

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.

202310001

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	Stormwater - 907620
Contract or Grant Administrator:	Kraig Olason, Stormwater Program Manager
Contractor's / Agency Name:	Stremler Gravel, Inc.

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes  No   
 Yes  No  If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: \_\_\_\_\_

Does contract require Council Approval? Yes  No  If No, include WCC: \_\_\_\_\_  
 Already approved? Council Approved Date: 9/12/23 (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes  No  If yes, grantor agency contract number(s): \_\_\_\_\_ CFDA#: \_\_\_\_\_

Is this contract grant funded? Yes  No  If yes, Whatcom County grant contract number(s): FEMA Disaster 4635-DR-WA, Contract No. D22-108

Is this contract the result of a RFP or Bid process? Contract  
 Yes  No  If yes, RFP and Bid number(s): SWBB23-01 Cost Center: 9259017001

Is this agreement excluded from E-Verify? No  Yes  If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

- |   |  |
|---|--|
| <input type="checkbox"/> Professional services agreement for certified/licensed professional. | <input type="checkbox"/> Goods and services provided due to an emergency     |
| <input type="checkbox"/> Contract work is for less than \$100,000.                            | <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). |
| <input checked="" type="checkbox"/> Contract work is for less than 120 days.                  | <input type="checkbox"/> Work related subcontract less than \$25,000.        |
| <input type="checkbox"/> Interlocal Agreement (between Governments).                          | <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.  |

Contract Amount:(sum of original contract amount and any prior amendments):  
 \$ 99,430.03  
 This Amendment Amount:  
 \$ \_\_\_\_\_  
 Total Amended Amount:  
 \$ 99,430.03

Council approval required for; all property leases, contracts or bid awards **exceeding \$40,000**, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, **except when**:

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
3. Bid or award is for supplies.
4. Equipment is included in Exhibit "B" of the Budget Ordinance.
5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.

**Summary of Scope:**

This project involves permanent repairs to stabilize overflow paths and limit potential flooding to properties downstream of Cottonwood Creek near 8143 Cottonwood Drive. This is to be accomplished through providing asphalt berms to direct sheetflow, buildup of shoulder areas to limit flow to private properties, and provide hardscape and walls at the overflow berm to limit erosion in the event of overtopping.

Term of Contract: N/A

Expiration Date: 2023-12-31

Contract Routing: 1. Prepared by: <u>Cody Swan</u>	Date: <u>2023-09-12</u>
2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>10/4/2023</u>
3. AS Finance reviewed: <u>Amy Martin</u>	Date: <u>10-03-2023</u>
4. IT reviewed (if IT related): _____	Date: _____
5. Contractor signed: <u>✓</u>	Date: <u>9/28/23</u>
6. Executive contract review: <u>✓</u>	Date: <u>10/4/23</u>
7. Council approved, if necessary: <u>AB2023-580</u>	Date: <u>9/12/23</u>
8. Executive signed: <u>✓</u>	Date: <u>10/5/23</u>
9. Original to Council: _____	Date: _____

**WHATCOM COUNTY  
PUBLIC WORKS DEPARTMENT**

ELIZABETH KOSA  
DIRECTOR



**STORMWATER**  
322 N. Commercial Street, Suite 224  
Bellingham, WA 98225  
Phone # (360) 778-6210  
Fax # (360) 778-6201  
[www.co.whatcom.wa.us](http://www.co.whatcom.wa.us)

**RECEIVED**

OCT 04 2023

**MEMORANDUM**

**WHATCOM COUNTY  
EXECUTIVE'S OFFICE**

**TO:** The Honorable Satpal Singh Sidhu, Whatcom County Executive

**THROUGH:** Elizabeth Kosa, Public Works Director *EaK*

**FROM:** Kraig Olason, Stormwater Program Manager KO

**RE:** Construction Contract – Stremler Gravel, Inc. – Bid No. SWBB23-01  
Cottonwood Drive Stormwater Inlet Repair

**DATE:** October 4, 2023

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Attached for your review and signature are two original copies of the subject contract between Whatcom County and Stremler Gravel, Inc. for construction of the Cottonwood Drive Stormwater Inlet Repair.

▪ **Requested Action**

Public Works requests the County Executive execute both original copies of the attached contract. Please sign and date where indicated.

▪ **Background and Purpose**

Bid proposals for the project were received via email at 4:00 p.m. on Tuesday, August 29, 2023. A total of one (1) responsive and responsible bid was received. This low bid was Stremler Gravel, Inc. in the amount of \$99,430.03, including all taxes. The proposed construction start date will be early October.

▪ **Funding Amount and Source**

The total budget for the Cottonwood Drive Stormwater Inlet Repairs contract will be funded by existing authority in the BBWARM district budget (cost center 9259017001, work order 23333). Whatcom County has received a Disaster Assistance Payment Request for the \$199,602.61 FEMA for Incident 21-4321 (2021 November Floods).

Sufficient budget exists to cover this construction contract cost of \$99,430.03. FEMA funds will reimburse the BBWARM District for the majority of the repair project costs.

Please contact Cody Swan at extension 360-815-3803 if you have any questions.



