excluded by endorsement.

**(12)** Any "product recall" initiated due to the expiration of the designated shelf life of "your product".

**5. COVERAGE H - WATER DAMAGE LEGAL LIABILITY**

The insurance provided under Coverage **H (Section I)** applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

The Limit under this coverage shall not be in addition to the Damage To Premises Rented To You Limit.

The amount we will pay is limited as described below in **SECTION III - LIMITS OF INSURANCE**

**6. COVERAGE I – DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM**

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

**r.** This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" for any "consolidated (Wrap-up) insurance program" which has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not a "consolidated (Wrap-up) insurance program":

**a.** Provides coverage identical to that provided by this Coverage Part; or

**b.** Has limits adequate to cover all claims.

This exclusion does not apply if a "consolidated (Wrap-up) insurance program" covering your operations has been cancelled, non-renewed or otherwise no longer applies for reasons other than exhaustion of all available limits, whether such limits are available on a primary, excess or on any other basis. You must advise us of such cancellation, nonrenewal or termination as soon as practicable.

For purposes of this exclusion a "consolidated (wrap-up) insurance program" is a program providing insurance coverage to all parties for exposures involved with a particular (typically major) construction project.

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C. **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** is amended:

1. To read **SUPPLEMENTARY PAYMENTS**
2. **Bail Bonds**

   Item **1.b.** is amended as follows:

   b. Up to $1,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
3. **Loss of Earnings**

   Item **1.d.** is amended as follows:

   d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $500 a day because of time off from work.
4. The following language is added to Item **1.**

   However, we shall have none of the duties set forth above when this insurance applies only for **Voluntary Property Damage Coverage** and/or **Care, Custody or Control Property Damage Coverage** and we have paid the Limit of Liability or the Aggregate Limit for these coverages.

## SECTION II - WHO IS AN INSURED

A. The following change is made:

**Extended Reporting Requirements**

Item **3.a.** is deleted and replaced by the following:

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

B. The following provisions are added:

4. **BROAD FORM NAMED INSURED**

   Item **1.f.** is added as follows:

   f. Any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period only if there is no other similar insurance available to that entity. However:

      **(1)** Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired more than 50 percent of the voting stock; and

      **(2)** Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired more than 50 percent of the voting stock.
5. **Additional Insured - Owners, Lessees or Contractors-Automatic Status When Required in Construction or Service Agreement With You – Including Upstream Parties**

   a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy;

   b. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph a. above.

      Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" which may be imputed to that person or organization directly arising out of:

      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.

      However, the insurance afforded to such additional insured:

      1. Only applies to the extent permitted by law; and
      2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

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

This insurance does not apply to:

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

   a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

   b. Supervisory, inspection, architectural or engineering activities.

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

2. "Bodily injury" or "property damage" occurring after:

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

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

**6. Additional Insured – Products Completed Operations Coverage – Including Upstream Parties**

a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and

b. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph a. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" which may be imputed to that person or organization directly arising out of "your work" specified in the "written contract" and included in the "products-completed operations hazard".

However:

(1) The insurance afforded to such additional insureds only applies to the extent permitted by law;

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

(3) Such coverage will not apply subsequent to the first to occur of the following:

   i. The expiration of the period of time required by the "written contract"; or

   ii. The expiration of any applicable statute of limitations or statute of repose with respect to claims arising out of "your work".

c. With respect to the insurance afforded to any additional insured under this endorsement, the following additional exclusionary language shall apply:

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

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

(2) Supervisory, inspection, architectural or engineering activities.

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7. **Additional Insured - Vendors**

   a. Any person(s) or organization(s) (referred to throughout this additional coverage as vendor), but only with respect to "bodily injury" or "property damage", which may be imputed to that person(s) or organization(s) arising out of "your products" shown with the Schedule which are distributed or sold in the regular course of the vendor's business is an insured.

      However:

      (1) The insurance afforded to such vendor only applies to the extent permitted by law; and

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

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

      (1) This insurance afforded the vendor does not apply to:

         (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

         (b) Any express warranty unauthorized by you;

         (c) Any physical or chemical change in the product made intentionally by the vendor;

         (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container.

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

         (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product.

         (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

         (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

            i. The exceptions contained in Sub-paragraphs d. or f.; or

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

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

8. **Additional Insured – Lessor of Leased Equipment – Automatic Status When Required in Lease Agreement With You**

   a. Any person(s) or organization(s) from whom you lease equipment when you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an insured only with respect to your liability for "bodily injury", "property damage" or "personal and advertising injury" directly arising out of the maintenance, operation or use of equipment leased to you, which may be imputed to such person or organization as the lessor of equipment.

