## AGREEMENT

## CITY OF JOPLIN AND DALTON-KILLINGER CONSTRUCTION COMPANY

**THIS AGREEMENT**, made and entered into this 2nd day of April, 2018, by the parties identified above.

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

**SURFACE PROJECT 4006**
**JACKSON AVENUE TO MOFFET AVENUE AND 26TH STREET TO 19TH STREET**
**BYERS AVENUE TO MAIN STREET AND 26TH STREET TO 18TH STREET**
**CDBG-DR GRANT No. B-13-MS-29-0001**

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 April 5th, 2019.

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 Three Million Seven Hundred Fifty Three Thousand Eight Hundred Twenty-Two Dollars and Nine cents ($3,753,822.09) 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 $2,800.00 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 Three Million Seven Hundred Fifty Three Thousand Eight Hundred Twenty-Two Dollars and Nine cents ($3,753,822.09), 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 Section 285.530, 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:** Dalton-Killinger
Construction Company
P.O. Box 607
Joplin, Missouri 64802

By: _____

Printed Name: Shane McDaniel

Title: Vice-President

Date: _____

**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 Hertzberg

David Hertzberg, P.E.
Public Works Director

Date: 4/2/2018

**APPROVED AS TO CDBG-DR**

Troy Bolander, Director of Planning, Development & Neighborhood Services

**CONTRACTOR'S BOND NO.** Bond Numbered: 674027528
**FOR CITY CONTRACTS**

**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS: That

Dalton-Killinger Construction Company, P.O. Box 607, Joplin, Missouri 64802

a Corporation, hereinafter called Principal, and

The Ohio Casualty Insurance Company

(Name of Surety)

62 Maple Avenue, Keene, New Hampshire 03431

(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 Three Million Seven Hundred Fifty Three Thousand Eight Hundred Twenty-Two and 09/100 dollars ($3,753,822.09)
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.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the 2nd day of April, 2018, a copy of which is hereto attached and made a part hereof for the construction of:

**SURFACE PROJECT 4006**
**PAP 7-1 Joplin**
**JACKSON AVENUE TO MOFFET AVENUE AND 26TH STREET TO 19TH STREET**
**BYERS AVENUE TO MAIN STREET AND 26TH STREET TO 18TH STREET**
**CDBG-DR GRANT No. B-13-MS-29-0001**

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 2nd day of April, 2018.

ATTEST: (SEAL)

Mary Lou Halama Secretary

Approved as to form this 3rd day of April, 2018.

City Attorney

Dalton-Killinger Construction Company
Principal

By Shane McDaniel, Vice-President

By _____

ATTEST: (SEAL)

_____
Secretary

Approved this 4th day of April, 2018.

Director of Finance

The Ohio Casualty Insurance Company
Surety

By Dawn Oney

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.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**
**This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.**

Certificate No. 7808152

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company West American Insurance Company

# POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Cristiann Becker; Dawn Oney; Diana L. Turnbull; Scott Brothers

all of the city of Joplin, state of MO each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 19th day of June, 2017.

The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 19th day of June, 2017, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS** – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII** – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the seals of said Companies this 2nd day of April, 2018.

By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



LMS_12873_022017

**CONTRACTOR'S BOND NO.**
**FOR CITY CONTRACTS** Bond Numbered: 674027528

## PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That

Dalton-Killinger Construction Company, P.O. Box 607, Joplin, Missouri 64802

a Corporation, hereinafter called Principal, and

The Ohio Casualty Insurance Company

(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 Three Million Seven Hundred Fifty Three Thousand Eight Hundred Twenty-Two and 09/100 dollars ($3,753,822.09) 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.

THE CONDITION OF THIS OBLIGATION is such that whereas, the principal entered into a certain contract with the OWNER, dated the 2nd day of April, 2018, a copy of which is hereto attached and made a part hereof for the construction of:

**SURFACE PROJECT 4006**
**PAP 7-1 Joplin**
**JACKSON AVENUE TO MOFFET AVENUE AND 26TH STREET TO 19TH STREET**
**BYERS AVENUE TO MAIN STREET AND 26TH STREET TO 18TH STREET**
**CDBG-DR GRANT No. B-13-MS-29-0001**

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 2nd day of April, 2018.

ATTEST: (SEAL)

Mary Lou Halama Secretary

Dalton-Killinger Construction Company
Principal

Approved as to form this 3rd day of April, 2018.

City Attorney

By
Shane McDaniel, Vice-President

By

ATTEST: (SEAL)

Secretary

The Ohio Casualty Insurance Company
Surety

Approved this 4th day of April, 2018.

By Dawn Oney
Dawn Oney

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.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**
**This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.**

Certificate No. 7808151

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company West American Insurance Company

# POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Cristiann Becker; Dawn Oney; Diana L. Turnbull; Scott Brothers

all of the city of Joplin, state of MO each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 19th day of June, 2017.

The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: _____
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 19th day of June, 2017, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: _____
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS** – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII** – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

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**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the seals of said Companies this 2nd day of April, 2018.

By: _____
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



LMS_12873_022017

DALTO-2 OP ID: OD

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 03/29/2018

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>The Insurancenter<br>2901 Arizona Ave<br>Joplin, MO 64804<br>J. Scott Brothers | 800-444-8675 | CONTACT NAME: Dawn Oney<br>PHONE (A/C, No, Ext): 800-444-8675 FAX (A/C, No): 417-623-0902<br>E-MAIL ADDRESS: doney@theinsurancenter.com | |
| | | INSURER(S) AFFORDING COVERAGE | NAIC # |
| | | INSURER A : Cincinnati Insurance Company | 10677 |
| INSURED Dalton-Killinger Construction Company<br>PO Box 607<br>Joplin, MO 64802 | | INSURER B : Midwest Builders' Casualty | 13126 |
| | | INSURER C : | |
| | | INSURER D : | |
| | | INSURER E : | |
| | | INSURER F : | |