## CONTRACT

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**COTTONWOOD DRIVE STORMWATER INLET REPAIRS  
BID NO SWBB23-01**

This Contract, made and entered into this 5<sup>th</sup> day of October, 2023 by and between Whatcom County, Washington, a municipal Corporation and a Charter County in the State of Washington, hereinafter called the "County", and Strumler Gravel, Inc. hereinafter called the "Contractor."

## WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this Contract, the parties hereto covenant and agree as follows:

1. The Contractor shall do all of the work and furnish all of the labor, materials, tools and equipment for the construction of the improvements and shall perform any changes in the work, all in full compliance with the contract documents entitled "COTTONWOOD DRIVE STORMWATER INLET REPAIRS, BID NO SWBB23-01," "Bid Proposal," "Specifications and Conditions," "Contract Forms," and the "Plans and Details" section contained in said contract documents are hereby referred to and by reference made a part hereof.
2. The County hereby promises and agrees with the Contractor to employ, and does employ the Contractor to furnish the labor, materials, tools and equipment, and to do and cause to be done the above-described work, and to complete and finish the same in accordance with the said contract documents and the terms and conditions herein contained, and hereby contracts to pay for the same, according to the said documents, including the schedule of estimated quantities, and unit and lump sum prices in the Bid Proposal, the approximate sum of \$ 99,430.<sup>03</sup> the total amount of bid, subject to the actual quantity of work performed, at the time and in the manner and upon the conditions provided for in this contract.
3. The Contractor for himself, and for his agents, successors, assigns, subcontractors and/or employees, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.
4. The County hereby appoints and the Contractor hereby accepts the Whatcom County Engineer, as the County's representative for the purpose of administering the provisions of this Contract, including the County's right to receive and act on all reports and documents related to this Contract, to request and receive additional information from the Contractor, to assess the general performance of the Contractor under this Contract, to determine if the contracted services are being performed in accordance with Federal, State or local laws, and to administer any other right granted to the County under this Contract. The County expressly reserves the right to terminate this Contract as provided in the contract documents, and also expressly the reserves the right to commence civil action for the enforcement of this contract.

5. This Contract contains terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Contract.
6. The Contractor agrees to comply with all applicable Federal, State, County or municipal standards for the licensing, certification, operation of facilities and programs, and accreditation and licensing of individuals.
7. The Contractor shall not assign or subcontract any portion of the work provided for under the terms of this Contract without obtaining prior written approval of the County Engineer. All terms and conditions of this Contract shall apply to any approved subcontract or assignment related to this Contract.
8. The parties intend that an independent Contractor-County relationship will be created by this Contract. The County is interested only in the results to be achieved, and the implementation of the work will lie solely with the Contractor. No agent, employee, servant, or representative of the Contractor shall be deemed to be an employee, agent, servant, or representative of the County for any purpose. Employees of the Contractor are not entitled to any of the benefits the County provides for County employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors, or otherwise during the performance of this Contract. In the performance of the work herein contemplated, the Contractor is an independent Contractor with regard to the performance of the details of the work; however, the components of and the results of the work contemplated herein must meet the approval of the County Engineer and shall be subject to the County Engineer's general rights of inspection and review to secure the satisfactory completion thereof.
9. The Contractor agrees and covenants to indemnify, defend, and save harmless, the County and those persons who were, now are, or shall be duly elected or appointed officials or employees thereof, hereinafter referred to as the "County" against and from any loss, damage, costs, charge, expense, liability, claims, demands or judgments, of whatsoever kind or nature, whether to persons or to property, arising wholly or partially out of any act, action, neglect, omission, or default on the part of the Contractor, his agents, successors, assignees, subcontractors and/or employees, except only such injury or damage as shall have been caused by or resulted from the sole negligence of the County. In case any suit or cause of action shall be brought against the County on account of any act, action, neglect, omission, or default on the part of the Contractor, his agents, successors, assignees, subcontractors and/or employees the Contractor hereby agrees and covenants to assume the defense thereof and to pay any and all costs, charges, attorney's fees and other expenses and any and all judgments that may be incurred or obtained against the County.
  - a. In the event the County is required to institute legal action and/or participate in the legal action to enforce this Indemnification and Hold Harmless Clause, the Contractor agrees to pay the County's legal fees, costs and disbursements incurred in establishing the right to indemnification.
  - b. If the claim, suit, or action for injuries, death, or damages as provided for in the preceding paragraphs of this specification is caused by or results from the



concurrent negligence of (a) the indemnities or the indemnities agents or employees and (b) the indemnitor or the indemnitor's agents for employees the indemnity provisions provided for in the preceding paragraphs of this specification shall be valid and enforceable only to the extent of the indemnitor's negligence.

10. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in law, suit and equity or judicial proceedings for the enforcement of this contract, or any provisions thereof, shall be instituted and maintained in the courts of competent jurisdiction located in Whatcom County, Washington.
11. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Contract or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such obligation, or any other covenants or agreements, but the same shall be and remain in full force and effect.
12. It is understood and agreed by the parties hereto that if any part of this agreement is determined to be illegal, the validity of the remaining portions shall be construed as if the agreement did not contain the particular illegal part.
13. No change or addition to this Contract shall be valid or binding upon either party unless such change or addition shall be in writing, executed by both parties.