      However, the insurance afforded to such additional insured:

      (1) Only applies to the extent permitted by law; and

      (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.



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

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

**9. Additional Insured – Managers or Lessors of Premises**

**a.** Any person(s) or organization(s), but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

**(1)** Any "occurrence" which takes place after you cease to be a tenant in that premises.

**(2)** Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

**(1)** The insurance afforded to such additional insured only applies to the extent permitted by law; and

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

**10. Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured**

**a.** Any architects, engineers or surveyors who are not engaged by you are insureds, but only with respect to liability for "bodily injury" or "property damage" or "personal and advertising injury" which may be imputed to that architect, engineer or surveyor arising out of:

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

**(2)** Your acts or omissions of those acting on your behalf;

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

But only if such architects, engineers or surveyors, while not engaged by you, are contractually required to be added as an additional insured to your policy.

However, the insurance afforded to such additional insured:

**(1)** Only applies to the extent permitted by law; and

**(2)** Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

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

**11. Additional Insured - State or Governmental Agency or Subdivision or Political Subdivision - Permits or Authorizations**

Any state or governmental agency or subdivision or political subdivision is an insured, subject to the following provisions:

**a.** 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.

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However:

(1) The insurance afforded to such additional insured only applies to the extent permitted by law; and

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

b. This insurance does not apply to:

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or

(2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

12. **Additional Insured Consolidated Insurance Program (Wrap-Up) Off-Premises Operations Only - Owners, Lessees or Contractors**

a. Any persons or organizations for whom you are performing operations, for which you have elected to seek coverage under a Consolidated Insurance Program, when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy is an insured. Such person or organization is an additional insured only with respect to your liability which may be imputed to that person or organization directly arising out of your ongoing operations performed for that person or organization at a premises other than any project or location that is designated as covered under a Consolidated Insurance Program. A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

b. 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 failure to render, any professional architectural, engineering or surveying services, including:

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

(2) Supervisory, inspection

13. **Additional Insured - Employee Injury to Another Employee**

With respect to your "employees" who occupy positions which are supervisory in nature:

Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED** is amended to read:

a. "Bodily injury" or "personal and advertising injury":

(1) 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);

(2) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph **(1)(a)** above; or

(3) Arising out of his or her providing or failing to provide professional healthcare services. Paragraph **3.a.** is deleted.

For the purpose of this Item **13** only, a position is deemed to be supervisory in nature if that person performs principle work which is substantially different from that of his or her subordinates and has authority to hire, direct, discipline or discharge.

## SECTION III - LIMITS OF INSURANCE

**A. The following Items are deleted and replaced by the following:**

2. The General Aggregate Limit is the most we will pay for the sum of:

a. Medical expenses under **Coverage C**;

b. Damages under **Coverage A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

c. Damages under **Coverage B;** and

d. Damages under **Coverage H.**

3. The Products-Completed Operations Aggregate Limit is the most we will pay under **Coverage A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" and **Coverage G.**

6. Subject to **5.** above, the Damage to Premises Rented to You Limit is the most we will pay under **Coverage A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, explosion, lightning, smoke resulting from such fire, explosion, or lightning or sprinkler leakage while rented to you or temporarily occupied by you with permission of the owner.

**B.** The following are added :

8. Subject to Paragraph **5.** of **SECTION III – LIMITS OF INSURANCE** $25,000 is the most we will pay under Coverage H for **Water Damage Legal Liability.**

9. **Coverage G - Product Recall Expense**

Aggregate Limit $50,000

Each Product Recall Limit $25,000

a. The Aggregate Limit shown above is the most we will pay for the sum of all "product recall expense" you incur as a result of all "product recalls" you initiate during the endorsement period.

b. The Each Product Recall Limit shown above is the most we will pay, subject to the Aggregate and $1,000 deductible, for "product recall expense" you incur for any one "product recall" you initiate during the endorsement period.

We will only pay for the amount of "product recall expenses" which are in excess of the deductible amount. The deductible applies separately to each "product recall". The limits of insurance will not be reduced by the amount of this deductible.

We may, or will if required by law, pay all or any part of any deductible amount. Upon notice of our payment of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

10. **Aggregate Limits of Insurance (Per Location)**

The General Aggregate Limit applies separately to each of your "locations" owned by or rented to you or temporarily occupied by you with the permission of the owner.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

11. **Aggregate Limits of Insurance (Per Project)**

The General Aggregate Limit applies separately to each of your projects away from premises owned by or rented to you.

12. With respects to the insurance afforded to additional insureds afforded coverage by items **5** through **13** of **SECTION II – WHO IS AN INSURED** above, the following is added:

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

a. Required by the contract or agreement;

b. Available under the applicable Limits of Insurance shown in the Declarations;

Whichever is less.