**COVERAGES** **CERTIFICATE NUMBER:** **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>GEN'L AGGREGATE LIMIT APPLIES PER:<br>POLICY X PRO-JECT LOC<br>OTHER: | X | | EPP0161359 | 10/01/2017 | 10/01/2018 | 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 | $ 1,000,000<br>$ 100,000<br>$ 5,000<br>$ 1,000,000<br>$ 2,000,000<br>$ 2,000,000 |
| A | AUTOMOBILE LIABILITY<br>X ANY AUTO<br>OWNED AUTOS ONLY SCHEDULED AUTOS<br>HIRED AUTOS ONLY NON-OWNED AUTOS ONLY | X | | EPP0161359 | 10/01/2017 | 10/01/2018 | COMBINED SINGLE LIMIT (Ea accident)<br>BODILY INJURY (Per person)<br>BODILY INJURY (Per accident)<br>PROPERTY DAMAGE (Per accident) | $ 1,000,000<br>$<br>$<br>$ |
| A | X UMBRELLA LIAB X OCCUR<br>EXCESS LIAB CLAIMS-MADE<br>DED X RETENTION $ 0 | X | | EPP0161359 | 10/01/2017 | 10/01/2018 | EACH OCCURRENCE<br>AGGREGATE | $ 5,000,000<br>$ 5,000,000 |
| 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 | | 18BWC0790 | 01/01/2018 | 01/01/2019 | X PER STATUTE OTH-ER<br>E.L. EACH ACCIDENT<br>E.L. DISEASE - EA EMPLOYEE<br>E.L. DISEASE - POLICY LIMIT | $ 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)

RE: Project described as "Surface Project 4006"

GA233 (0207); AA101 (0306); US101UM (1204); US4096 (1010); IA4370 (0809); IA4087 (0811); WC990601 (0111)

**CERTIFICATE HOLDER** CITJO01

City of Joplin, Missouri
602 South Main
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
Dawn Oney


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DALTO-3 OP ID: OD

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 03/21/2018

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>The Insurancenter<br>2901 Arizona Ave<br>Joplin, MO 64804<br>J. Scott Brothers<br>800-444-8675 | CONTACT NAME: Dawn Oney<br>PHONE (A/C, No, Ext): 800-444-8675 FAX (A/C, No): 417-623-0902<br>E-MAIL ADDRESS: doney@theinsurancenter.com |
| INSURED<br>The City of Joplin, Missouri<br>602 South Main Street<br>Joplin, MO 68401 | INSURER(S) AFFORDING COVERAGE — NAIC #<br>INSURER A : Cincinnati Insurance Company* — 10677<br>INSURER B :<br>INSURER C :<br>INSURER D :<br>INSURER E :<br>INSURER F : |

**COVERAGES** **CERTIFICATE NUMBER:** **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 | COMMERCIAL GENERAL LIABILITY<br>CLAIMS-MADE / OCCUR<br>X Owner/Cont Prot.<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>POLICY / PRO-JECT / LOC<br>OTHER: | | | CAP5077558 | 04/02/2018 | 04/02/2019 | 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 | $ 3,000,000<br>$<br>$<br>$<br>$ 3,000,000<br>$ |
| | AUTOMOBILE LIABILITY<br>ANY AUTO<br>OWNED AUTOS ONLY / SCHEDULED AUTOS<br>HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY | | | | | | COMBINED SINGLE LIMIT (Ea accident)<br>BODILY INJURY (Per person)<br>BODILY INJURY (Per accident)<br>PROPERTY DAMAGE (Per accident) | $<br>$<br>$<br>$ |
| | UMBRELLA LIAB / OCCUR<br>EXCESS LIAB / CLAIMS-MADE<br>DED / RETENTION $ | | | | | | EACH OCCURRENCE<br>AGGREGATE | $<br>$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N / A | | | | | PER STATUTE / OTH-ER<br>E.L. EACH ACCIDENT<br>E.L. DISEASE - EA EMPLOYEE<br>E.L. DISEASE - POLICY LIMIT | <br>$<br>$<br>$ |

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

Surface project 4006, Jackson Avenue to Moffet Avenue and 26th Street to 19th St., Byers Avenue to Main St. and 26th St to 18th St.

Designated Contractor: Dalton-Killinger Construction Company

**CERTIFICATE HOLDER**

DALTO01

Dalton-Killinger Construction Company
P.O. Box 607
Joplin, MO 64802

**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

Dawn Oney



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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. Endorsement - Table of Contents:**


| Coverage: | Begins on Page: |
|---|---|
| 1. Employee Benefit Liability Coverage | 2 |
| 2. Unintentional Failure to Disclose Hazards | 7 |
| 3. Damage to Premises Rented to You | 8 |
| 4. Supplementary Payments | 9 |
| 5. Medical Payments | 9 |
| 6. Voluntary Property Damage (Coverage **a.**) and Care, Custody or Control Liability Coverage (Coverage **b.**) | 9 |
| 7. 180 Day Coverage for Newly Formed or Acquired Organizations | 10 |
| 8. Waiver of Subrogation | 10 |
| 9. Automatic Additional Insured - Specified Relationships: | 10 |
| • Managers or Lessors of Premises; | |
| • Lessor of Leased Equipment; | |
| • Vendors; | |
| • State or Political Subdivisions - Permits Relating to Premises; | |
| • State or Political Subdivisions - Permits; and | |
| • Contractors' Operations | |
| 10. Broadened Contractual Liability - Work Within 50' of Railroad Property | 14 |
| 11. Property Damage to Borrowed Equipment | 14 |
| 12. Employees as Insureds - Specified Health Care Services: | 14 |
| • Nurses; | |
| • Emergency Medical Technicians; and | |
| • Paramedics | |
| 13. Broadened Notice of Occurrence | 14 |


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**B. Limits of Insurance:**

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

**1. Employee Benefit Liability Coverage**

| | |
|---|---|
| Each Employee Limit: | $ 1,000,000 |
| Aggregate Limit: | $ 3,000,000 |
| Deductible: | $ 1,000 |

**3. Damage to Premises Rented to You**

The lesser of:

**a.** The Each Occurrence Limit shown in the Declarations; or

**b.** $500,000 unless otherwise stated $ _____

**4. Supplementary Payments**

**a.** Bail bonds: $ 1,000

**b.** Loss of earnings: $ 350

**5. Medical Payments**

Medical Expense Limit: $ 10,000


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i) Reports all, or any part, of the act, error or omission to us or any other insurer;

ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and

b) There is no other applicable insurance.

**(2) Exclusions**

This insurance does not apply to:

**(a) Bodily Injury, Property Damage or Personal and Advertising Injury**

"Bodily injury", "property damage" or "personal and advertising injury".

**(b) Dishonest, Fraudulent, Criminal or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

**(c) Failure to Perform a Contract**

Damages arising out of failure of performance of contract by any insurer.

**(d) Insufficiency of Funds**

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

**(e) Inadequacy of Performance of Investment / Advice Given With Respect to Participation**

Any claim based upon:

1) Failure of any investment to perform;

2) Errors in providing information on past performance of investment vehicles; or

3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

**(f) Workers' Compensation and Similar Laws**

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

**(g) ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**(h) Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**(i) Taxes, Fines or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**(j) Employment-Related Practices**

Any liability arising out of any:

(1) Refusal to employ;

(2) Termination of employment;

(3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employ-


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(b) Claims made or "suits" brought;

(c) Persons or organizations making claims or bringing "suits";

(d) Acts, errors or omissions; or

(e) Benefits included in your "employee benefit program".