IN WITNESS WHEREOF, the Contractor has executed this instrument, on the day and year first below written and the County Executive has caused this instrument to be executed by and in the name of the said County, the day and year first above written.

Executed by the Contractor this 28 day of September, 2023

By: [Signature] (SEAL)  
Title: LANE STREMLER, PRES  
Contractor: STREMLER GRAVEL, INC.

STATE OF WASHINGTON )  
COUNTY OF Whatcom ) ss.

On this 28 day of September, 2023, before me personally appeared Lane Stremler, to me personally known to be the person described in and who executed the above instrument and who acknowledged to me the act of signing thereof.

[Signature]  
Notary Public, in and for the  
State of Washington, residing at: Nooksack

NOTARY PUBLIC  
STATE OF WASHINGTON  
MARI SKUSE  
License # 21028099  
Commission Expires  
September 02, 2025

My commission expires: 09/02/2025

Executed by Whatcom County this 5<sup>th</sup> day of Oct, 2023

By: Satpal Singh  
Satpal Singh Sidhu  
Whatcom County Executive

STATE OF WASHINGTON )  
  ) ss.  
COUNTY OF WHATCOM )

On this 5<sup>th</sup> day of October, 2023, before me personally appeared Satpal Singh Sidhu, to me personally known to be the Executive of Whatcom County described in and who executed the above instrument and who acknowledged to me the act of signing thereof.

Billie Sue Rinn  
Notary Public, in and for the  
State of Washington, residing at:



Bellingham  
My commission expires: 4/13/27

Approved as to form: Approved by Chris Quinn via email 10-04-2023  
Senior Civil Deputy Prosecuting Attorney



# CONTRACT BOND

Bond No. 107853838

## COTTONWOOD DRIVE STORMWATER INLET REPAIRS BID NO SWBB23-01

KNOW ALL MEN BY THESE PRESENTS, that Stremler Gravel, Inc.

:

as PRINCIPAL, and Travelers Casualty and Surety Company of America  
a corporation duly authorized to do a general Surety business in the State of Washington,  
as SURETY, are jointly and severally held and bound unto the COUNTY OF WHATCOM,  
OBLIGEE herein, in the sum of

ninety nine thousand four hundred thirty and 3/100ths-----Dollars

:

(\$ 99,430.03 ), lawful money of the United States, for the payment of which we  
bind our heirs, administrators, executors, successors, and assigns, jointly and severally,  
firmly by these presents.

WHEREAS, the PRINCIPAL has executed and entered into a certain Contract, with the  
OBLIGEE, dated September 13, 2023 in the Contract described, which Contract is  
hereto annexed.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the PRINCIPAL shall well and truly perform and fulfill all and every obligation of the  
covenants, conditions, stipulations, and agreements in the Contract mentioned to be  
performed and fulfilled; and shall promptly make payment to all persons supplying him with  
labor, equipment and materials in the prosecution of the work provided for in the Contract;  
and shall keep the OBLIGEE harmless and indemnified from and against all and every claim,  
demand, judgment, lien, cost and fee of every description incurred in suits or otherwise  
against the OBLIGEE, growing out of or incurred in, the prosecution of the work according  
to the terms of the Contract; and shall repay to the OBLIGEE all sums of money which the  
OBLIGEE may pay to other persons on account of work and labor done or materials  
furnished on or for the Contract; and if the PRINCIPAL shall in all respects, faithfully perform  
said Contract, then this obligation shall be void; otherwise, the same shall remain in full force  
and virtue.

It is, however, mutually understood between the parties hereto, that in no event shall the  
SURETY be liable for a greater sum than the penalty of this bond.

IN WITNESS WHEREOF, this instrument is executed in 2 counterparts, each one of which shall be deemed an original. This 26th day of September, 2023

WITNESS AS TO PRINCIPAL

Stremler Gravel, Inc.

(SEAL)

Principal

By:

*LANE STREMLER, PRES.*

Travelers Casualty and Surety Company of America

Surety

By:

*Julie R. Truitt*

Attorney-in-Fact, Julie R. Truitt

The Attorney-In-Fact (Resident Agent) who executes this bond on behalf of the Surety, must attach a copy of his power of attorney as evidence of his authority.



**Travelers Casualty and Surety Company of America**  
**Travelers Casualty and Surety Company**  
**St. Paul Fire and Marine Insurance Company**

**POWER OF ATTORNEY**

**NOW ALL MEN BY THESE PRESENTS:** That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Julie R Truitt** of **TACOMA**, **Washington**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April**, **2021**.



State of Connecticut

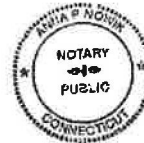
City of Hartford ss.

By:   
 Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, **2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, **2026**



  
 Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **26th** day of **September**, **2023**



  
 Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.**  
**Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**



# RETAINAGE INVESTMENT OPTION

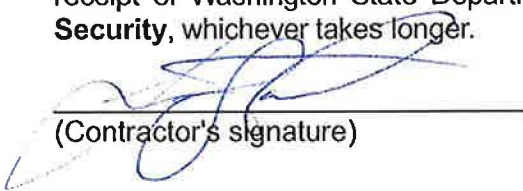
## COTTONWOOD DRIVE STORMWATER INLET REPAIRS BID NO SWBB23-01

CONTRACTOR: Stremler Gravel, Inc.