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

13. Subject to **5.** of **SECTION III – LIMITS OF INSURANCE**, a $5,000 "occurrence" limit and a $10,000 "aggregate" limit is the most we will pay under **Coverage A** for damages because of "property damage" covered under **Coverage D - Voluntary Property Damage Coverage.**

**For the purposes of this Voluntary Property Damage Coverage, our right and duty to defend ends when we have paid the Limit of Liability or the Aggregate Limit for each coverage, and we are granted discretion in making payments under this coverage.**

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14. Subject to **5.** of **SECTION III – LIMITS OF INSURANCE**, a $25,000 "occurrence" limit and a $100,000 "aggregate" limit is the most we will pay under **Coverage E - Care, Custody and Control Coverage** regardless of the number of:

    a. Insureds;

    b. Claims made or "suits" brought; or

    c. Persons or organizations making claims or bringing "suits".

    Deductible - Our obligation to pay damages on your behalf applies only to the amount of damages in excess of $500.

    This deductible applies to all damages because of "property damage" as the result of any one "occurrence" regardless of the number of persons or organizations who sustain damages because of that "occurrence".

    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.

    As respects this coverage "Aggregate" is the maximum amount we will pay for all covered "occurrences" during one policy period.

    **For the purposes of this Care, Custody and Control Property Damage Coverage, our right and duty to defend ends when we have paid the Limit of Liability or the Aggregate Limit for each coverage, and we are granted discretion in making payments under this coverage.**

15. Subject to **5.** of **SECTION III – LIMITS OF INSURANCE**, the most we will pay for "property damage" under **Coverage F - Electronic Data Liability Coverage** for loss of "electronic data" is $50,000 without regard to the number of "occurrences".

## SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

A. The following conditions are amended:

1. **Knowledge of Occurrence**

    a. Condition **2.**, Items **a.** and **b.** are deleted and replaced by the following:

        **(1) Duties In The Event Of Occurrence, Offense, Claim Or Suit**

        (a) You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. Knowledge of an "occurrence" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee. To the extent possible, notice should include:

            i. How, when and where the "occurrence" took place;

            ii. The names and addresses of any injured persons and witnesses, and

            iii. 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:

            i. Immediately record the specifics of the claim or "suit" and the date received; and

            ii. Notify us as soon as practicable.

        You must see to it that we receive written notice of the claim or "suit" as soon as practicable. Knowledge of a claim or "suit" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee.

2. Where **Broad Form Named Insured** is added in **SECTION II – WHO IS AN INSURED** of this endorsement, Condition **4. Other Insurance b. Excess Insurance (1).(a)** is replaced by the following:

    (a) Any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to an insured solely by reason of ownership by you of more than 50 percent of the voting stock, and not withstanding any other language in any other policy. This provision does not apply to a policy written to apply specifically in excess of this policy.



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**B.** The following are added:

**10.** Condition **(5) of 2. "Duties in the event Occurrence, Offense, Claim or Suit" c.** You or any other involved insured must:

**(5)** Upon our request, replace or repair the property covered under **Voluntary Property Damage Coverage** at your actual cost, excluding profit or overhead.

**11. Blanket Waiver Of Subrogation**

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: premises owned or occupied by or rented or loaned to you, ongoing operations performed by you or on your behalf, done under a contract with that person or organization, "your work", or "your products". We waive this right where you have agreed to do so as part of a written contract, executed by you before the "bodily injury" or "property damage" occurs or the "personal and advertising injury" offense is committed.

**12. Liberalization**

If a revision to this Coverage Part, which would provide more coverage with no additional premium becomes effective during the policy period in the state designated for the first Named Insured shown in the Declarations, your policy will automatically provide this additional coverage on the effective date of the revision.

**13. Unintentional Failure to Disclose All Hazards**

Based on our reliance on your representations as to existing hazards, if you unintentionally should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**14.** The following conditions are added in regard to **Coverage G - Product Recall Expense**

In event of a "product recall", you must

**a.** See to it that we are notified as soon as practicable of a "product recall". To the extent possible, notice should include how, when and where the "product recall" took place and estimated "product recall expense".

**b.** Take all reasonable steps to minimize "product recall expense". This will not increase the limits of insurance.

**c.** If requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance or your claim, including your books and records. Your answers must be signed.

**d.** Permit us to inspect and obtain other information proving the loss. You must send us a signed, sworn statement of loss containing the information we request to investigate the claim. You must do this within 60 days after our request.