(2) The Aggregate Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

(3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

(a) An act, error or omission; or

(b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions,

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

(4) **Deductible Amount**

(a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.

(b) The deductible amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

(c) The terms of this insurance, including those with respect to:

1) Our right and duty to defend the insured against any "suits" seeking those damages; and

2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim,

apply irrespective of the application of the deductible amount.

(d) 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 we have paid.

**d. Additional Conditions**

As respects **Employee Benefit Liability Coverage, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

(1) Item **2. Duties in the Event of Occurrence, Offense, Claim or Suit** is deleted in its entirety and replaced by the following:

**2. Duties in the Event of an Act, Error or Omission, or Claim or Suit**

**a.** You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:

(1) What the act, error or omission was and when it occurred; and

(2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.


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in any benefit included in the "employee benefit program".

However, "administration" does not include:

a. Handling payroll deductions; or

b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.

2. "Cafeteria plans" means plan authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.

3. "Employee benefit programs" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:

a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;

b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;

c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and

d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

(2) The following definitions are deleted in their entirety and replaced by the following:

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or

c. An appeal of a civil proceeding.

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

2. **Unintentional Failure to Disclose Hazards**

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 7. Representations** is hereby amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.


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caused by or resulting from rain, snow, sleet or ice, whether driven by wind or not.

**c. Limit of Insurance**

The Damage to Premises Rented to You Limit as shown in the Declarations is amended as follows:

**(2)** Paragraph **6.** of **SECTION III - LIMITS OF INSURANCE** is hereby deleted and replaced by the following:

**6.** Subject to **5.** above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, for damages because of "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of any one "occurrence" to which this insurance applies.

**(3)** The amount we will pay is limited as described in Section **B. Limits of Insurance, 3. Damage to Premises Rented to You** of this endorsement.

**4. Supplementary Payments**

Under **SECTION I - COVERAGE, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**:

**a.** Paragraph **2.** is replaced by the following:

Up to the limit shown in Section **B. Limits of Insurance, 4.a.** Bail Bonds of this endorsement 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.

**b.** Paragraph **4.** is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in Section **B. Limits of Insurance, 4.b.** Loss of Earnings of this endorsement per day because of time off from work.

**5. Medical Payments**

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in Section **B. Limits of Insurance, 5. Medical Payments** of this endorsement.

**6. Voluntary Property Damage and Care, Custody or Control Liability Coverage**

**a. Voluntary Property Damage Coverage**

We will pay for "property damage" to property of others arising out of operations incidental to the insured's business when:

**(1)** Damage is caused by the insured; or

**(2)** Damage occurs while in the insured's possession.

With your consent, we will make these payments regardless of fault.

**b. Care, Custody or Control Liability Coverage**

**SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, j. Damage to Property**, Subparagraphs **(3)**, **(4)** and **(5)** do not apply to "property damage" to the property of others described therein.

With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

**a.** The Limits of Insurance shown in the Declarations are replaced by the limits designated in Section **B. Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section **B. Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

**(1)** Insureds;

**(2)** Claims made or "suits" brought; or

**(3)** Persons or organizations making claims or bringing "suits".


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you cease to be a tenant in that premises.

2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**(b)** Any person or organization from which you lease equipment with whom you have agreed per Paragraph **9.a.(1)** above to provide insurance. Such person(s) or organization(s) are insureds solely with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person(s) or organizations(s). However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

**(c)** Any person or organization (referred to below as vendor) with whom you have agreed per Paragraph **9.a.(1)** above to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1) The insurance afforded the vendor does not apply to:

**a)** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability 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, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

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

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

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

2) This insurance does not apply to any insured person or organization:

**a)** From whom you have acquired such products, or any ingredient, part or container, entering into, ac-


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of the additional insured; or

2) The rendering of, or 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; and

b) Supervisory, inspection, architectural or engineering activities.

3) "Your work" for which a consolidated (wrap-up) insurance program has been provided by the primecontractor-project manager or owner of the construction project in which you are involved.

b. Only with regard to insurance provided to an additional insured designated under Paragraph **9.a.(2)** Subparagraph **(f)** above, **SECTION III - LIMITS OF INSURANCE** is amended to include:

The limits applicable to the additional insured are those specified in the written contract or agreement or in the Declarations of this Coverage Part, whichever are less. If no limits are specified in the written contract or agreement, or if there is no written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations of this Coverage Part. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

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

(1) Condition **5. Other Insurance** is amended to include:

(a) Where required by a written contract or agreement, this insurance is primary and / or noncontributory as respects any other insurance policy issued to the additional insured, and such other insurance policy shall be excess and / or noncontributing, whichever applies, with this insurance.

(b) Any insurance provided by this endorsement shall be primary to other insurance available to the additional insured except:

1) As otherwise provided in **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance, b. Excess Insurance**; or

2) For any other valid and collectible insurance available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, the coverage provided under this endorsement shall also be excess.

(2) Condition **11. Conformance to Specific Written Contract or Agreement** is hereby added:

**11. Conformance to Specific Written Contract or Agreement**

With respect to additional insureds described in Paragraph **9.a.(2)(f)** above only:

If a written contract or agreement between you and the additional insured specifies that coverage for the additional insured:

a. Be provided by the Insurance Services Office additional insured form number **CG 20 10** or **CG 20 37** (where edition specified); or

b. Include coverage for completed operations; or

c. Include coverage for "your work";

and where the limits or coverage provided to the addi-


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**TIONS**) is hereby deleted and replaced by the following:

**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. To the extent possible, notice should include:

**(1)** How, when and where the "occurrence" or offense took place;

**(2)** The names and addresses of any injured persons and witnesses; and

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

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".



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# BUSINESS AUTO COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer **to SECTION V - DEFINITIONS.**

## SECTION I - COVERED AUTOS

ITEM TWO of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

**A. Description of Covered Auto Designation Symbols**

**SYMBOL** **DESCRIPTION**

**1 =** ANY "AUTO".

**2 =** OWNED "AUTOS" ONLY. Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.

**3 =** OWNED PRIVATE PASSENGER "AUTOS" ONLY. Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.

**4 =** OWNED "AUTOS" OTHER THAN PRIVATE PASSENGER "AUTOS" ONLY. Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.

**5 =** OWNED "AUTOS" SUBJECT TO NO-FAULT. Only those "autos" you own that are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged.

**6 =** OWNED "AUTOS" SUBJECT TO A COMPULSORY UNINSURED MOTORISTS LAW. Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.