Pursuant to R.C.W. 60.28.010, as amended, you may choose how your retainage under this contract will be held and invested. Please complete and sign this form indicating your preference. If you fail to do so, the County will hold your retainage as described in "Current Expense" option 1 below.

- 1. **Current Expense:** The County will retain your money in its Current Expense Fund Account until sixty (60) days following final acceptance of the improvement or work as completed. You will not receive interest earned on this money.
- 2. **Interest Bearing Account:** The County will deposit retainage checks in an interest-bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of the improvement or work as completed or until agreed to by both parties. Interest on the account will be paid to you.
- 3. **Escrow/Investments:** The County will place the retainage checks in escrow with a bank or trust company until thirty days following the final acceptance of the improvement or work as completed. When the moneys reserved are to be placed in escrow, the County will issue a check representing the sum of the moneys reserved payable to the bank or trust company and you jointly. This check will be converted into bonds and securities chosen by you and approved by the County and these bonds and securities will be held in escrow. Interest on these bonds and securities will be paid to you as interest accrues. If this option is chosen, the bidder shall complete the Escrow Agreement form on the following pages.
- 4. **Retainage Bond:** The Bidder shall post a retainage bond equal to 5% of the total bid price on this. If this option is chosen, the Bidder shall complete the Retainage Bond form supplied in this document.

Retainage is normally released 45-60 days after final acceptance of work by the County, or following receipt of Washington State Departments of **Labor and Industries / Revenue / Employment Security**, whichever takes longer.

  
\_\_\_\_\_  
(Contractor's signature)

  
\_\_\_\_\_  
(Title)

# ESCROW AGREEMENT

---

Escrow No. \_\_\_\_\_  
Agency Whatcom County

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned, \_\_\_\_\_, hereinafter referred to as the Contractor, has directed Whatcom County hereinafter referred to as the Agency, to deliver to you its warrants or checks which shall be payable to you and the Contractor jointly. Such warrants or checks are to be held and disposed of by you in accordance with the following instructions and upon the terms and conditions hereinafter set forth.

## INSTRUCTIONS

The Agency shall deliver to you from time to time, checks or warrants payable jointly to you and the Contractor. You are hereby authorized by the Contractor to endorse in the Contractor's name, any such check or warrant so that you may receive the proceeds thereof and invest the same. The power of endorsement hereby granted to you by the Contractor shall be deemed a power coupled with an interest and shall be irrevocable during the term of this escrow. Although you may be a payee named in such warrants or checks as shall be delivered to you, your duties and responsibilities with respect to the same shall be only those duties and responsibilities which a depository bank would have, pursuant to Article 4 of the Uniform Commercial Code of the State of Washington for an item deposited with it for collection as of the date such check or warrant shall be delivered to you. The proceeds from collections shall be used by you to purchase, as directed by the Contractor, bonds or other securities chosen by the Contractor and approved by you and the Agency. For the purpose of each such purchase, you may follow the last written direction received by you from the Contractor, provided such direction otherwise conforms with the restrictions or investments recited herein. Attached is a list of such bonds or other securities approved by the Agency. No further approval is necessary if any securities, except stocks, may be selected by the Contractor, subject to express written approval of you and the Agency. Purchase of such bonds or other securities shall be in a form which shall allow you alone to reconvert such bonds or other securities into money if you are required to do so by the Agency as provided in paragraph 4 of this Escrow Agreement.

The investments selected by the Contractor, approved by the Agency and purchase by you must mature on or prior to the date set for the completion of the contract, including extensions thereof or thirty days following the final acceptance of said improvement or work.

When and as interest on the securities held by you pursuant to this agreement accrues and is paid, you shall collect such interest and forward it to the Contractor at the address designated below unless within your written consent you are otherwise directed in writing by the Contractor.

You are not authorized to deliver to the Contractor all or any part of the securities held by you pursuant to this agreement (or any monies derived from the sale of such securities, or the negotiation of the Agency's warrants or checks) except in accordance with written instructions from the Agency. The Agency shall inform you and keep you informed in writing of the name of the person or persons with authority to give you such written instructions. Compliance with such instructions shall relieve you of any further liability related thereto. The estimated completion date of the contract underlying this Escrow Agreement is \_\_\_\_\_.

Upon request by you, the Agency shall advise you in writing of any change in the estimated completion date. If the estimated completion date is changed, you are authorized to reinvest the monies held hereunder in accordance with the new estimated completion date.

In the event the Agency orders you to do so in writing, and notwithstanding any other provisions of this agreement, you shall, within thirty-five (35) days of receipt of such order, reconvert into money the securities held by you pursuant to this agreement and return such money, together with any other monies, including accrued interest on such securities held by you hereunder, to the Agency.

