

AMENDMENT TO CONTRACT
Unit Price
Pavement/Concrete Services
Bid No. 16-285
City of Lincoln, Lancaster County and
City of Lincoln-Lancaster County Public Building Commission
Renewal with Price Changes and Additional Line Items
K2 Construction

This Amendment is hereby entered into by and between K2 Construction, 7701 Cornhusker Highway, Lincoln, NE 68507 (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. 90268, and County Contract C-17-0073, dated February 14, 2017, and executed by the City of Lincoln-Lancaster County Public Building Commission, on February 14, 2017, for Unit Price – Pavement/Concrete Services, Bid No. 16-285, 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 parties hereby amend the Contract to reflect price changes and additional line items as listed on Quotation Sheet (per Attachment 1).

WHEREAS, the expenditures for the City of Lincoln for the term of this renewal shall not exceed \$230,000.00 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 \$50,000.00 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 \$20,000.00 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 90268 and County Contract C-17-0073, 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 parties hereby amend the Contract to reflect price changes and additional line items as listed on Quotation Sheet (per Attachment 1).
- 3) The expenditures for the City of Lincoln for the term of this renewal shall not exceed \$230,000.00 for contracts without approval by the City of Lincoln.
- 4) The expenditures for Lancaster County for the term of this renewal shall not exceed \$50,000.00 for contracts without approval by the Lancaster County Board.
- 5) The expenditures for the City of Lincoln-Lancaster County Public Building Commission for the term of this renewal shall not exceed \$20,000.00 for contracts without approval by the Public Building Commission.
- 6) 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.
- 7) 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

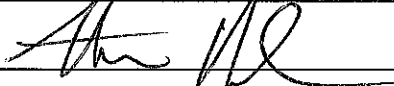
City of Lincoln-Lancaster County Public Building Commission Signature Page

Vendor Signature Page

**AMENDMENT TO CONTRACT
Unit Price
Pavement/Concrete Services
Bid No. 16-285
City of Lincoln, Lancaster County and
City of Lincoln-Lancaster County Public Building Commission
Renewal with Price Changes and Additional Line Items
K2 Construction**

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

Mail to: City/County Purchasing
Attn: Debbie Winkler
440 So. 8th St., Ste. 200
Lincoln, NE 68508
Or email to: dwinkler@lincoln.ne.gov

Company Name:	K2 Construction
By: (Please Sign)	
By: (Please Print)	Tom Rogge
Title:	Manager
Company Address:	K2 Construction 7701 Cornhusker Highway Lincoln, NE 68505
Company Phone & Fax:	402-467-2355 / 402-467-2055
E-Mail Address:	trogge@k2construction.biz
Date:	2-11-19
Contact Person for Orders or Service	Tom Rogge
Contact Phone Number:	402-467-2355

City of Lincoln Signature Page

**AMENDMENT TO CONTRACT
Unit Price
Pavement/Concrete Services
Bid No. 16-285
City of Lincoln, Lancaster County and
City of Lincoln-Lancaster County Public Building Commission
Renewal with Price Changes and Additional Line Items
K2 Construction**

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
Pavement/Concrete Services
Bid No. 16-285
City of Lincoln, Lancaster County and
City of Lincoln-Lancaster County Public Building Commission
Renewal with Price Changes and Additional Line Items
K2 Construction**

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**

**AMENDMENT TO CONTRACT
Unit Price
Pavement/Concrete Services
Bid No. 16-285
City of Lincoln, Lancaster County and
City of Lincoln-Lancaster County Public Building Commission
Renewal with Price Changes and Additional Line Items
K2 Construction**

EXECUTION BY LINCOLN-LANCASTER COUNTY PUBLIC BUILDING COMMISSION

ATTEST:

Public Building Commission Attorney

Chairperson, Public Building Commission

dated _____

**CITY OF LINCOLN, LANCASTER COUNTY, CITY OF LINCOLN-LANCASTER
COUNTY PUBLIC BUILDING COMMISSION**

UNIT PRICE QUOTATION

This Document Is Required For All Unit Price Projects

Unit Price - Pavement/Concrete Services, Bid No. 16-285

Date: _____

TO DEPARTMENT/AGENCY REPRESENTATIVE:

FROM (CONTRACTOR): K2 Construction

AWARD LEVEL: 3

PROJECT DESCRIPTION:

Fill in the following Tables in the areas as shown. If an item does not apply, please do not make an entry in that column.