**7 =** SPECIFICALLY DESCRIBED "AUTOS". Only those "autos" described in ITEM THREE of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to a power unit described in ITEM THREE).

**8 =** HIRED "AUTOS" ONLY. Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees" or partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

**9 =** NONOWNED "AUTOS" ONLY. Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs.

**B. Owned Autos You Acquire After the Policy Begins**

1. If Symbols 1, 2, 3, 4, 5, or 6 are entered next to a coverage in ITEM TWO of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.

2. But, if Symbol 7 is entered next to a coverage in ITEM TWO of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:

   **a.** We already cover all "autos" that you own for that coverage or it replaces


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quired because of an "accident" we cover. We do not have to furnish these bonds.

(3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $250 a day because of time off from work.

(5) All costs taxed against the "insured" in any "suit" against the "insured" we defend.

(6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

**b. Out-of-State Coverage Extensions**

While a covered "auto" is away from the state where it is licensed we will:

(1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.

(2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

**B. Exclusions**

This insurance does not apply to any of the following:

**1. Expected or Intended Injury**

"Bodily injury" or "property damage" which may reasonably be expected to result from the intentional or criminal acts of the "insured" or which is in fact expected or intended by the "insured", even if the injury or damage is of a different degree or type than actually expected or intended. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

**2. Contractual**

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

**a.** Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or

**b.** That the "insured" would have in the absence of the contract or agreement.

**3. Workers' Compensation**

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

**4. Employee Indemnification and Employer's Liability**

"Bodily injury" to:

**a.** An "employee" of the "insured" sustained in the "workplace";

**b.** An "employee" of the "insured" arising out of the performance of duties related to the conduct of the "insured's" business; or

**c.** The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph **a.** or **b.** above.

This Exclusion applies:

(1) Whether the "insured" may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.


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(3) Being stored, disposed of, treated or processed in or upon the covered "auto";

**b.** Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

**c.** After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

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

(1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

(2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs **6.b.** and **6.c.** of the definition of "mobile equipment".

However, this exception to Paragraph **a.** does not apply if the fuels, lubricants, fluids, exhaust gases or other similar "pollutants" are intentionally discharged, dispersed or released.

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

(1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and

(2) The discharge, dispersal, seepage, migration, release, emission or escape of the "pollutants" is caused directly by such upset, overturn or damage.

**d.** At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:

(1) If the "pollutants" are brought on or to the premises, site or location in connection with such operations by such "insured", contractor or subcontractor; or

(2) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

Subparagraph **d.(1)** does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such "insured", contractor or subcontractor.

**12. War**

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

**a.** War, including undeclared or civil war;

**b.** Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

**c.** Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**13. Racing**

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This


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"auto" is returned to use or we pay for its "loss".

**b. Loss of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

**(1)** Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";

**(2)** Specified Causes of Loss only if the Declarations indicate that Specified Causes of Loss Coverage is provided for any covered "auto"; or

**(3)** Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is $20 per day, to a maximum of $600.

**B. Exclusions**

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

   **a. Nuclear Hazard**

   **(1)** The explosion of any weapon employing atomic fission or fusion; or

   **(2)** Nuclear reaction or radiation, or radioactive contamination, however caused.

   **b. War or Military Action**

   **(1)** War, including undeclared or civil war;

   **(2)** Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

   **(3)** Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.

3. We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this insurance:

   **a.** Wear and tear, freezing, mechanical or electrical breakdown; or

   **b.** Blowouts, punctures or other road damage to tires.

4. We will not pay for "loss" to any of the following:

   **a.** Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.

   **b.** Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measurement equipment.

   **c.** Any electronic equipment, without regard to whether this equipment is permanently installed, that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound.

   **d.** Any accessories used with the electronic equipment described in Paragraph **c.** above.

   Exclusions **4.c.** and **4.d.** do not apply to:

   **a.** Equipment designed solely for the reproduction of sound and accessories used with such equipment, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or such equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto"; or

   **b.** Any other electronic equipment that is:


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c. If there is "loss" to a covered "auto" or its equipment you must also do the following:

(1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.

(2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.

(3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.

(4) Agree to examinations under oath at our request and give us a signed statement of your answers.

3. **Legal Action Against Us**

No one may bring a legal action against us under this Coverage Form until:

a. There has been full compliance with all the terms of this Coverage Form; and

b. Under Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

4. **Loss Payment - Physical Damage Coverages**

At our option we may:

a. Pay for, repair or replace damaged or stolen property;

b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or

c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

5. **Transfer of Rights of Recovery Against Others to Us**

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

**B. General Conditions**

1. **Bankruptcy**

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

2. **Concealment, Misrepresentation or Fraud**

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

a. This Coverage Form;

b. The covered "auto";

c. Your interest in the covered "auto"; or

d. A claim under this Coverage Form.

3. **Liberalization**

If within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part as of the latter of:

a. The date we implemented the change in your state; or

b. The date this Coverage Part became effective; and

will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

4. **No Benefit to Bailee - Physical Damage Coverages**

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.


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## SECTION V - DEFINITIONS

**A.** "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".

**B.** "Auto" means:

1. A land motor vehicle, "trailer" or semitrailer designed for travel on public roads; or
2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

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

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

**D.** "Covered pollution cost or expense" means any cost or expense arising out of:

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

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants":

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

(1) Being transported or towed by, handled, or handled for movement into, onto or from the covered "auto";

(2) Otherwise in the course of transit by or on behalf of the "insured";

(3) Being stored, disposed of, treated or processed in or upon the covered "auto"; or

**b.** Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

**c.** After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

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

(1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

(2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs **6.b.** or **6.c.** of the definition of "mobile equipment".

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

(1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and

(2) The discharge, dispersal, seepage, migration, release, escape or emission of the "pollutants" is caused directly by such upset, overturn or damage.

**E.** "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".

**F.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

**G.** "Insured" means any person or organization qualifying as an insured in the Who is an Insured provision of the applicable coverage.


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(1) Snow removal;

(2) Road maintenance, but not construction or resurfacing; or

(3) Street cleaning;

b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment.

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

L. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and their by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property or the environment regardless of whether injury or damage is caused directly or indirectly by the "pollutants" and whether:

1. The "insured" is regularly or otherwise engaged in activities which taint or degrade the environment; or

2. The "insured" uses, generates or produces the "pollutant".

M. "Property damage" means damage to or loss of use of tangible property.

N. "Suit" means a civil proceeding in which:

1. Damages because of "bodily injury" or "property damage"; or

2. A "covered pollution cost or expense",

to which this insurance applies, are alleged.

"Suit" includes:

a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.