The Contractor agrees to pay you as compensation for your services hereunder as follows:

\_\_\_\_\_. Payment of all fees shall be the sole responsibility of the Contractor and shall not be deducted from any property placed with you pursuant to this agreement until and unless the Agency directs the release to the Contractor of the securities and monies held hereunder whereupon you shall be granted a first lien upon such property released and shall be entitled to reimburse yourself from such property for the entire amount of your fees and any anticipated amounts which might be owing as provided for herein. In the event that you are made a party to any litigation with respect to the property held by you hereunder, or in the event that the conditions of this escrow are not promptly fulfilled or that you are required to render any services not provided for in these instructions, or that there is any assignment of the interests of this escrow or any modification hereof, you shall be entitled to reasonable compensation for such extraordinary services from the Contractor and reimbursement from the Contractor for all costs and expenses, including attorney fees occasioned by such default, delay, controversy or litigation.

Should you at any time and for any reason desire to be relieved of your obligations as escrow holder hereunder, you shall give written notice to the Agency and Contractor. The Agency and Contractor shall, within 20 days of the receipt of such notice, jointly appoint a successor escrow holder and instruct you to deliver all securities and funds held hereunder to said successor. If you are notified of the appointment of the successor escrow holder within 20 days, you may return the subject matter hereof to the Agency and upon so doing, it absolves you from all further charges and obligations in connection with this escrow.

This agreement shall not be binding until executed by the Contractor and the Agency and accepted by you.

This instrument contains the entire agreement between you, the Contractor and the Agency with respect to this escrow and you are not a party to nor bound by any instrument or agreement other than this; you shall not be required to take notice of any default any other matter, nor be bound by nor required to give notice or demand, nor required to take any action whatever



except as herein expressly provided; you shall not be liable for any loss or damage not caused by your own negligence or willful misconduct.

The foregoing provisions shall be binding upon the assigns, successors, personal representatives and heirs to the parties hereto.

The undersigned have read and hereby approve the instructions as given above governing the administration of this escrow and do hereby execute this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Agency

By: \_\_\_\_\_  
Signature and Title

\_\_\_\_\_  
Signature and Title

\_\_\_\_\_  
Address

The above escrow instructions received and accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Bank or Trust Company

By: \_\_\_\_\_

## **LIST OF TYPE OF BONDS OR SECURITIES THAT ARE APPROVED BY AGENCY**

Bills, certificates, notes or bonds of the United States.

Other obligations of the United States or its agencies.

Any Corporation wholly owned by the government of the United States.

Indebtedness of the Federal National Mortgage Association.

Time deposits in Commercial Banks, Mutual Savings Banks or Savings and Loan Associations.

The investments selected must mature on or prior to the date set for completion of the contract, including extensions thereof.

Bond No. 107853839

## RETAINAGE BOND

KNOW ALL MEN BY THESE PRESENTS, that Stremler Gravel, Inc.,  
A corporation existing under and by virtue of the laws of the State of Washington  
and authorized to do business in the State of Washington as Principal, and  
Travelers Casualty and Surety Company of America a corporation organized and existing under the laws of the  
Connecticut and authorized to transact business in the State of  
Washington as Surety, are jointly and severally held and bound unto WHATCOM COUNTY,  
WASHINGTON, hereinafter called Obligee, and are similarly held and bound unto the  
beneficiaries of the trust fund created by RCW 60.28, in the penal sum of:  
Four Thousand Five Hundred Seventy-Seven and 81/100 Dollars  
(\$ 4,577.81) which is 5% of the Principal's price on  
Contract No. SWBB23-01.

WHEREAS, on the September 13, 2023 the said Principal herein executed a  
contract with the Obligee, for Cottonwood Drive Stormwater Inlet Repairs.

WHEREAS, said contract and RCW 60.28 require the Obligee to withhold from the principal the  
sum of 5% from monies earned on estimates during the progress of the construction, hereinafter  
referred to as earned retained funds.

AND NOW WHEREAS, Principal has requested that the Obligee not retain any earned retained  
funds as allowed under RCW 60.28.

NOW THEREFORE, the condition of this obligation is such that the surety is held and bound unto  
the beneficiaries of the trust fund created by RCW 60.28 in the penal sum of 5 percent of the final  
contract cost which shall include any increases due to change orders, increases in quantities of  
work or the addition of any new item of work. If the Principal shall use the earned retained funds,  
which will not be retained, for the trust fund purposes of RCW 60.28, then this obligation shall be  
null and void; otherwise, it shall remain in full force and effect until release is authorized in writing  
by the Obligee.



PROVIDED HOWEVER that:

1. The liability of the Surety under this bond shall not exceed 5% of the total amount earned by the Principal if no monies are retained by the Obligee on estimates during the progress of construction.
2. Any suit under this bond must be instituted within the time period provided by applicable law.

WITNESS our hands this 26th day of September 2023.

Stremier Gravel, Inc.

BY: 

LANE STREMLER Principal  
PRESIDENT

Travelers Casualty and Surety Company of America

BY: 

Julie R. Truitt, Attorney-in-Fact

**Name and Address Local Office or Agent**

Propel Insurance  
1201 Pacific Avenue, Suite 1000  
Tacoma, WA 98402

**APPROVED:**

**WHATCOM COUNTY  
PUBLIC WORKS DEPARTMENT**

By: 

Date: Oct 5th, 20 23.