**e.** Cooperate with us in the investigation or settlement of any claim.

**f.** Assist us upon our request, in the enforcement of any rights against any person or organization which may be liable to you because of loss to which this insurance applies.

**15. Limited Railroad Contractual Liability**

The following conditions are applicable only to coverage afforded by reason of the redefining of an "insured contract" in the **DEFINITIONS** section of this endorsement:

**a.** Railroad Protective Liability coverage provided by **Railroad Protective Liability Coverage Form (CG 00 35)** with minimum limits of $2,000,000 per occurrence and a $6,000,000 general aggregate limit must be in place for the entire duration of any project.

**b.** Any amendment to the Other Insurance condition of **Railroad Protective Liability Coverage Form (CG 00 35)** alters the primacy of the coverage or which impairs our right to contribution will rescind any coverage afforded by the redefined "insured contract" language.

**c.** For the purposes of the **Other Insurance** condition of **Railroad Protective Liability Coverage Form (CG 00 35)** you, the named insured, will be deemed to be the designated contractor.

## SECTION V – DEFINITIONS

A. At item **12.** "Mobile equipment" the wording at **f.(1)** is deleted and replaced by the following:

**f.(1)** Equipment designed primarily for:

**(a)** Snow removal;

**(b)** Road maintenance, but not construction or resurfacing; or

**(c)** Street cleaning;

except for such vehicles that have a gross vehicle weight less than 1,000 lbs which are not designed for highway use.

B. Item **3.** "Bodily injury" is deleted and replaced with the following:

**3.** "Bodily injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

C. Item **9.** "Insured contract" **c.** is deleted and replaced with the following:

**c.** Any easement or *license agreement*;

D. Item **9.** "Insured Contract" **f.(1)** is deleted

E. The following definitions are added for this endorsement only:

**23.** "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, tape drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**24.** "Product recall" means a withdrawal or removal from the market of "your product" based on the determination by you or any regulatory or governmental agency that:

**a.** The use or *consumption* of "your product" has caused or will cause actual or alleged "bodily injury" or "property damage"; and

**b.** Such determination requires you to recover possession or control of "your product" from any distributor, purchaser or user, to repair or replace "your product", but only if "your product" is unfit for use or consumption, or is hazardous as a result of:

**(1)** An error or omission by an insured in the design, manufacturing, processing, labeling, storage, or transportation of "your product"; or

**(2)** Actual or alleged intentional, malicious or wrongful alteration or contamination of "your product" by someone other than you.

**25.** "Product recall expense" means reasonable and necessary expenses for:

**a.** Telephone, radio and television communication and printed advertisements, including stationery, envelopes and postage.

**b.** Transporting recalled products from any purchaser, distributor or user, to locations designated by you.

**c.** Remuneration paid to your employees for overtime, as well as remuneration paid to additional employees or independent contractors you hire.

**d.** Transportation and accommodation expense incurred by your employees.

**e.** Rental expense incurred for temporary locations used to store recalled products.

**f.** Expense incurred to properly dispose of recalled products, including packaging that cannot be reused.

**g.** *Transportation* expenses incurred to replace recalled products.

**h.** Repairing, redistributing or replacing covered recalled products with like products or substitutes, not to exceed your original cost of manufacturing, processing, acquisition and/or distribution.

These expenses must be incurred as a result of a "product recall".

**26.** "Written Contract" means a written contract or written agreement that requires you to make a person or organization an additional insured on this Coverage Part, provided the contract or agreement:

**a.** Is currently in effect or becoming effective during the term of this policy; and

**b.** Was executed prior to:

**(1)** The "bodily injury" or "property damage"; or

**(2)** The *offense* that caused the "personal and advertising injury",

for which the additional insured seeks coverage under this coverage part.



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

# WAIVER OF GOVERNMENTAL IMMUNITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

We will waive, both in the adjustment of claims and in the defense of "suits" against the insured, any governmental immunity of the insured, unless the insured requests in writing that we not do so.

Waiver of immunity as a defense will not subject us to liability for any portion of a claim or judgment in excess of the applicable limit of insurance.