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

P. "Trailer" includes semitrailer.

Q. "Workplace" means that place and during such hours to which the "employee" sustaining "bodily injury" was assigned by you, or any other person or entity acting on your behalf, to work on the date of the "accident".

## NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

## (Broad Form)

1. The insurance does not apply:

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

(1) With respect to which an "insured" under the policy is also an "insured" under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an "insured" under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(b)** the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazard-


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# COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM

Various provisions in this Coverage Part restrict this insurance. Read the entire Coverage Part carefully to determine rights, duties and what is and is not covered.

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

The word "insured" means any person or organization qualifying as such under **SECTION II - WHO IS AN INSURED.**

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V - DEFINITIONS.**

**SECTION I - COVERAGE**

**A. Insuring Agreement**

1. We will pay on behalf of the insured the "ultimate net loss" which the insured is legally obligated to pay as damages for "bodily injury", "personal and advertising injury" or "property damage" to which this insurance applies:

   a. Which is in excess of the "underlying insurance"; or

   b. Which is either excluded or not insured by "underlying insurance".

2. This insurance applies to "bodily injury", "personal and advertising injury" or "property damage" only if:

   a. The "bodily injury", "personal and advertising injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and

   b. The "bodily injury" or "property damage" occurs during the policy period shown in the Declarations; or

   c. The "personal and advertising injury" results from an "occurrence" that takes place during the policy period shown in the Declarations; and

   d. Prior to the "coverage term" in which "bodily injury" or "property damage" occurs, or a "personal and advertising injury" offense is committed, you did not know, per Paragraph **5.** below, that the "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part, or that the "personal and advertising injury" offense had been committed or had begun to be committed, in whole or in part.

3. "Bodily injury" or "property damage" which:

   a. Occurs during the "coverage term"; and

   b. Was not, prior to the "coverage term", known by you, per Paragraph **5.** below, to have occurred;

   includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "coverage term" in which it first became known by you.

4. "Personal and advertising injury" caused by an offense which:

   a. Was committed during the "coverage term"; and

   b. Was not, prior to the "coverage term", known by you, per Paragraph **5.** below, to have been committed;

   includes any continuation, change or resumption of that "personal and advertising injury" offense after the end of the "coverage term" in which it first became known by you.

5. You will be deemed to know that "bodily injury" or "property damage" has occurred, or that a "personal and advertising injury" offense has been committed at the earliest time when any "authorized representative":

   a. Reports all, or any part, of the "bodily injury", "personal and advertising injury" or "property damage" to us or any other insurer;

   b. Receives a written or verbal demand or claim for damages because of the "bodily injury", "personal and advertising injury" or "property damage";

   c. First observes, or reasonably should have first observed, the "bodily injury" or "property damage", or the offense that caused the "personal and advertising injury";

   d. Becomes aware, or reasonably should have become aware, by any means, other than as described in **c.** above, that "bodily injury" or "prop-


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**8. Distribution of Material in Violation of Statutes**

Any liability arising directly or indirectly out of any action or omission that violates or is alleged to violate:

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

**b.** The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or

**c.** Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**9. Electronic Chatrooms or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**10. 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".

**11. Employer's Liability Limitation**

Any liability arising from any injury to:

**a.** An "employee" of the insured sustained in the "workplace";

**b.** An "employee" of the insured arising out of the performance of duties related to the conduct of the insured's business; or

**c.** The spouse, child, parent, brother or sister of that "employee" as a consequence of **a.** or **b.** above.

This exclusion applies:

**a.** Whether the insured may be liable as an employer or in any other capacity; and

**b.** To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply when such insurance is provided by valid and collectible "underlying insurance" listed in the Schedule of Underlying Insurance, or would have been provided by such listed "underlying insurance" except for the exhaustion by payment of claims of its limits of insurance, and then only for such hazards for which coverage is provided by such "underlying insurance", unless otherwise excluded by this Coverage Part.

**12. Employment-Related Practices**

Any liability arising from any injury to:

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

**(1)** Refusal to employ that person;

**(2)** Termination of that person's employment; or

**(3)** Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

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

This exclusion applies:

**a.** Whether the insured may be liable as an employer or in any other capacity; and

**b.** To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**13. Expected or Intended Injury**

"Bodily injury" or "property damage" which may reasonably be expected to result from the intentional or criminal acts of the insured or which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually intended or expected.

However, this exclusion does not apply to:

**a.** "Bodily injury" resulting from the use of reasonable force to protect persons or property; or

**b.** "Bodily injury" or "property damage" resulting from the use of reasonable force to prevent or eliminate danger


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behalf in any other fashion or its parts, if:

(a) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

(b) The "bodily injury" or "property damage" does not arise out of the operation of any equipment listed in Paragraphs **f.(2)** and **(3)** of the definition of "mobile equipment".

However, this exception to Paragraph **(1)** does not apply if the fuels, lubricants, or other operating fluids, exhaust gases or other similar "pollutants" are intentionally discharged, dispersed, emitted or released.

Paragraphs **(2)** and **(3)** above do not apply to an "occurrence" that occurs away from premises owned by or rented to an insured with respect to "pollutants" not in or upon an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion if:

(a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion; and

(b) The discharge, dispersal, seepage, migration, release, emission or escape of the "pollutants" is caused directly by such upset, overturn or damage.

**b.** Any liability caused by "pollutants" and arising from the operation, maintenance, use, "loading or unloading" of an "auto", for which insurance coverage is excluded by "underlying insurance".

**17. Pollutant - Other Than Auto**

**a.** "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, emission or escape of "pollutants":

(1) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured.

However, Paragraph **a.(1)** of this exclusion does not apply to the following if such liability is covered by "underlying insurance" listed in the Schedule of Underlying Insurance, but only to the extent insurance is provided at the "underlying limit" specified in the Schedule of Underlying Insurance for the "underlying insurance" listed and subject to all its terms, limitations and conditions:

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

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

(c) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

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


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or such claim or "suit" by or on behalf of a governmental authority.

d. Any liability caused by "pollutants", for which insurance coverage is excluded by "underlying insurance".

**18. Recall of Products, Work or Impaired Property**

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

a. "Your product";

b. "Your work"; or

c. "Impaired Property";

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

**19. Unauthorized Use of Another's Name or Product**

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

**20. Uninsured / Underinsured Motorist**

Any liability or obligation to any insured or anyone else under any uninsured motorist, underinsured motorist, automobile no-fault or first party personal injury law.