**Travelers Casualty and Surety Company of America  
Travelers Casualty and Surety Company  
St. Paul Fire and Marine Insurance Company**

**POWER OF ATTORNEY**

**NOW ALL MEN BY THESE PRESENTS:** That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Julie R Truitt** of **TACOMA, Washington**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April, 2021**.



State of Connecticut

City of Hartford ss.

By:   
Robert L. Raney, Senior Vice President

On this the **21st** day of **April, 2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2026**



  
Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **26th** day of **September**, **2023**



  
Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.  
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**

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).

<b>PRODUCER</b> Propel Insurance 601 Union Street; Suite 3400 COM Construction Seattle, WA 98101-1371	CONTACT NAME: <b>Rainey Lindholm</b>
	PHONE (A/C, No, Ext): <b>800 499-0933</b> FAX (A/C, No): <b>866 577-1326</b> E-MAIL ADDRESS: <b>rainey.lindholm@propelinsurance.com</b>
<b>INSURED</b> Stremler Gravel, Inc. P O Box 527 Lynden, WA 98264	INSURER(S) AFFORDING COVERAGE      NAIC #
	INSURER A : <b>BITCO General Insurance Corporation</b> <b>20095</b>
	INSURER B :
	INSURER C :
	INSURER D :
	INSURER E :


**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	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>PD Ded: 2,000</b> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			<b>CLP3723781</b>	<b>12/05/2022</b>	<b>12/05/2023</b>	EACH OCCURRENCE      \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence)      \$ <b>100,000</b> MED EXP (Any one person)      \$ <b>5,000</b> PERSONAL & ADV INJURY      \$ <b>1,000,000</b> GENERAL AGGREGATE      \$ <b>2,000,000</b> PRODUCTS - COM/OP AGG      \$ <b>2,000,000</b> \$
	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			<b>CAP2723782</b>	<b>12/05/2022</b>	<b>12/05/2023</b>	COMBINED SINGLE LIMIT (Ea accident)      \$ <b>1,000,000</b> BODILY INJURY (Per person)      \$ BODILY INJURY (Per accident)      \$ PROPERTY DAMAGE (Per accident)      \$ \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ <b>\$10,000</b>			<b>CUP2821547</b>	<b>12/05/2022</b>	<b>12/05/2023</b>	EACH OCCURRENCE      \$ <b>5,000,000</b> AGGREGATE      \$ <b>5,000,000</b> \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			<b>CLP3723781</b> <b>WA Stop Gap</b>	<b>12/05/2022</b>	<b>12/05/2023</b>	PER STATUTE    OTH-ER E.L. EACH ACCIDENT      \$ <b>\$1,000,000</b> E.L. DISEASE - EA EMPLOYEE      \$ <b>\$1,000,000</b> E.L. DISEASE - POLICY LIMIT      \$ <b>\$1,000,000</b>
A	<b>Leased &amp; Rented Equipment</b> <b>Scheduled Equip</b>			<b>CLP3723781</b> <b>CLP3723781</b>	<b>12/05/2022</b> <b>12/05/2022</b>	<b>12/05/2023</b> <b>12/05/2023</b>	<b>\$500,000 Limit</b> <b>\$1,000 Ded</b> <b>See Description Below</b>

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

**RE: Cottonwood Drive Stormwater Inlet Repairs SW Project No. SWBB23-01**  
**Additional Insured Status applies to Whatcom County and their officers, elected officials, employees, agents, and volunteers per attached form(s).**

<b>CERTIFICATE HOLDER</b> WHATCOM COUNTY PUBLIC WORKS DEPARTMENT 322 N. Commercial Street, 4th floor Bellingham, WA 98225	<b>CANCELLATION</b> 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.

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

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. SUITS AGAINST DREDGES AND BARGES**

We agree that any "suit" in rem against any dredge or barge owned, operated by or for you, and used in your operations, shall in all respects be treated in the same manner as though the "suit" were against you.

This coverage is excess over and above any specific insurance on any dredge or barge owned, operated by or for you, and used in your operations.

## **M. 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.

#### **N. 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.

**O. 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.

**P. PROPERTY DAMAGE LIABILITY - ELEVATORS**

"Property damage" liability is changed as follows:

1. **Exclusions 2.j.(3) and 2.j.(4) of SECTION I, COVERAGE A**, do not apply to the use of elevators.
2. The insurance afforded by reason of this provision is excess over any valid and collectible property insurance (including any deductible portion thereof) available to the insured whether primary, excess, contingent or on any other basis, and the **OTHER INSURANCE** condition is changed accordingly.

**Q. 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.

**R. 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.

## **S. 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.

## **T. 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.

#### **U. AUTOMATIC ADDITIONAL INSUREDS - 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.

#### **V. AUTOMATIC ADDITIONAL INSUREDS – 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.

#### **W. 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.

#### **X. 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.

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.