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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/13/2018

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).

| PRODUCER | CONTACT NAME: Tina Osborne | |
|---|---|---|
| Beimdiek Insurance Agency, Inc.<br>303 W Third Street<br>PO Box 612<br>Carthage MO 64836 | PHONE (A/C, No, Ext): (417)358-4007 | FAX (A/C, No): (417)358-4052 |
| | E-MAIL ADDRESS: tina.osborne@beimdiek.com | |

| INSURED | INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|---|
| BENNETT INC<br>103 NE 15TH LN<br>LAMAR MO 64759-8121 | INSURER A: United Fire & Casualty Company | 13021 |
| | INSURER B: American Interstate Ins Co | 31895 |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |
| | INSURER F: | |

**COVERAGES** **CERTIFICATE NUMBER:** 18 Mstr AL,GL,Umb,WC **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 | [X] COMMERCIAL GENERAL LIABILITY<br>[ ] CLAIMS-MADE [X] OCCUR<br>[X] Blanket AI, WOS<br>[X] Comp Ops<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>[ ] POLICY [X] PRO-JECT [ ] LOC<br>[ ] OTHER: | | | 60486804 | 01/27/2018 | 01/27/2019 | EACH OCCURRENCE<br>DAMAGE TO RENTED PREMISES (Ea occurrence)<br>MED EXP (Any one person)<br>PERSONAL & ADV INJURY<br>GENERAL AGGREGATE<br>PRODUCTS - COMP/OP AGG<br>$ | $ 1,000,000<br>$ 500,000<br>$ 5,000<br>$ 1,000,000<br>$ 2,000,000<br>$ 2,000,000<br>$ |
| A | AUTOMOBILE LIABILITY<br>[X] ANY AUTO<br>[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS<br>[X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY | | | 60486804 | 01/27/2018 | 01/27/2019 | COMBINED SINGLE LIMIT (Ea accident)<br>BODILY INJURY (Per person)<br>BODILY INJURY (Per accident)<br>PROPERTY DAMAGE (Per accident)<br>Uninsured motorist | $ 1,000,000<br>$<br>$<br>$<br>$ 1,000,000 |
| A | [X] UMBRELLA LIAB [X] OCCUR<br>[ ] EXCESS LIAB [ ] CLAIMS-MADE<br>[ ] DED [ ] RETENTION $ | | | 60486804 | 01/27/2018 | 01/27/2019 | EACH OCCURRENCE<br>AGGREGATE<br>$ | $ 6,000,000<br>$ 6,000,000<br>$ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N]<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | | AVWCMO2669792018 | 01/27/2018 | 01/27/2019 | [X] PER STATUTE [ ] OTH-ER<br>E.L. EACH ACCIDENT<br>E.L. DISEASE - EA EMPLOYEE<br>E.L. DISEASE - POLICY LIMIT | <br>$ 1,000,000<br>$ 1,000,000<br>$ 1,000,000 |

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

Included: CG2414 - Waiver of Governmental Immunity Form; Extended Ultra Liability Plus Endt (CG7201 07/17) includes Blanket Completed Operations, Blanket Additional Insured, Blanket Waiver of Subrogation and Per Project Limit when required in a written contract; Business Auto Ultra Endt (CA7109 01/17) includes Blanket Additional Insured when required in a written contract.

**CERTIFICATE HOLDER**

City of Joplin
602 Main Street
Joplin MO 64801

**CANCELLATION**

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

AUTHORIZED REPRESENTATIVE

G Stephen Beimdiek / tdo

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## Restriction on Lobbying

(For contracts, grants, cooperative agreements, and loans over $100,000)

The undersigned certifies, to the best of his knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards (at all tiers, including contracts under grants, loans, and cooperative agreements, subcontracts, and subgrants) over $100,000, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction impost by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Bennett, Inc.

Name of Entity (city, county, contractor, etc.)

Sheri L. McWilliams, President

Name of Certifying Official (Mayor, Presiding Commissioner, President, etc.)

Sheri L. McWilliams

Signature of Certifying Official

4-18-18

Date

STATE OF Missouri )

)ss

COUNTY OF Barton )

## FWAP Affidavit

(as required by Section 285.530, Revised Statues of Missouri)

As used in this Affidavit, the following terms shall have the following meanings:

EMPLOYEE: Any person performing work or service of any kind for hire within the State of Missouri.

FEDERAL WORK AUTHORIZATION PROGRAM: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

KNOWINGLY: A person acts knowingly or with knowledge,

(a) with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or
(b) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

UNAUTHORIZED ALIEN: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

BEFORE ME, the undersigned authority, personally appeared Sheri L. McWilliams, who, being duly sworn, states on his oath or affirmation as follows:

1. My name is Sheri L. McWilliams and I am currently the President of Bennett, Inc. (hereinafter "Contractor"), whose business address is 103 NE 15th Lane, Lamar, MO 64759 "and I am authorized to make this Affidavit.

2. I am of sound mind and capable of making this Affidavit and am personally acquainted with the facts stated herein.

3. Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the following services contracted between Contractor and the City of Joplin.

4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.

5. Attached hereto is documentation affirming Contractor's enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services.

Sheri L. McWilliams

Further, Affiant sayeth not.
Affiant

Subscribed and sworn to before me this 18th day of April, 2018.