**21. War**

Any liability, however caused, arising directly or indirectly, out of:

a. War, including undeclared or civil war;

b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack by any government, sovereign or authority using military personnel or other agents; or

c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

**22. Workers' Compensation**

Any liability or obligation of the insured under any workers' compensation, unemployment compensation, disability benefits or similar law. However, this exclusion does not apply to liability of others assumed by you under an "insured contract" in existence at the time of "occurrence".

**C. Defense and Supplementary Payments**

1. We will have the right and duty to defend the insured against any "suit" seeking damages because of "bodily injury", "personal and advertising injury" or "property damage" to which this insurance applies. We will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "personal and advertising injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result when:

   a. The applicable limits of the "underlying insurance" and any other insurance have been exhausted by payment of claims; or

   b. Damages are sought for "bodily injury", "personal and advertising injury" or "property damage" which are not covered by "underlying insurance" or other insurance.

2. Our right and duty to defend ends when the applicable Limits of Insurance, as stated in the Declarations, has been exhausted by payment of claims.

3. We have no duty to investigate, settle or defend any claim or "suit" other than those circumstances described in Paragraph **C.1.** However, we do have the right to participate in the investigation, settlement or defense of any claim or "suit" to which this insurance applies. If we exercise this right, we will do so at our expense.

4. If there is no underlying insurer or other insurance obligated to do so, we will pay the following when we provide a defense:

   a. All expenses we incur.

   b. The cost of bail bonds up to $3,000. We do not have to furnish these bonds.

   c. The cost of bonds to appeal a judgment or award in any claim or "suit" we defend and the cost of bonds to


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with respect to their duties as trustees.

**b.** Each of the following is also an insured:

**(1)** Any "employee" of yours while acting within the scope of their duties as such.

**(2)** Any person or organization while acting as your real estate manager.

**(3)** Any person or organization having proper temporary custody of your property if you die, but only:

**(a)** With respect to liability arising out of the maintenance or use of that property; and

**(b)** Until your legal representative has been appointed.

**(4)** Your legal representative if you die, but only with respect to duties as such.

**2.** Only with respect to liability arising out of the ownership, maintenance, occupancy or use of an "auto":

**a.** You are an insured.

**b.** Anyone else while using with your permission an "auto" you own, hire or borrow is also an insured except:

**(1)** The owner or any other person or organization (except your "executive officers" or principals) from whom you hire or borrow an "auto", unless such persons or organizations are insureds in your "underlying insurance" listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is provided by such "underlying insurance". This exception does not apply if the "auto" is a trailer or semitrailer connected to an "auto" you own.

**(2)** Your "employee", if the "auto" is owned by that "employee" or a member of his or her household, unless:

**(a)** Such "employee" is an insured with respect to that "auto" in the "underlying insurance" listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is provided by such "underlying insurance"; or

**(b)** The "bodily injury" or "property damage" is sustained by a co-"employee" of such "employee".

**(3)** Someone using an "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos", unless that business is yours.

**(4)** Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from an "auto".

**c.** Anyone liable for the conduct of an insured described in Paragraphs **2.a.** and **b.** above is also an insured, but only if they are provided insurance coverage for such liability by valid and collectible "underlying insurance" listed in the Schedule of Underlying Insurance and then only for such hazards for which coverage is provided by such "underlying insurance".

**3.** At your option and subject to the terms of this insurance, any additional insureds not addressed by Paragraphs **1.** and **2.** above covered in the "underlying insurance" listed in the Schedule of Underlying Insurance are also insureds, but only to the extent that insurance is provided for such additional insureds thereunder.

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

**SECTION III - LIMITS OF INSURANCE**

**1.** The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

**a.** Insureds;

**b.** Claims made or "suits" brought; or

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

**2.** The Aggregate Limit is the most we will pay for all damages:

**a.** Included in the "products-completed operations hazard";

**b.** Because of "bodily injury" by disease sustained by your "employees" arising out of and in the course of their employment by you; or


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**TION I - COVERAGE, C. Defense and Supplementary Payments**; and

c. The expense of such appeal.

**2. Audit**

If this Coverage Part is subject to Audit, as indicated in the Declarations, then the following Condition applies:

a. The premium shown in the Premium Computation Endorsement as Advance Premium is a deposit premium. At the close of each audit period, we will compute the earned premium for that period. If:

(1) The earned premium is less than the deposit premium, we will return the excess to the first Named Insured; or

(2) The earned premium is greater than the deposit premium, the difference will be due and payable to us by the first Named Insured upon notice from us. The due date for audit and retrospective premiums is the date shown as the due date on the bill.

However, in no event will the earned premium be less than the Minimum Premium stated in the Premium Computation Endorsement.

b. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**3. Bankruptcy**

Bankruptcy or insolvency of the insured or the insured's estate shall not relieve us of any obligations under this Coverage Part.

**4. Duties in the Event of Occurrence, Claim or Suit**

a. You must see to it that we are notified as soon as practicable of an "occurrence" which may result in a claim or "suit". To the extent possible, notice should include:

(1) How, when and where the "occurrence" took place;

(2) The names and addresses of any injured persons and witnesses; and

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

This requirement applies only when the "occurrence" is known to an "authorized representative".

b. If a claim is made or "suit" is brought against any insured that is likely to involve this Coverage Part, you must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

This requirement will not be considered breached unless the breach occurs after such claim or "suit" is known to an "authorized representative".

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

**5. First Named Insured**

The person or organization first named in the Declarations will act on behalf of all other insureds where indicated in this Coverage Part.

**6. Legal Action Against Us and Loss Payments**

a. No legal action may be brought against us unless there has been full compliance with all the terms of this Coverage Part nor until the amount of the insured's obligation to pay has been finally determined as provided below. No person or organization has any right under this Coverage Part to bring us into any action to determine the liability of the insured.

b. We shall be liable for payment of the "ultimate net loss" for any "occurrence" to which this Coverage Part applies:

(1) For "occurrences" not covered by "underlying insurance"; or


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a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

**13. Transfer of Rights of Recovery Against Others to Us**

a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

b. Any recoveries shall be applied as follows:

(1) First, we will reimburse anyone, including the insured, the amounts actually paid by them that were in excess of our payments;

(2) Next, we will be reimbursed to the extent of our actual payment; and

(3) Lastly, any amounts left after meeting the obligations outlined in **(1)** and **(2)** above will be distributed to anyone else known to us at the time a recovery is made and who is legally entitled to such recovery.

Expenses incurred in the recovery shall be apportioned among all interests in the ratio of their respective recoveries as finally settled. If there is no recovery as a result of our attempts, we shall bear all of the recovery expenses.

c. If prior to an "occurrence" to which this Coverage Part would apply, you and the issuer of your applicable "underlying insurance" listed specifically in the Schedule of Underlying Insurance waive any right of recovery against a person or organization for injury or damage, we will also waive any rights we may have against such person or organization.

