

**AMENDMENT TO CONTRACT**  
**Unit Price**  
**Painting Services**  
**Bid No. 16-286**  
**City of Lincoln, Lancaster County and**  
**City of Lincoln-Lancaster County Public Building Commission**  
**Renewal**  
**Athey Painting**

This Amendment is hereby entered into by and between Athey Painting Inc., 9400 Yankee Hill Road, Lincoln, NE 68526 (hereinafter "Contractor") and the City of Lincoln, Lancaster County and the City of Lincoln-Lancaster County Public Building Commission (hereinafter "Owners"), for the purpose of amending the Contract dated March 2, 2017 executed under City Resolution No. A-90259, and County Contract C-17-0142, dated February 21, 2017, and executed by the City of Lincoln-Lancaster County Public Building Commission, on February 14, 2017, for Unit Price – Painting Services, Bid No. 16-286, which is made a part of this amendment by this reference.

WHEREAS, the original term of the Contract is March 1, 2017 through February 28, 2019, with the option to renew for two (2) additional two (2) year terms upon written mutual consent by all parties; and

WHEREAS, the parties hereby renew the Contract for an additional two (2) year term beginning March 1, 2019 through February 28, 2021; and

WHEREAS, the expenditures for the City of Lincoln for the term of this renewal shall not exceed \$40,000.00 for contracts without approval by the City of Lincoln; and

WHEREAS, the expenditures for Lancaster County for the term of this renewal shall not exceed \$30,000.00 for contracts without approval by the Lancaster County Board; and

WHEREAS, the expenditures for the City of Lincoln-Lancaster County Public Building Commission for the term of this renewal shall not exceed \$40,000.00 for contracts without approval by the Public Building Commission; and

WHEREAS, the parties hereby amend the contract to replace Paragraph No. 9 of the Contract with the following language:

OWNER INCLUSION. It is understood and agreed by all parties that "Owner/s" shall include the City of Lincoln, Lancaster County, and the Lincoln-Lancaster County Public Building Commission. Whenever a singular entity is referenced (i.e., "the City" or "the County" or "Building Commission") in the Contract, which includes the instructions to bidders, specifications, insurance requirements, bonds, terms and conditions, or any other documents which are a part of the Contract, it shall mean the "Owners" encompassing the City of Lincoln, Lancaster County, and the Lincoln-Lancaster County Public Building Commission. Notwithstanding the foregoing, the duties and obligations of the City of Lincoln, Lancaster County, and the Lincoln-Lancaster County Public Building Commission pursuant to the Contract shall be treated as divisible and severable duties and obligations, and default by any one of the Owners shall not be attributed to any other of the Owners, but shall remain the sole obligation of the defaulting entity.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in the Contract under City Resolution A-90259 and County Contract C-17-0142, all amendments thereto, and as stated herein, the parties agree as follows:

- 1) The parties hereby renew the Contract for an additional two (2) year term beginning March 1, 2019 through February 28, 2021.

- 2) The expenditures for the City of Lincoln for the term of this renewal shall not exceed \$40,000.00 for contracts without approval by the City of Lincoln.
- 3) The expenditures for Lancaster County for the term of this renewal shall not exceed \$30,000.00 for contracts without approval by the Lancaster County Board.
- 4) The expenditures for the City of Lincoln-Lancaster County Public Building Commission for the term of this renewal shall not exceed \$40,000.00 for contracts without approval by the Public Building Commission.
- 5) The parties hereby amend the contract to replace Paragraph No. 9 of the Contract with the following language: OWNER INCLUSION. It is understood and agreed by all parties that "Owner/s" shall include the City of Lincoln, Lancaster County, and the Lincoln-Lancaster County Public Building Commission. Whenever a singular entity is referenced (i.e., "the City" or "the County" or "Building Commission") in the Contract, which includes the instructions to bidders, specifications, insurance requirements, bonds, terms and conditions, or any other documents which are a part of the Contract, it shall mean the "Owners" encompassing the City of Lincoln, Lancaster County, and the Lincoln-Lancaster County Public Building Commission. Notwithstanding the foregoing, the duties and obligations of the City of Lincoln, Lancaster County, and the Lincoln-Lancaster County Public Building Commission pursuant to the Contract shall be treated as divisible and severable duties and obligations, and default by any one of the Owners shall not be attributed to any other of the Owners, but shall remain the sole obligation of the defaulting entity.
- 6) All other terms of the Contract, not in conflict with this Amendment, shall remain in force and effect.