TIME OF COMPLETION

Estimated Start Date	
Number of Days to Complete	

EQUIPMENT AND MATERIAL COSTS

ITEM	COST	% of Markup	Estimated Total
Total Rental Equipment Costs		15%	
Total Materials Cost		15%	
Total Shipping/Freight Cost			

MOBILIZATION

DESCRIPTION	UNIT PRICE	UOM	Quantity	Estimated Total
Mobilization - Equipment and Labor	\$2,000.00	LS		

SCHEDULE I - CONCRETE WORK

DESCRIPTION	UNIT PRICE	UOM	Quantity	Estimated Total
1. Type "A" Sawing - Portland Cement Concrete Pavement	\$10.00	LF		
2. Type "B" Sawing - Portland Cement Concrete Pavement	\$6.00	LF		
3. Type "C" Sawing - Portland Cement Concrete Pavement	\$6.00	LF		
4. Miscellaneous Asphalt and Concrete Removal	\$50.00	CY		
5. Concrete Sidewalk, 4" Thick	\$5.00	SF		
6. Concrete Sidewalk, 7" Thick	\$8.00	SF		
7. Concrete Sidewalk, 9" Thick	\$10.00	SF		
8. Concrete Sidewalk, 10" Thick	\$11.00	SF		
9. Concrete Bikeway, 5" Thick	\$6.00	SF		
10. Concrete Driveway, 6" Thick	\$8.00	SF		
11. Concrete Driveway, 8" Thick	\$10.00	SF		
12. Detectable Warning Panel	\$30.00	SF		
13. Remove Concrete Sidewalk, 4" Thick	\$2.00	SF		
14. Remove Concrete Bikeway, 5" Thick	\$2.00	SF		
15. Remove Concrete Driveway, 6" Thick	\$2.00	SF		
16. Remove Concrete Driveway, 8" Thick	\$2.00	SF		
17. Sub-Grade Preparation	\$2.00	SY		
18. 5" Concrete Base (L-5500)	\$70.00	SY		
19. 8" Concrete Base (L-5500)	\$80.00	SY		
20. Tie Bars	\$3.00	EA		
21. Surface Milling	\$5.00	SY		
22. 24" Curb and Gutter	\$50.00	LF		
23. Adjust Manhole to Grade	\$500.00	LS		
24. Adjust Water Valve Box to Grade	\$350.00	LS		
25. Remove & Reset Storm Inlet Top	\$500.00	LS		
26. Install & Remove Curb Inlet Filters	\$150.00	LS		
27. Parking Space Finish (Minor grading and preparing the area between the sidewalk and curb for either seed / sod	\$1.00	SY		

28. Modular Block Retaining Wall (Based on total area of the retaining wall installed)	\$60.00	SF		
29. Seeding	\$1.00	SF		
30. Sodding	\$5.00	SF		
Total				

SCHEDULE II - ASPHALTIC CONCRETE WORK

DESCRIPTION	UNIT PRICE	UOM	Quantity	Estimated Total
1. Type "A" Sawing - Asphaltic Concrete Pavement	\$10.00	LF		
2. Type "D" Sawing - Asphaltic Concrete Pavement	\$15.00	LF		
3. Miscellaneous Asphalt and Concrete Removal	\$60.00	CY		
4. Install Asphaltic Concrete Curb	\$50.00	LF		
5. Remove Asphaltic Concrete Curb	\$15.00	LF		
6. Install Concrete Curb	\$50.00	LF		
7. Remove Concrete Curb	\$15.00	LF		
8. Asphaltic Concrete Pavement Class 2, Non-Arterial Streets & Parking Area	\$80.00	SY		
10. Asphaltic Concrete Resurfacing	\$400.00	TON		
11. Paint Pavement Marking with Glass Beads	\$10.00	LF		
12. Paint Pavement Marking, without Glass Beads	\$10.00	LF		
13. Street Patching, 6" Thick	\$20.00	SF		
14. Street Patching, 8" Thick	\$20.00	SF		
15. Alternate Sidewalk Repairs	\$10.00	Inch-Foot		
Total				

SUBCONTRACTORS COSTS

SUB-CONTRACTOR (NAME)	COST	% of Markup	Estimated Total
Sub No. 1		15%	
Sub No. 2		15%	

TOTAL ESTIMATED COST -- NOT TO EXCEED:

\$	
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FIRM: _____
BY: _____
ADDRESS: _____