**14. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

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

**SECTION V - DEFINITIONS**

**1.** "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. "Advertisement" includes a publicity article. For the purposes of this definition:

a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement".

**2.** "Authorized representative" means:

a. If you are:

(1) An individual, you and your spouse are "authorized representatives".

(2) A partnership or joint venture, your members, your partners, and their spouses are "authorized representatives".

(3) A limited liability company, your members and your managers are "authorized representatives".

(4) An organization other than a partnership, joint venture or limited liability company, your "executive officers" and directors are "authorized representatives". Provided you are not a publicly traded organization, your stockholders are also "authorized representatives".

(5) A trust, your trustees are "authorized representatives".

b. Your "employees" assigned to manage your insurance program, or assigned to give or receive notice of an "occurrence", claim or "suit" are also "authorized representatives".

**3.** "Auto" means:

a. Any land motor vehicle, trailer or semitrailer designed for travel on public roads; or

b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

"Auto" does not include "mobile equipment".


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Paragraphs **f.** and **g.** do not include that part of any contract or agreement:

**(1)** That indemnifies a railroad for "bodily injury", "property damage" or "personal and advertising injury" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing. However, if such liability is insured by valid and collectible "underlying insurance" as listed in the Schedule of Underlying Insurance, this Paragraph **(1)** shall not apply for such hazards for which insurance coverage is afforded by such "underlying insurance";

**(2)** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

**(a)** Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

**(b)** Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

**(3)** Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph **(2)** above and supervisory, inspection, architectural or engineering activities;

**(4)** That indemnifies an advertising, public relations or media consulting firm for "personal and advertising injury" arising out of the planning, execution or failure to execute marketing communications programs. Marketing communications programs include but are not limited to comprehensive marketing campaigns; consumer, trade and corporate advertising for all media; media planning, buying, monitoring and analysis; direct mail; promotion; sales materials; design; presentations; point-of-sale materials; market research; public relations and new product development;

**(5)** Under which the insured, if an advertising, public relations or media consulting firm, assumes liability for "personal and advertising injury" arising out of the insured's rendering or failure to render professional services, including those services listed in Paragraph **(4)**, above;

**(6)** That indemnifies a web-site designer or content provider, or Internet search, access, content or service provider for injury or damage arising out of the planning, execution or failure to execute Internet services. Internet Services include but are not limited to design, production, distribution, maintenance and administration of web-sites and web-banners; hosting web-sites; registering domain names; registering with search engines; marketing analysis; and providing access to the Internet or other similar networks;

**(7)** Under which the insured, if a web-site designer or content provider, or Internet search, access, content or service provider, assumes liability for injury or damage arising out of the insured's rendering or failure to render Internet services, including those listed in Paragraph **(6)**, above;

**(8)** That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or

**(9)** That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of an "auto" over a route or territory that person or organization is authorized to serve by public authority.

**13.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" includes supervisors furnished to you by the labor leasing firm. "Leased worker" does not include a "temporary worker".

**14.** "Loading or unloading" means the handling of property:

**a.** After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

**b.** While it is in or on an aircraft, watercraft or "auto"; or


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f. Oral or written publication, in any manner, of material that violates a person's right of privacy;

g. The use of another's advertising idea in your "advertisement";

h. Infringing upon another's copyright, trade dress or slogan in your "advertisement"; or

i. Discrimination, unless insurance coverage therefor is prohibited by law or statute.

18. "Pollutants" mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include, but are not limited to, substances which are generally recognized in industry or government to be harmful or toxic to persons, property or the environment regardless of whether the injury or damage is caused directly or indirectly by the "pollutants" and whether:

a. The insured is regularly or otherwise engaged in activities which taint or degrade the environment; or

b. The insured uses, generates or produces the "pollutant".

19. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the site has been completed, if your contract calls for work at more than one site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or

(2) The existence of tools, uninstalled equipment or abandoned or unused materials.

20. "Property damage" means:

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

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

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

21. "Subsidiary" means any organization in which more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors is owned or controlled, directly or indirectly, in any combination, by one or more of the Named Insureds.

22. "Suit" means a civil proceeding in which money damages because of "bodily injury", "personal and advertising injury" or "property damage" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such money damages are claimed and to which the insured must submit or does submit with our consent;

b. Any other alternative dispute resolution proceeding in which such money damages are claimed and to which the insured submits with our consent; or

c. An appeal of a civil proceeding.


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# NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART**

**A. SECTION I - COVERAGE, B. Exclusions** is modified to add the following:

This insurance does not apply to:

1. Any liability:

   **a.** With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

   **b.** Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(1)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(2)** the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

2. Any liability resulting from the "hazardous properties" of "nuclear material", if

   **a.** The "nuclear material" **(1)** is at any "nuclear facility" owned by, or operated by or on behalf of, an insured or **(2)** has been discharged or dispersed therefrom,

   **b.** The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or

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

**B. SECTION V - DEFINITIONS** is hereby modified to add the following definitions:

1. "Hazardous properties" include radioactive, toxic or explosive properties;

2. "Nuclear material" means "source material", "special nuclear material" or "by-product material";

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

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

5. "Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

6. "Nuclear facility" means:

   **a.** Any "nuclear reactor";

   **b.** Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", **(3)** or handling, processing or packaging "waste";

   **c.** Any equipment or device used for the processing, fabricating or alloying of "special nuclear materials", if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of


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

# AUTOMATIC NON-CONTRIBUTORY COVERAGE ENDORSEMENT - WHERE REQUIRED BY WRITTEN CONTRACT

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART**

**SCHEDULE**

| **LIMITS OF INSURANCE:** | |
|---|---|
| $ **5**,000,000 Each Occurrence Limit<br>$ **5**,000,000 Aggregate Limit | |

**COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM, US 101** and **US 101 UM**, is amended as follows:

**A. SECTION III - LIMITS OF INSURANCE** is amended to add the following:

**7.** For the purposes of this endorsement only, the Limits of Insurance stated in the Schedule of this endorsement and described below will apply on a "non-contributory basis" within the parameters set forth in **SECTION III - LIMITS OF INSURANCE** of the Coverage Part to which this endorsement is attached:

We will not pay more on behalf of a "non-contributory additional insured" than the lesser of:

**a.** The Limits of Insurance stated in the Schedule of this endorsement; or

**b.** The limits of insurance required in a written contract on a "non-contributory basis" for such "non-contributory additional insured", but only to the extent the required limits of insurance are in excess of the "underlying insurance"; or

**c.** The Limits of Insurance available after the payment of "ultimate net loss" on any insured's behalf from any claim or "suit".