Commission # 17390262 Chloe Anne Tally

CHLOE ANNE TALLY
Comm. Exp. July 06, 2021
NOTARY PUBLIC
NOTARY SEAL
# 17390262
Barton County
STATE OF MISSOURI

## Certification Regarding Equal Employment Opportunity

INSTRUCTIONS:

The certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any p

revious contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the subcontractor has not filed a compliance report due under applicable instructions, such subcontractor shall be required to submit a compliance report before the owner approves the subcontract or permits work to begin under the subcontract.

BIDDER'S CERTIFICATION

NAME AND ADDRESS OF SUBCONTRACTOR (Include ZIP Code):

Bennett, Inc. 103NE 15th Lane Lamar, MO 64759

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

   ☒YES ☐NO

2. Compliance reports were required to be filed in connection with such contract or subcontract.

   ☒YES ☐NO

3. Bidder has filed all compliance reports due under applicable instructions.

   ☒YES ☐NO

4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?

   ☐YES ☒NO

Sheri L. McWilliams, President

NAME AND TITLE OF SIGNER (Please type):

Sheri L. McWilliams 4-18-18

SIGNATURE DATE

## CDBG Bidder Qualifications & Certifications

**Firm Name:** Bennett, Inc.
(Company Name)

103 NE 15th Lane — Lamar, MO 64759
(Address) (City, State, Zip)

417-682-6826 — 417-682-2775 — bandkexcavation@sbcglobal.net
(Phone Number) (Fax Number) (E-mail)

Date: 3-12-18

**Construction Capabilities:**

- ☒ General Contracting
- ☐ HVAC
- ☐ Asbestos Abatement
- ☐ Electrical
- ☐ Demolition
- ☐ Other: _____
- ☐ Plumbing
- ☐ Earthmoving

**For Corporations Only:**

Federal ID Number: 90-0090189

Name of State(s) in which incorporated: Missouri

Date(s) of incorporation: June 4, 2001

If not incorporated in Missouri:

1. Attach Certificate of Authority to do Business in Missouri
2. Certificate Number: _____ Date: _____

Sheri L. McWilliams — Ron R. Bennett Jr.
(President's Name) (Vice-President's Name)

Bo T. Bennett — _____
(Secretary's Name) (Treasurer's Name)

**For Partnerships Only:** Date of Organization: _____

Type of Partnership: ☐ General ☐ Limited ☐ Association

Names and Addresses of all partners: (use additional sheet if necessary)

1. _____
(Name) (Address) (City, State, Zip Code)

2. _____
(Name) (Address) (City, State, Zip Code)

**General Information:**

Federal ID Number: 90-0090189 or SSN: _____

Percent of work done by Contractor: 90% Number of Permanent Employees: 7

Number of years in business: 20

Geographical limits of operation: Missouri & Kansas

If you have done business under a different name, please give name and location: _____

dba B&K Excavation, same location

Has firm ever failed to complete a project or defaulted on a contract? If so, state where and why:

No

**Date:** Dated this 12th day of March, 2018.

**Signatures:**

☐ Individual ☐ Partnership ☐ Joint Venture ☒ Corporation

Business Name: Bennett, Inc.

Address: 103 NE 15th Lane
Lamar MO 64759

Telephone: 417-682-6826 Fax Number: 417-682-2775

Federal ID Number: 90-0090189 or Social Security Number: _____

DUNS Number: 074671236

Incorporated under the laws of the State of: Missouri

(If a corporation is organized in a state other than Missouri, attach Certificate of Authority to do business in the State of Missouri.)

Sheri L. McWilliams
(Bidder's Signature)

(Corporate Secretary's Signature and Seal)
Bo T. BENNETT

SHERI L. McWILLIAMS
(Typed or Printed Name of Signor)

(Seal)

(Partner/Joint Venture Signature)

(Typed or Printed Name of Signor)

## Subcontractor Disclosure Form

CONTRACTOR: Bennett, Inc.