APPROVED BY: _____
Department Agency/Rep
PHONE NO: _____
DATE: _____

Change Order #: _____ Accepted: _____ Not Accepted : _____

CONSTRUCTION PERFORMANCE BOND

Bond No. 30052777

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

**K2 Construction
7701 Cornhusker Highway
Lincoln, NE 68462**

SURETY (Name and Principal
Place of Business):

Western Surety Company
151 N. Franklin Street
Chicago, IL 60606

Owner (Name and Address):

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

CONSTRUCTION CONTRACT

Date: March 1, 2017

Amount: **\$50,000.00**

Description (Name and Location):

**For all labor, material and equipment necessary for Unit Price - Pavement/Concrete Services,
Bid No. 16-285 for the contract term of March 1, 2019 to February 28, 2021.**

BOND

Date: March 1, 2019

Amount: **\$50,000.00**

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

**K2 Construction
7701 Cornhusker Highway
Lincoln, NE 68462**

SURETY

Company: Western Surety Company (Corp.Seal)

Signature: T. Sondgeroth
Name and Title: **T. Sondgeroth, MGR**

Signature: Maura P Kelly
Name and Title: **Maura P. Kelly, Attorney-in-Fact**

EJCDC NO. 1910-28a (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the 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 to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. 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 and
 - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors: or
 - 4.3 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 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 Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or
 - 4.4 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 tender payment therefor to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen 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 Subparagraph 4.4 and the Owner refuses payment tendered 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.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, 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. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 6.2 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 Paragraph 4; and
 - 6.3 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.
7. 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, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.
9. 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 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.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. 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. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1 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.
 - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
 - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

K2 Construction
7701 Cornhusker Highway
Lincoln, NE 68462

SURETY (Name and Principal Place

Of Business): **Western Surety Company**
151 N. Franklin Street
Chicago, IL 60606

Owner (Name and Address):

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

CONSTRUCTION CONTRACT

Date: March 1, 2017
Amount: **\$50,000.00**

Description (Name and Location):

For all labor, material and equipment necessary for Unit Price - Pavement/Concrete Services,
Bid No. 16-285 for the contract term of March 1, 2019 to February 28, 2021.

BOND

Date: March 1, 2019
Amount: **\$50,000.00**

Modifications to this Bond Form:


CONTRACTOR AS PRINCIPAL

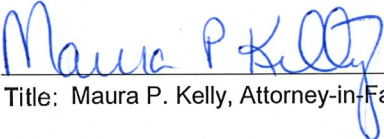
Company: _____ (Corp. Seal)

K2 Construction
7701 Cornhusker Highway
Lincoln, NE 68462

SURETY

Company: _____ (Corp. Seal)
Western Surety Company

Signature: 
Name and Title: T. Sondgeroth, MGR

Signature: 
Name and Title: Maura P. Kelly, Attorney-in-Fact

EJCDC NO. 1910-28B (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the 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.
 2. With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
 3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
 4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with the Contractor:
 1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and
 2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
 4. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
 6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
 7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
 8. 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 the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. 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 payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
 10. 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.
 11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), 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.
 12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
 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 here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
 14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
 15. DEFINITIONS
 - 15.1 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 Contract. 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.
 - 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY - NAME, ADDRESS AND TELEPHONE)
 AGENT OR BROKER: OWNER'S REPRESENTATIVE (ARCHITECT, ENGINEER OR OTHER PARTY)

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Sharon K Murray, Jacqueline L Drey, Kevin J Stenger, David A Dominiani, Maura P Kelly, Joan Leu, Dustin Cooper, Individually

of Omaha, NE, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

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

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 16th day of October, 2018.



WESTERN SURETY COMPANY

Paul T. Bruflat
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 16th day of October, 2018, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
June 23, 2021



J. Mohr
J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 1st day of MARCH, 2019.



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

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, Tom Rogge, do hereby certify that all equipment to be used on City Bid No.16-285, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in 2019 County, Nebraska.

DATED this 12 day of Feb, 2019.

By: [Signature]
Title: Manager

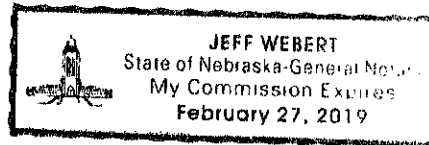
STATE OF NEBRASKA)
)ss.
COUNTY OF Lancaster)

On 12 Feb, 2019, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came Tom Rogge, 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.