This provision is included within and does not act to increase the Limits of Insurance stated in the Declarations.

**B. SECTION IV - CONDITIONS** is amended as follows:

**1.** Condition **9. Other Insurance** is amended to add the following:

It is agreed that this condition does not apply to the "non-contributory additional insured's" own insurance program.

This exception to the Other Insurance Condition shall only apply if the applicable "underlying insurance" applies on a "non-contributory basis" for such "non-contributory additional insured" and only to the extent of the specific limits of insurance required in a written contract on a "non-contributory basis" that is in excess of the "underlying insurance".

**2.** The following condition is added:

**15.** As a precedent to the receipt of insurance coverage hereunder, the "non-contributory additional insured" must give written notice of such claim or "suit", including a demand for defense and indemnity, to any other insurer who had coverage for the claim or "suit" under its policies. Such notice must demand the full coverage available and the "non-contributory additional insured" shall not waive or limit such other available coverage.

This condition does not apply to the "non-contributory additional insured's" own insurance program.

**C. SECTION IV - DEFINITIONS** is amended to add the following:

**30.** "Non-contributory additional insured" means any person or organization:

**a.** Qualifying as an additional insured under **SECTION II - WHO IS AN INSURED**, Paragraph **3.** of the Coverage Part to which this endorsement is attached; and

**b.** Being granted additional insured status on a "non-contributory basis" in the "underlying insurance" as re-


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# MATERIAL COVERAGE CHANGE NOTIFICATION

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS PACKAGE POLICY**
**COMMERCIAL AUTO COVERAGE PART**
**CLAIMS-MADE EXCESS LIABILITY COVERAGE PART**
**COMMERCIAL GENERAL LIABILITY COVERAGE PART**
**COMMERCIAL INLAND MARINE COVERAGE PART**
**COMMERCIAL OUTPUT PROGRAM - PROPERTY COVERAGE PART**
**COMMERCIAL PROPERTY COVERAGE PART**
**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART**
**CONTRACTOR'S ERRORS AND OMISSIONS COVERAGE PART CLAIMS-MADE**
**CONTRACTOR'S LIMITED POLLUTION LIABILITY COVERAGE PART**
**CRIME AND FIDELITY COVERAGE PART**
**DENTIST'S PACKAGE POLICY**
**ELECTRONIC DATA LIABILITY COVERAGE PART**
**EMPLOYEE BENEFIT LIABILITY COVERAGE PART**
**EMPLOYMENT PRACTICES LIABILITY COVERAGE PART**
**EXCESS LIABILITY COVERAGE PART**
**EXCESS WORKERS COMPENSATION AND EMPLOYERS LIABILITY COVERAGE PART**
**FARM COVERAGE PART**
**GOLF COURSE CHEMICAL APPLICATION LIMITED LIABILITY COVERAGE PART**
**HOLE-IN-ONE COVERAGE PART**
**INTERNET LIABILITY COVERAGE PART**
**LIQUOR LIABILITY COVERAGE PART**
**MACHINERY AND EQUIPMENT COVERAGE PART**
**MANUFACTURER'S ERRORS AND OMISSIONS COVERAGE PART CLAIMS-MADE**
**MORTGAGEHOLDERS ERRORS AND OMISSIONS COVERAGE PART**
**POLLUTION LIABILITY COVERAGE PART**
**PRODUCT WITHDRAWAL COVERAGE PART**
**PRODUCTS / COMPLETED OPERATIONS COVERAGE PART**
**PROFESSIONAL LIABILITY COVERAGE PART**
**PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART**
**PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

**SCHEDULE**

Name of Person or Organization:

The City of Joplin, Missouri

Mailing Address:

602 South Main Street
Joplin, Missouri 64801

**Material Change Notification - Number of Days** 30

In the event of a material change in coverage requested by the Insured or initiated by us which reduces or restricts coverage other than:

**(1)** The reduction of aggregate limits through reserves or payments of claims; or

**(2)** Routine automobile changes;

we agree to mail or deliver notification to the person or entity shown on the Schedule. The notification will be at least the number of days shown in the Schedule before the effective date of the coverage change.

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

# CANCELLATION OR NONRENEWAL BY US NOTIFICATION TO A DESIGNATED ENTITY

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS PACKAGE POLICY**
**CLAIMS-MADE EXCESS LIABILITY COVERAGE PART**
**COMMERCIAL AUTO COVERAGE PART**
**COMMERCIAL GENERAL LIABILITY COVERAGE PART**
**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART**
**DENTIST'S PACKAGE POLICY**
**EXCESS LIABILITY COVERAGE PART**
**PRODUCTS/COMPLETED OPERATIONS COVERAGE PART**
**PROFESSIONAL LIABILITY COVERAGE PART**
**PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART**
**PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

**SCHEDULE**

Name and mailing address of person(s) or organization(s):

City of Joplin, Missouri
602 South Main Street
Joplin, Missouri 64801

Number of days notice (other than nonpayment of premium): 30

**A.** If we cancel or nonrenew this policy for any statutorily permitted reason other than nonpayment of premium we will mail notice to the person or organization shown in the Schedule. We will mail such notice at least the number of days shown in the Schedule before the effective date of cancellation or nonrenewal.

**B.** If we cancel this policy for nonpayment of premium, we will mail notice to the person or organization shown in the Schedule. We will mail such notice at least 10 days before the effective date of cancellation.

**C.** If notice is mailed, proof of mailing to the mailing address shown in the Schedule will be sufficient proof of notice.

**D.** In no event will coverage extend beyond the actual expiration, termination or cancellation of the policy.

## NOTICE OF CANCELLATION TO CERTIFICATE HOLDERS

This policy is subject to the following additional Conditions:

A. If this policy is cancelled by the Company, other than for non-payment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

B. If this policy is cancelled by the Company for non-payment of premium, or by the insured, notice of such cancellation will be provided within ten (10) days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

If this policy is cancelled by the Company for non-payment of premium, or by the insured, notice of such cancellation will be provided within ten (10) days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

Our failure to provide such advance notification will not extend the policy cancellation date nor negate cancellation of the policy or provide any additional insurance that would not have been provided in the absence of this endorsement.

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

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

Endorsement Effective 1/1/2018 Policy No. WC100-0000790-2018A Endorsement WC 99 06 01

Insured **Dalton Killinger Construction Company, Inc.** Premium $48,582

Insurance Company

**Midwest Builders' Casualty Mutual Company**
1100 Walnut Street Suite 3010
Kansas City, MO 64106
(816) 474-7799
Carrier Code **32131**

Countersigned by