The Parties do hereby agree to all the terms and conditions of this Amendment. This Amendment shall be binding upon the parties, their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties do hereby execute this Amendment upon completion of signatures on:

Vendor Signature Page  
City of Lincoln Signature Page  
Lancaster County Signature Page  
City of Lincoln-Lancaster County Public Building Commission Signature Page


## Vendor Signature Page

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**AMENDMENT TO CONTRACT**  
**Unit Price**  
**Painting Services**  
**Bid No. 16-286**  
**City of Lincoln, Lancaster County and**  
**City of Lincoln-Lancaster County Public Building Commission**  
**Renewal**  
**Athey Painting**

Please sign, date and return within 5 days of receipt.

Mail to: City/County Purchasing  
 Attn: Brianne Crooks  
 440 So. 8th St., Ste. 200  
 Lincoln, NE 68508  
 Or email to: [bcrooks@lincoln.ne.gov](mailto:bcrooks@lincoln.ne.gov)

Company Name:	Athey Painting Inc
By: (Please Sign)	
By: (Please Print)	Buck Athey
Title:	V. President
Company Address:	9400 Yankee Hill Rd Lincoln NE 68526
Company Phone & Fax:	402-421-2612 / Fax: 402-421-2620
E-Mail Address:	paint@athelpainting.com
Date:	1-31-19
Contact Person for Orders or Service	Buck Athey
Contact Phone Number:	402-202-2417

**City of Lincoln Signature Page**

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**AMENDMENT TO CONTRACT  
Unit Price  
Painting Services  
Bid No. 16-286  
City of Lincoln, Lancaster County and  
City of Lincoln-Lancaster County Public Building Commission  
Renewal  
Athey Painting**

**EXECUTION BY THE CITY OF LINCOLN, NEBRASKA**

ATTEST:

\_\_\_\_\_  
City Clerk

CITY OF LINCOLN, NEBRASKA

\_\_\_\_\_  
Chris Beutler, Mayor

Approved by Executive Order No. \_\_\_\_\_

dated \_\_\_\_\_

**Lancaster County Signature Page**

**AMENDMENT TO CONTRACT  
Unit Price  
Painting Services  
Bid No. 16-286  
City of Lincoln, Lancaster County and  
City of Lincoln-Lancaster County Public Building Commission  
Renewal  
Athey Painting**

**EXECUTION BY LANCASTER COUNTY, NEBRASKA**

Contract Approved as to Form:

The Board of County Commissioners of  
Lancaster, Nebraska

\_\_\_\_\_  
Deputy Lancaster County Attorney

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

dated \_\_\_\_\_

**City of Lincoln-Lancaster County Public Building Commission  
Signature Page**

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**AMENDMENT TO CONTRACT  
Unit Price  
Painting Services  
Bid No. 16-286  
City of Lincoln, Lancaster County and  
City of Lincoln-Lancaster County Public Building Commission  
Renewal  
Athey Painting**

**EXECUTION BY LINCOLN-LANCASTER COUNTY PUBLIC BUILDING COMMISSION**

ATTEST:

\_\_\_\_\_  
Public Building Commission Attorney

\_\_\_\_\_  
Chairperson, Public Building Commission

dated \_\_\_\_\_

**PERFORMANCE BOND**

**Bond Number:** BD 749297

**AMCO Insurance Company**  
**Nationwide Mutual Insurance Company**  
**Allied Property & Casualty Insurance Company**  
1100 Locust St., Dept 2006 Des Moines, IA 50391-2006  
(866) 387-0457

**CONTRACTOR:**

Athey Painting Inc.  
9400 Yankee Hill Road  
Lincoln, NE 68526

**SURETY:**

Nationwide Mutual Insurance Company  
1100 Locust St, Dept 2006  
Des Moines, IA 50391

**OWNER:**

City of Lincoln, Lancaster County and Lincoln-Lancaster County Public Building Commission  
555 South 10th St.  
Lincoln, NE 68508

**CONSTRUCTION CONTRACT**

Date: 02/11/2019

Amount: \$50,000.00

**Description:**

For all labor, material and equipment necessary for Unit Price - Painting Services, Bid No 16-286.