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

**BROADENED COVERAGE - AUTOMOBILES**

The following modifies insurance provided under:

**BUSINESS AUTO COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

- |   |  |
|---|--|
| 1 - Broad Form Named Insured                                | 11 - Bodily Injury Extension                           |
| 2 - Automatic Waiver of Subrogation                         | 12 - Hired Auto Physical Damage                        |
| 3 - Automatic Additional Insured                            | 13 - Enhanced Supplementary Payments                   |
| 4 - Primary and Noncontributory - Other Insurance Condition | 14 - Fellow Employee Coverage for Designated Positions |
| 5 - Unintentional Failure to Disclose Hazards               | 15 - Physical Damage – Transportation Expenses         |
| 6 - Extended Notice of Cancellation, Non-Renewal            | 16 - Rental Reimbursement Coverage                     |
| 7 - When We Do Not Renew                                    | 17 - Loan/Lease Gap Coverage                           |
| 8 - Notice of Knowledge of Accident or Loss                 | 18 - Accidental Air Bag Discharge Coverage             |
| 9 - Employees as Insured                                    | 19 - Glass Repair – Waiver of Deductible               |
| 10 - Employee Hired Autos                                   |  |

**1. BROAD FORM NAMED INSURED**

**SECTION II. A. 1. -WHO IS AN INSURED** - Paragraph d. is added:

- d. Any organization you newly acquire or form, except for a partnership, joint venture or limited liability company, and over which you maintain majority ownership or interest (51% or more) or for which you have assumed the active management, will qualify as a Named Insured if there is no other similar insurance available to that organization. However, coverage under this provision is only afforded until the end of the policy period or the 12-month anniversary of the policy inception date, whichever is earlier.

**2. AUTOMATIC WAIVER OF SUBROGATION**

**Section IV – Business Auto Conditions, Paragraph A.5., Transfer of Rights of Recovery Against Others to Us**, is deleted and replaced with the following:

- 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 damages under this coverage form.

**3. AUTOMATIC ADDITIONAL INSURED**

**SECTION II – WHO IS AN INSURED, Paragraph A.1,** is amended to include as an "insured" any person or organization who is required by written contract or agreement to be an additional insured on your policy, but only with respect to liability arising out of operations performed by you or on your behalf for the additional insured.

**4. PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION**

The following is added to the Other Insurance Condition in the Business Auto Coverage Form and the Other Insurance - Primary And Excess Insurance Provisions in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

**5. 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.

**6. EXTENDED NOTICE OF CANCELLATION, NON-RENEWAL**

The **COMMON POLICY CONDITIONS** , Item **A.2.b.** 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.

**7. WHEN WE DO NOT RENEW**

**SECTION IV – BUSINESS AUTO CONDITIONS** , is amended to add Item **B.9.**:

- 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.

**8. NOTICE OF KNOWLEDGE OF ACCIDENT OR LOSS**

**SECTION IV - BUSINESS AUTO CONDITIONS** , Item **A.2.a.** is deleted and replaced with the following:

**2. Duties in the Event of Accident, Claim Suit or Loss:**

- a. You must see to it that we are notified of an "accident", "claim", "suit" or "loss" which may result in a claim as soon as practicable after the "occurrence" has been reported to you, a partner, a member, an officer, or an employee designated to give notice to us. Notice should include:

- (1) How, when and where the "accident" or "loss" occurred;



- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

**9. EMPLOYEES AS INSURED**

The following is added to the **Section II - Covered Autos Liability Coverage**, Paragraph **A.1. Who Is An Insured** provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

**10. EMPLOYEE HIRED AUTOS**

**A. Changes In Covered Autos Liability Coverage**

The following is added to the **Who Is An Insured** Provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

**B. Changes In General Conditions**

Paragraph **5.b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **5.f.** of the **Other Insurance - Primary And Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For **Hired Auto Physical Damage Coverage**, the following are deemed to be covered "autos" you own:

1. Any covered "auto" you lease, hire, rent or borrow; and
2. Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**11. BODILY INJURY EXTENSION**

**SECTION V - DEFINITIONS** , Paragraph **C.** is deleted and replaced by the following:

- C.** "Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these, at any time. Mental anguish means any type of mental or emotional illness or disease.

**12. HIRED AUTO PHYSICAL DAMAGE**

**SECTION III.A.4. - Coverage Extensions** - Paragraph **c.** is added:

**c. Hired Auto Physical Damage**

If Comprehensive, Specified Causes of Loss or Collision coverage is provided under this policy, then Hired Auto Physical Damage is provided for that coverage part subject to the following:

- (1) The most we will pay for any one "accident" or "loss" under this Hired Auto Physical Damage Coverage is the lesser of:
  - (a) The any one "Accident" or "Loss" amount of \$100,000;
  - (b) The actual cash value; or

(c) Cost of repair.

Our obligation to pay for a loss in c.(1) above will be reduced by a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. The deductible will be waived for "loss" caused by fire or lightning.

- (2) Subject to paragraph c.(1). above, we will provide coverage equal to the broadest physical damage coverage applicable to any covered "auto" shown in the declarations.
- (3) When you are required by written contract to indemnify a lessor for actual financial loss because of loss of use of a hired "auto" resulting from a covered "accident" or "loss", we will cover that financial loss subject to the limit specified in paragraph c.(1).