PROJECT: Storm Drainage - Yellow Area

DATE: 3-13-18

| SUBCONTRACTOR | CATEGORY OF WORK | DOLLAR VALUE |
|---|---|---|
| Name: Blevins Asphalt | Asphalt | 663,000.00 |
| Contact Name: Jeran Cordova | | |
| Address: PO Box 230 Mt. Vernon, MO 65712 | | |
| Phone Number: 417-466-3758 | | |
| Fax Number: 417-466-7914 | | |
| Email: jcordova@blevinsasphalt.com | | |
| Tax ID Number: 43-0964288 | DUNS Number: 125206131 | |

| | | |
|---|---|---|
| Name: KW. Luetkemeyer Painting | Paint/Marking | 4500.00 |
| Contact Name: Mike Luetkemeyer | | |
| Address: 4506 Country Club Dr. Jefferson City MO 65109 | | |
| Phone Number: 573-893-7196 | | |
| Fax Number: | | |
| Email: kwlpainting@mediacombb.net | | |
| Tax ID Number: 43-1203294 | DUNS Number: 071968341 | |

| | | |
|---|---|---|
| Name: Carnahan-White LLC | Fence | 22,455.00 |
| Contact Name: Dean Powers | | |
| Address: 1833 N. State Hwy MM Springfield, MO 65802 | | |
| Phone Number: 417-883-0733 | | |
| Fax Number: 417-883-1152 | | |
| Email: dean@carnahanwhite.com | | |
| Tax ID Number: 35-2494025 | DUNS Number: 031133069 | |

| | | |
|---|---|---|
| Name: Premier Dirt & Landscaping | Sod, Seeding, | 25,000.00 |
| Contact Name: Justin Wilkins | | |
| Address: 11188 St Hwy 171 Carl Junction, MO 64834 | | |
| Phone Number: | | |
| Fax Number: | | |
| Email: | | |
| Tax ID Number: 45-0495143 | DUNS Number: 166476718 | |

| | | |
|---|---|---|
| Name: Road Runner Safety Services | traffic control | 41,840.00 |
| Contact Name: Matt Boyd | | |
| Address: P.O. Box 552 Jackson, MO 63755 | | |
| Phone Number: 417-833-8155 | | |
| Fax Number: | | |
| Email: matt@roadrunnerss.com | | |
| Tax ID Number: 43-1806037 | DUNS Number: 029366056 | |

This form to be submitted with Bid:

## Minority and Women's Business Enterprise Utilization Worksheet

Please complete the minority and women's business enterprise utilization worksheet required per HUD 24 CFR 570.506(g)(6) for all contracts (both prime contractors and subcontractors) that will be receiving $25,000 or more in CDBG funds. Use additional pages as needed.

Project Name/ Number Stormwater Drainage & Infrastructure Improvements - Yellow Area

Contractor/ Engineer Bennett, Inc. / Jacobs

Address, City, State, and Zip 103 NE 15th Lane, Lamar, MO 64759

Contact Person Sheri McWilliams Telephone # 417-682-6826

Amount of Contract 2,243,474.75 Duns # 074671236

MBE [N/A] WBE [N/A]

1. Subcontractor Road Runner Safety Services

   Address, City, State, Zip P.O. Box 552, Jackson, MO 63755

   Contact Person Matt Boyd

   Amount of Subcontract 41,840.00 Tax ID Number 43-1806037

   Scope of Work traffic control

   Duns # 029366056 MBE [ ] WBE [X]

2. Subcontractor _____

   Address, City, State, Zip _____

   Contact Person _____

   Amount of Subcontract _____ Tax ID Number _____

   Scope of Work _____

   Duns # _____ MBE [ ] WBE [ ]

3. Subcontractor _____

   Address, City, State, Zip _____

   Contact Person _____

   Amount of Subcontract _____ Tax ID Number _____

   Scope of Work _____

   Duns # _____ MBE [ ] WBE [ ]

4. Subcontractor _____

   Address, City, State, Zip _____

## Demographic Information Form

Please complete the Demographic Information Form required per HUD 24 CFR 570.506(g)(6) for all contracts (both prime contractors and subcontractors) that will be receiving $25,000 or more in CDBG funds. Please use the racial and ethnic codes located in the chart on the next page. Use additional pages as needed.

Project Name/ Number Stormwater Drainage & Infrastructure Improvements - Yellow Area
Contractor/ Engineer Bennett, Inc.
Address, City, State, and Zip 103 NE 15th Lane, Lamar, MO 64759
Contact Person Sheri McWilliams Telephone # 417-682-6826
Duns # 074671234 Race Code 1 Ethnicity Code 2

1. Subcontractor Blevins Asphalt Const. Co. Inc.
   Address, City, State, and Zip P.O. Box 230, Mt. Vernon, MO 65712
   Contact Person Rick Bekemeier Telephone # 417-466-3758
   Duns # 125206131 Race Code 1 Ethnicity Code 2

2. Subcontractor Premier Dirt & Landscaping
   Address, City, State, and Zip 11188 State Hwy 171, Carl Junction, MO 64834
   Contact Person Justin Wilkins Telephone #
   Duns # 166476718 Race Code 1 Ethnicity Code 2