[Signature]
Notary Public

(SEAL)



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, Travis Sandgeroth, 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, Lancaster County, and Lincoln-Lancaster County Public Building Commission. 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, Lancaster County, and Lincoln-Lancaster County Public Building Commission 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: Travis Ryan Sandgeroth
 (First, Middle, Last)

SIGNATURE: [Handwritten Signature]

TITLE: Manager

State of Nebraska)
) ss.
 County of Lancaster)

This affidavit was signed and sworn to before me, the undersigned Notary Public, on this 4 day of February, 2019.

JEFF WEBERT
 State of Nebraska-General Notary
 My Commission Expires
 February 27, 2019

[Handwritten Signature]
 Notary Public

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/01/2019

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 any rights to the certificate holder in lieu of such endorsement(s).


PRODUCER INSPRO Insurance P.O. Box 6847 Lincoln, NE 68506 402 483-4500	CONTACT NAME: Lucas Siel PHONE (A/C, No, Ext): 402-483-4500 FAX (A/C, No): 402-483-7977 E-MAIL ADDRESS: lsiel@insproins.com
INSURER(S) AFFORDING COVERAGE	
INSURER A : Bituminous	
INSURER B : Westchester Surplus Lines Ins Co	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	
INSURED K2 Construction 7701 Cornhusker Highway Lincoln, NE 68507	NAIC # 20109 10172

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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input checked="checked" type="checkbox"/> CLAIMS-MADE <input checked="checked" type="checkbox"/> OCCUR PD Ded:2,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="checked" type="checkbox"/>		CLP3677344	01/01/2019	01/01/2020	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="checked" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="checked" type="checkbox"/> HIRED AUTOS ONLY <input checked="checked" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="checked" type="checkbox"/> Drive Oth Car			CAP3677343	01/01/2019	01/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	UMBRELLA LIAB <input checked="checked" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="checked" type="checkbox"/> RETENTION \$ 10000			CUP2815605	01/01/2019	01/01/2020	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="checked" type="checkbox"/> Y/N <input checked="checked" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		<input checked="checked" type="checkbox"/>	WC3677342	01/01/2019	01/01/2020	<input checked="checked" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
B	Pollution Co			G27944358004	01/12/2019	01/12/2020	5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
City of Lincoln and Lancaster County and Lincoln-Lancaster County Public Building Commission are listed as an additional insured.

CERTIFICATE HOLDER City of Lincoln, Lancaster County, and Lincoln-Lancaster County Public Building Commission 555 S 10th St Lincoln, NE 68508	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 
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**UTILITY CONTRACTORS EXTENDED LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

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

A. PARTNERSHIP AND JOINT VENTURE EXTENSION

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

The last full paragraph which reads as follows:

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

is deleted and replaced with the following:

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

insurance is available to you for "your work" in connection with your interest in such partnership or joint venture.

B. CONTRACTORS AUTOMATIC ADDITIONAL INSURED COVERAGE – ONGOING OPERATIONS

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

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

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

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

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

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

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

C. AUTOMATIC WAIVER OF SUBROGATION

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

8. Transfer of Rights of Recovery Against Others to Us and Automatic Waiver of Subrogation.

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

D. EXTENDED NOTICE OF CANCELLATION, NONRENEWAL

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

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

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

9. WHEN WE DO NOT RENEW

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

E. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

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

F. BROADENED MOBILE EQUIPMENT

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

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

G. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL COVERAGE

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

H. NONEMPLOYMENT DISCRIMINATION

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

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

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

SECTION V - DEFINITIONS, is amended to include:

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

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

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

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

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

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

I. LIQUOR LIABILITY

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

J. BROADENED CONDITIONS

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

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

a. You must see to it that we are notified of an "occurrence" or an offense which may result in a claim as soon as practicable after the "occurrence" has been reported to you, one of your officers or an "employee" designated to give notice to us. Notice should include:

- (1)** How, when and where the "occurrence" or offense took place;
- (2)** The names and addresses of any injured persons and witnesses; and
- (3)** The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1)** Record the specifics of the claim or "suit" and the date received as soon as you, one of your officers, or an "employee" designated to record such information is notified of it; and
- (2)** Notify us in writing as soon as practicable after you, one of your officers, your legal department or an "employee" you designate to give us such notice learns of the claims or "suit."