**BOND**

Date: 02/11/2019

Amount: \$50,000.00

Modifications to this Bond:  None  See Section 16

**CONTRACTOR AS PRINCIPAL**

Company: *(Corporate Seal)*  
Athey Painting Inc.

**SURETY**

Company: *(Corporate Seal)*  
Nationwide Mutual Insurance Company

Signature: *[Handwritten Signature]*  
Name  
And Title:

Signature: *[Handwritten Signature]*  
Name  
and Title: Elissa Biggerstaff, Attorney-in-Fact



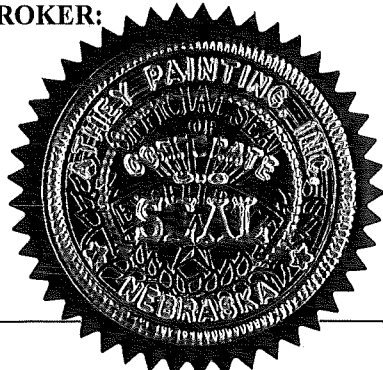
*(Any additional signatures appear on the last page of this Performance Bond)*

*(FOR INFORMATION ONLY – Name, address and telephone)*

**AGENT or BROKER:**

**OWNERS REPRESENTATIVE:**

*(Architect, Engineer or other party:)*



§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provide in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for the execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for



- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontractors, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.


§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be a Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on cover page.)


**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corporate Seal)

Signature:   
Name: Buck Athey  
And Title: V. President  
Address: 9400 Yankee Hill Rd  
Lincoln NE 68526

**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)  
Nationwide Mutual Insurance Company

Signature:   
Name: \_\_\_\_\_  
and Title: Elissa Biggerstaff, Attorney-in-Fact  
Address: \_\_\_\_\_

**PAYMENT BOND**

**Bond Number:** BD 749297

**AMCO Insurance Company**  
**Nationwide Mutual Insurance Company**  
**Allied Property & Casualty Insurance Company**  
1100 Locust St., Dept 2006 Des Moines, IA 50391-2006  
(866) 387-0457

**CONTRACTOR:**  
Athey Painting Inc.  
9400 Yankee Hill Road  
Lincoln, NE 68526

**SURETY:**  
Nationwide Mutual Insurance Company  
1100 Locust St, Dept 2006  
Des Moines, IA 50391

**OWNER:**  
City of Lincoln, Lancaster County and Lincoln-Lancaster County Public Building Commission  
555 South 10th St.  
Lincoln, NE 68508

**CONSTRUCTION CONTRACT**  
Date: 02/11/2019

Amount: \$50,000.00

Description:  
For all labor, material and equipment necessary for Unit Price - Painting Services, Bid No 16-286.

**BOND**  
Date: 02/11/2019

Amount: \$50,000.00

Modifications to this Bond:  None  See Section 18

**CONTRACTOR AS PRINCIPAL**  
Company: *(Corporate Seal)*  
Athey Painting Inc.

**SURETY**  
Company: *(Corporate Seal)*  
Nationwide Mutual Insurance Company

Signature: *[Handwritten Signature]*  
Name  
And Title:

Signature: *Elissa Biggerstaff*  
Name  
and Title: Elissa Biggerstaff, Attorney-in-Fact



*(Any additional signatures appear on the last page of this Performance Bond)*

*(FOR INFORMATION ONLY – Name, address and telephone)*

**AGENT or BROKER:**

**OWNERS REPRESENTATIVE:**  
*(Architect, Engineer or other party:)*



§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13)

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

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§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be a Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

*(Space is provided below for additional signatures of added parties, other than those appearing on cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ *(Corporate Seal)*

Signature: *[Handwritten Signature]*  
Name *Black Athey*  
And Title: *V. President*  
Address *9400 Yankee Hill Rd  
Lincoln NE 68526*

**SURETY**

Company: \_\_\_\_\_ *(Corporate Seal)*  
Nationwide Mutual Insurance Company

Signature: *[Handwritten Signature]*  
Name  
and Title: *Elissa Biggerstaff, Attorney-in-Fact*  
Address

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS THAT:

Nationwide Mutual Insurance Company, an Ohio corporation  
National Casualty Company, an Ohio corporation

AMCO Insurance Company, an Iowa corporation  
Allied Property and Casualty Insurance Company, an Iowa corporation

hereinafter referred to severally as the "Company" and collectively as "the Companies" does hereby make, constitute and appoint:

Elissa Biggerstaff

each in their individual capacity, its true and lawful attorney-in-fact, with full power and authority to sign, seal, and execute on its behalf any and all bonds and undertakings, and other obligatory instruments of similar nature, in penalties not exceeding the sum of

One Hundred Thousand Dollars and NO/100 (\$100,000.00)

and to bind the Company thereby, as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Company; and all acts of said Attorney pursuant to the authority given are hereby ratified and confirmed.