**13. ENHANCED SUPPLEMENTARY PAYMENTS**

**SECTION II.A.2.a. COVERAGE EXTENSIONS**, Supplementary Payments (2) and (4) are replaced by the following:

- (2) Up to \$2,500 for the cost of bail bonds (including bonds for related traffic laws violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$350 a day because of time off from work.

**14. FELLOW EMPLOYEE COVERAGE FOR DESIGNATED POSITIONS**

The **Fellow Employee Exclusion contained in Section II.B.5.** does not apply to the following positions or job titles: foreman, supervisor, manager, officer, partner or other senior level "employee". Coverage is excess over all other collectible insurance.

**15. PHYSICAL DAMAGE - TRANSPORTATION EXPENSES**

**SECTION III.A.4.a. Transportation Expenses** is replaced by the following:

**a. Transportation Expenses**

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto". We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Cause of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expirations, when the covered "auto" is returned to use or we pay for its "loss".

For autos provided with temporary transportation expense, the following physical damage coverage will apply:

- (1) The most we will pay for any one "accident" or "loss" under the temporary transportation expense physical damage coverage is the lesser of:
  - (a) The any one "Accident" or "Loss" amount of \$100,000;
  - (b) The actual cash value; or
  - (c) Cost of repair.

Our obligation to pay for a loss in a.(1) above will be reduced by a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. The deductible will be waived for "loss" caused by fire or lightning.

- (2) Subject to paragraph a.(1). above, we will provide coverage equal to the broadest physical damage coverage applicable to any covered "auto" shown in the declarations.
- (3) When you are required by written contract to indemnify a lessor for actual financial loss because of loss of use of a hired "auto" resulting from a covered "accident" or "loss", we will cover that financial loss subject to the limit specified in paragraph a.(1).

**16. RENTAL REIMBURSEMENT COVERAGE**

**SECTION III.A.4. - Coverage Extensions** - Paragraph d. is added.

- d. If you carry Comprehensive, Specified Causes of Loss or Collision coverage for the damaged covered "auto" as provided under this policy, then Rental Reimbursement Coverage is provided for that coverage part subject to the following:
  1. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" other than theft, to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.
  2. We will only pay for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:
    - (a) The number of days reasonably required to repair or replace the covered "auto"; or,
    - (b) 30 days.
    - (c) Our payment is limited to the lesser of the following amounts:
      - (1) Necessary and actual expenses incurred; or
      - (2) \$50 per day.

**17. LOAN/LEASE GAP COVERAGE**

**Physical Damage Coverage** is amended by the addition of the following:

In the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the loss and the "outstanding balance" of the loan/lease, not to exceed \$2,500 for any one vehicle or \$25,000 annually in aggregate.

For the purposes of this endorsement, "outstanding balance" means the amount you owe on the loan/lease at the time of loss less any amounts representing taxes, overdue payments, penalties, interest or charges resulting from overdue payments, additional mileage charges, excess wear and tear charges or lease termination fees, costs for extended warranties, credit Life Insurance; Health, Accident or Disability Insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

**18. ACCIDENTAL AIR BAG DISCHARGE COVERAGE**

**SECTION III.B.3.a - Exclusions** . This exclusion does not apply to the accidental discharge of an air bag.

**19. GLASS REPAIR - WAIVER OF DEDUCTIBLE**

**SECTION III.D - Deductible** is replaced with the following:

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning. The deductible does not apply to glass damage if the glass is repaired rather than replaced.

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

## **WASHINGTON CHANGES**

For a covered "auto" licensed or principally garaged in, or for "auto dealer operations" conducted in, Washington, this endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### **A. Changes In Covered Autos Liability Coverage**

The **Employee Indemnification And Employer's Liability** Exclusion applies only to "bodily injury" to any "employee" of the "insured" whose employment is not subject to the Industrial Insurance Act of Washington (Washington Revised Code Title 51).

With respect to "bodily injury" to "employees" of the "insured" whose employment is subject to the Industrial Insurance Act of Washington, the **Employee Indemnification And Employer's Liability** Exclusion is replaced by the following:

#### **Employee Indemnification And Employer's Liability**

This insurance does not apply to "bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
  - (1) Employment by the "insured"; or
  - (2) Performing duties related to the conduct of the "insured's" business; or
- b. Any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". A domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

### **B. Changes In Physical Damage Coverage**

1. The lead-in to Paragraph **B.1.** in the Business Auto and Motor Carrier Coverage Forms and Paragraph **F.3.a.** in the Auto Dealers Coverage Form is replaced by the following:

We will not pay for "loss" caused directly or indirectly by any of the following:

2. The **Limit Of Insurance** provision with respect to repair or replacement resulting in better than like kind or quality is replaced by the following and supersedes any provision to the contrary:

We may deduct for betterment for parts normally subject to repair and replacement during the useful life of the "auto". In this event, deductions shall be limited to the lesser of:

- a. An amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part; or
- b. The amount by which the resale value of the "auto" is increased from the repair or replacement.

3. The following is added to the **Limit Of Insurance** provision:

We will not pay for a "loss" which is paid under Underinsured Motorists Coverage.