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

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

K. AUTOMATIC ADDITIONAL INSURED - EQUIPMENT LEASES

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

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

- 1.** "Bodily injury" or "property damage" occurring after you cease leasing the equipment.

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

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

L. INSURED CONTRACT EXTENSION - RAILROAD PROPERTY AND CONSTRUCTION CONTRACTS

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

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

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

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

M. CONSTRUCTION PROJECT GENERAL AGGREGATE LIMITS

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

- A.** For all sums which can be attributed only to ongoing operations at a single construction project for which the insured becomes legally obligated to pay as damages caused by an "occurrence" under **SECTION I - COVERAGE A**, and for all medical expenses caused by accidents under **SECTION I - COVERAGE C**:
- 1.** A separate Construction Project General Aggregate Limit applies to each construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 - 2.** The Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under **COVERAGE A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard," and for medical expenses under **COVERAGE C** regardless of the number of:
 - a.** Insureds;
 - b.** Claims made or "suits" brought; or
 - c.** Persons or organizations making claims or bringing "suits."
 - 3.** Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the Construction Project General Aggregate Limit for that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Construction Project General Aggregate Limit for any other construction project.
 - 4.** The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Construction Project General Aggregate Limit.
- B.** For all sums which cannot be attributed only to ongoing operations at a single construction project for which the insured becomes legally obligated to pay as damages caused by an "occurrence" under **SECTION I - COVERAGE A**, and for all medical expenses caused by accidents under **SECTION I - COVERAGE C**:
- 1.** Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
 - 2.** Such payments shall not reduce any Construction Project General Aggregate Limit.
- C.** Payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Construction Project General Aggregate Limit.
- D.** If a construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of **SECTION III - LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to be applicable.

N. FELLOW EMPLOYEE COVERAGE

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

2.e. "Bodily injury" to

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

This exclusion applies:

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

This exclusion does not apply to:

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

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

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

O. PROPERTY DAMAGE TO THE NAMED INSURED'S WORK

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

I. Damage to Your Work

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

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

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

P. CARE, CUSTODY OR CONTROL

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

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

- (a) The most that we will pay under this provision as an annual aggregate is \$100,000, regardless of the number of occurrences.
- (b) This provision does not apply to "employee" owned property or any property that is missing where there is not physical evidence to show what happened to the property.
- (c) The aggregate limit for this coverage provision is part of the General Aggregate Limit and **SECTION III - LIMITS OF INSURANCE** is changed accordingly.
- (d) In the event of damage to or destruction of property covered by this exception, you shall, if requested by us, replace the property or furnish the labor and materials necessary for repairs thereto, at actual cost to you, exclusive of prospective profit or overhead charges of any nature.
- (e) \$2,500 shall be deducted from the total amount of all sums you became obligated to pay as damages on account of damage to or destruction of all property of each person or organization, including the loss of use of that property, as a result of each "occurrence." Our limit of liability under the endorsement as being applicable to each "occurrence" shall be reduced by the amount of the deductible indicated above; however, our aggregate limit of liability under this provision shall not be reduced by the amount of such deductible. The conditions of the policy, including those with respect to duties in the event of "occurrence," claims or "suit" apply irrespective of the application of the deductible amount. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

Q. ELECTRONIC DATA LIABILITY COVERAGE

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

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
3. For the purposes of this coverage, the definition of "property damage" in **SECTION V – DEFINITIONS** is replaced by the following:

"Property damage" means:

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

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

R. CONSOLIDATED INSURANCE PROGRAM RESIDUAL LIABILITY COVERAGE

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

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

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

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

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

S. AUTOMATIC ADDITIONAL INSURED - MANAGERS OR LESSORS OR PREMISES

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

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

This insurance does not apply to:

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

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

T. AUTOMATIC ADDITIONAL INSURED – STATE OR GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISIONS – PERMITS OR AUTHORIZATIONS

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

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

This insurance does not apply to:

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

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

U. CONTRACTORS AUTOMATIC ADDITIONAL INSURED COVERAGE – COMPLETED OPERATIONS

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

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

V. ADDITIONAL INSURED – ENGINEERS, ARCHITECTS OR SURVEYORS

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

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

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

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

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

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

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

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

Schedule

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

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

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

Endorsement Effective 01-01-2019
Insured

Policy No. WC3677342

Endorsement No.
Premium

Insurance Company

Countersigned by _____

WC 00 03 13
(Ed. 4-84)