This power of attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the board of directors of the Company:

"RESOLVED, that the president, or any vice president be, and each hereby is, authorized and empowered to appoint attorneys-in-fact of the Company, and to authorize them to execute and deliver on behalf of the Company any and all bonds, forms, applications, memorandums, undertakings, recognizances, transfers, contracts of indemnity, policies, contracts guaranteeing the fidelity of persons holding positions of public or private trust, and other writings obligatory in nature that the business of the Company may require; and to modify or revoke, with or without cause, any such appointment or authority; provided, however, that the authority granted hereby shall in no way limit the authority of other duly authorized agents to sign and countersign any of said documents on behalf of the Company."

"RESOLVED FURTHER, that such attorneys-in-fact shall have full power and authority to execute and deliver any and all such documents and to bind the Company subject to the terms and limitations of the power of attorney issued to them, and to affix the seal of the Company thereto; provided, however, that said seal shall not be necessary for the validity of any such documents."

This power of attorney is signed and sealed under and by the following bylaws duly adopted by the board of directors of the Company.

Execution of Instruments. Any vice president, any assistant secretary or any assistant treasurer shall have the power and authority to sign or attest all approved documents, instruments, contracts, or other papers in connection with the operation of the business of the company in addition to the chairman of the board, the chief executive officer, president, treasurer or secretary; provided, however, the signature of any of them may be printed, engraved, or stamped on any approved document, contract, instrument, or other papers of the Company.

IN WITNESS WHEREOF, the Company has caused this instrument to be sealed and duly attested by the signature of its officer the 1st day of May, 2017.

Antonio C. Albanese, Vice President of Nationwide Mutual Insurance Company, National Casualty Company, AMCO Insurance Company, Allied Property and Casualty Insurance Company



ACKNOWLEDGMENT

STATE OF NEW YORK, COUNTY OF NEW YORK: ss

On this 1st day of May, 2017, before me came the above-named officer for the Company aforesaid, to me personally known to be the officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposes and says, that he is the officer of the Company aforesaid, that the seal affixed hereto is the corporate seal of said Company, and the said corporate seal and his signature were duly affixed and subscribed to said instrument by the authority and direction of said Company.

BARRY T. BASSIS  
Notary Public, State of New York  
No. 02BA4656400  
Qualified in New York County  
Commission Expires April 30, 2019

Notary Public  
My Commission Expires  
April 30, 2019

CERTIFICATE

I, Laura B. Guy, Assistant Secretary of the Company, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney issued by the Company; that the resolution included therein is a true and correct transcript from the minutes of the meetings of the boards of directors and the same has not been revoked or amended in any manner; that said Antonio C. Albanese was on the date of the execution of the foregoing power of attorney the duly elected officer of the Company, and the corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority of said board of directors; and the foregoing power of attorney is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of said Company this 11th day of February, 2019.

Assistant Secretary

This power of attorney expires: April 30, 2019

**Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323**

§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

Pursuant to Neb. Rev. Stat. § 77-1323, I, Buck Athey, do hereby certify that all equipment to be used on Bid No. 16-286, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in County, Nebraska.

DATED this 31 day of January, 2019.