3. Subcontractor K.W. Luetkemeyer Painting.
   Address, City, State, and Zip 4506 Country Club Dr., Jefferson City, MO 65109
   Contact Person Mike Luetkemeyer Telephone # 573-893-7196
   Duns # 071968341 Race Code 1 Ethnicity Code 2

4. Subcontractor Carnahan-White LLC
   Address, City, State, and Zip 1833 N. State Hwy MM, Springfield, MO 65802
   Contact Person Dean Powers Telephone # 417-883-0733
   Duns # 031133069 Race Code 1 Ethnicity Code 2

5. Subcontractor Road Runner Safety Services

Address, City, State, and Zip P.O. Box 552, Jackson, MO 63755

Contact Person Matt Boyd Telephone # 417-833-8155

Duns # 029366056 Race Code 1 Ethnicity Code 2

6. Subcontractor _____

Address, City, State, and Zip _____

Contact Person _____ Telephone # _____

Duns # _____ Race Code _____ Ethnicity Code _____

7. Subcontractor _____

Address, City, State, and Zip _____

Contact Person _____ Telephone # _____

Duns # _____ Race Code _____ Ethnicity Code _____

8. Subcontractor _____

Address, City, State, and Zip _____

Contact Person _____ Telephone # _____

Duns # _____ Race Code _____ Ethnicity Code _____

| Race Code: | Ethnicity Code: |
|---|---|
| 1 = White<br>2 = Black/African American<br>3 = Asian<br>4 = American Indian/Alaskan Native<br>5 = Native Hawaiian/Other Pacific Islander<br>6 = American Indian/Alaskan Native and White<br>7 = Asian and White<br>8 = Black/African American and White<br>9 = American Indian/Alaskan Native and Black/ African American<br>10 = Other Multi-Racial | 1 = Hispanic or Latino<br>2 = Not Hispanic or Latino |

# SECTION 3
# TABLE A
# BIDDER'S PROPOSED SECTION 3 CONTRACTS/SUBCONTRACTS

| Type of Contract (Business or Profession) | Total No. | Estimated Total Dollar Amount | Estimated No. of Contracts to Section 3 Businesses | Estimated Dollar Amount to Section 3 Businesses |
|---|---|---|---|---|
| NONE at this time | | | | |
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Bennett, Inc.
Company

Stormwater Drainage & Street Infrastructure Improvements - Yellow Area
Project Name

Project Number

Sheri L. McWilliams
Person Completing Form

3-13-18
Date

# TABLE B
# BIDDER'S SECTION 3 ESTIMATED NEW HIRES

| Job Category | Estimated Total Positions Needed for Project | No. of Positions Occupied by Permanent Employees | No. of Positions Not Occupied | No. of Positions to be Filled with Section 3 Residents |
|---|---|---|---|---|
| Officer/Supervisors | 1 | 2 | Ø | Ø |
| Professionals | | | | |
| Technical | | | | |
| Hsq Sales/Rental Mgmt. | | | | |
| Office/Clerical | 1 | 2 | Ø | Ø |
| Service Workers | 7 | 7 | Ø | Ø |
| Others | | | | |
| TRADE: | | | | |
| Journeymen | | | | |
| Helpers | | | | |
| Apprentices | | | | |
| Trainees | | | | |
| Others | | | | |
| TRADE: | | | | |
| Journeymen | | | | |
| Helpers | | | | |
| Apprentices | | | | |
| Trainees | | | | |
| Others | | | | |

Bennett, Inc.
Company

Stormwater Drainage & Street Infrastructure Improvements - Yellow Area
Project Name

Project Number

Sheri L. McWilliams
Person Completing Form

3-13-18
Date

## Contractor Past Performance Questionnaire

Bennett, Inc.
Legal Name of the Corporation, Firm or Individual Contractor

P.O Box — City & State Lamar, MO Zip Code 64759
Street Address 103 NE 15th Lane
*(If different from P.O. Box:)* City & State N/A Zip Code
Telephone No. 417-682-6826 Fax No. 417-682-2775
E-Mail Address bandkexcavation@sbcglobal.net Contact person: Sheri McWilliams

This firm or organization has 17 years experience as a general contractor and/or 20 years as a subcontractor in the type of work designated in this RFP.

Has your firm or organization ever failed to complete any work awarded to you? ___Yes ✓ No
If so, where and why? (Attach additional sheets as needed.) _____

Does your firm or organization currently possess a City of Joplin contractor license? ✓ Yes ___No

This organization or its key staff has completed the following similar projects for the type(s) of work designated in this RFP within the last five years. (Attach additional sheets as needed.)

| Contract Amount | Type of Work | Key Staff | When Completed | Location City and State | Project Owner's Name and Address |
|---|---|---|---|---|---|
| See attached | | | | | |