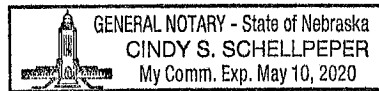
By: [Signature]  
Title: V. President

STATE OF NEBRASKA )  
COUNTY OF Lancaster )ss.  
)

On January 31, 2019, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came Buck Athey, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

Cindy S. Schellpeper  
Notary Public  
(S E A L)





**EMPLOYEE CLASSIFICATION ACT AFFIDAVIT**

For the purposes of complying with THE NEBRASKA EMPLOYEE CLASSIFICATION ACT, Nebraska Revised Statutes 48-2901 to 48-2912 and City of Lincoln Executive Order 083319,

I, Buck Athey, herein below known as the Contractor, state under oath and swear as follows:

- 1. Each individual performing services for the Contractor is properly classified under the Employee Classification Act.
- 2. The Contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services.
- 3. The Contractor has complied with Neb Rev Stat 4-114.
- 4. The Contractor has no reasonable basis to believe that any individual performing services for the Contractor is an undocumented worker.
- 5. The Contractor is not barred from contracting with the state or any political subdivision pursuant to NRS 48-2912 of this Act.
- 6. As the Contractor I understand that pursuant to the Employee Classification Act a violation of the Act by a contractor is grounds for rescission of the contract by the City of Lincoln and Lancaster County. I understand that pursuant to the Act any contractor who knowingly provides a false affidavit may be subject to criminal penalties and upon a second or subsequent violation shall be barred from contracting with the City of Lincoln and Lancaster County for a period of three years after the date of discovery of the falsehood.

I hereby affirm and swear that the statements and information provided on this affidavit are true, complete and accurate. The undersigned person does hereby agree and represent that he or she is legally capable to sign this affidavit and to lawfully bind the Contractor to this affidavit.

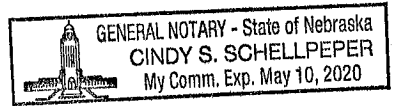
PRINT NAME: Robert, Buck, Athey  
 (First, Middle, Last)

SIGNATURE: [Handwritten Signature]

TITLE: V. President

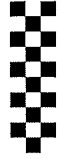
State of Nebraska )  
 ) ss.  
 County of Lancaster )

This affidavit was signed and sworn to before me, the undersigned Notary Public, on this 31 day of January, 2019.



[Handwritten Signature]  
 Notary Public





POLICY NUMBER: CPR8977114

COMMERCIAL GENERAL LIABILITY  
CGD 20 33 10 11

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

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS -  
AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. SECTION II - WHO IS AN INSURED** is amended to include as an insured any person or organization with whom you agree in a written contract or agreement to provide insurance such as is afforded under this policy, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by:

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

In the performance of your ongoing operations for such person or organization at the site or location designated in the written contract or agreement.

However, such person or organization is not an insured with respect to:

- 1. "Bodily injury" or "property damage" occurring:
  - a. Prior to the date the written contract or agreement was executed and in effect;
  - b. After all work on the project (other than service, maintenance or repairs) to be performed by or on behalf of such person or organization at the site or location of the covered operations has been completed; or
  - c. After that portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- 2. "Property damage" to:
  - a. Property owned, occupied or used by;
  - b. Property rented to, in the care, custody, or control of, or over which physical control is being exercised for any purpose by; or
  - c. "Your work" for, such person or organization.

3. "Bodily injury" or "property damage" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services for you, for such person or organization, or for others, including:

- a. The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs, drawings or specifications; and
- b. Supervisory, inspection, or engineering services.

4. Any "bodily injury" or "property damage" for which valid and collectible insurance is available under an Owners and Contractors Protective Liability policy that you have purchased.

**B. With respect to the Insurance provided by this endorsement, the following is added to SECTION III - LIMITS OF INSURANCE:**

- 8. The most we will pay under the insurance provided by this endorsement is:
  - a. The applicable limit of insurance to which you have agreed in the written contract or agreement to provide; or
  - b. The applicable Limit of Insurance shown in the Declarations,
 whichever is less.

**C. With respect to the Insurance provided by this endorsement, Paragraph 4. Other Insurance as found under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is replaced by the following:**

**4. Other Insurance**

This insurance is excess over any other valid and collectible insurance, whether primary, excess, contingent or on any other basis, unless you have agreed in a written contract or agreement for this insurance to apply on a primary or contributory basis.

When this insurance is excess, we will have no duty under Coverage A to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this Insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY****WC 00 03 13****(Ed. 4-84)****WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

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

**Schedule**

Any person with whom or organization for which you have agreed in writing to waive your rights to recover.

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 03/01/18 Policy No. WC 8977114

Endorsement No.

Insured Athey Painting Inc

Premium

Insurance Company DONEGAL MUTUAL INSURANCE COMPANY

Countersigned By \_\_\_\_\_

**WC 00 03 13****(Ed. 4-84)**

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