

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 39, SERIES 2024**

**A RESOLUTION APPROVING THE RENEWAL OF THE CONTRACT WITH CU
ONSITE SOLUTIONS FOR ROAD MAINTENANCE SERVICES**

WHEREAS, the Town Council of the Town of Timnath (the “Town”) pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS the Town issued an RFP for this work in 2022 with the intent to allow the contract to be renewed for up to 5 years upon satisfactory performance of the work and appropriation of the funds; and

WHEREAS the Town entered into an Independent Contractor Agreement with Dkota Ventures, LLC dba Cu Onsite Solutions on April 26, 2022 for an initial two year term; and

WHEREAS the Town hereby assigns the work from Dkota Ventures, LLC dba Cu Onsite Solutions to A-1 Chipseal Company dba Cu Onsite Solutions, as A-1 Chipseal Company acquired all assets of Cu Onsite Solutions on March 13, 2024; and

WHEREAS the Town has included this work in its 2024 Public Works Budget; and

WHEREAS, the Town Council is familiar with the Independent Contractor Agreement and finds it to be in the best interest of the Town, its residents, and the general public to enter into the agreement.

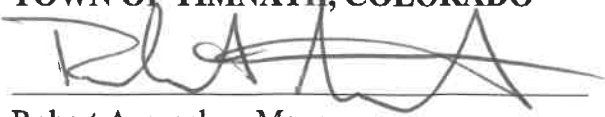
NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOW:

Section 1. Approval

The required purchase proposal and expenditure of funds up to the annual budget amount for road maintenance/road surfacing is hereby approved, authorized, and ratified to enter into a contract with A-1 Chipseal Company dba Cu Onsite Solutions for asphalt patching, crack sealing, sealcoating, and concrete repairs services. The required agreements may be finalized by the Town Manager, in consultation with the Public Works Director, Legal Counsel, and other applicable staff or consultant. Any actions taken prior to the execution of this Resolution, that are within the authority conferred hereby, are ratified, confirmed, and approved by the Town Council.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON MAY 14, 2024.

TOWN OF TIMNATH, COLORADO



Robert Axmacher, Mayor

ATTEST:



Milissa Peters-Garcia, CMC

Town Clerk



**INDEPENDENT CONTRACTOR AGREEMENT
(Asphalt Patching, Crack Sealing, Sealcoating, and Concrete Repairs)**

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “Agreement”), is entered into as of the 14th day of May, 2024, by and between THE TOWN OF TIMNATH, a home rule municipal corporation and political subdivision of the State of Colorado (the “Town”), and A-1 CHIPSEAL COMPANY DBA CU ONSITE SOLUTIONS, a Colorado Corporation (the “Contractor”). The Town and the Contractor are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Town is a Home Rule Municipality, authorized to provide certain services within its corporate boundaries;

WHEREAS, the Contractor is in good standing with the Colorado Secretary of State (*see Exhibit C*); and

WHEREAS, the Town is authorized to contract for the provision of such services pursuant to §§ 31-15-101 *et seq.*, C.R.S.;

WHEREAS, the Town has appropriated sufficient funds, which are available for the work to be performed by the Contractor under this Agreement, and other necessary approvals have been obtained;

WHEREAS, the Town desires to engage the Contractor to render the services described in this Agreement; and

WHEREAS, the Contractor has represented that it has the professional experience, skill and resources to perform the services, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

TERMS AND CONDITIONS

1. **SCOPE OF SERVICES.** The Contractor shall perform the services described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Services”): (a) in a professional manner, to the satisfaction of the Town, using the degree of skill and knowledge customarily employed by other professionals performing similar services in the area of the Town; (b) within the time period and pursuant to the Scope of Services specified in said **Exhibit A**; and (c) using reasonable commercial efforts to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the Town. **Exhibit A** may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in **Exhibit A**, the terms in the body

of this Agreement shall govern. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the Town in any manner whatsoever, except to the extent specifically provided in this Agreement (including **Exhibit A**) or through other authorization expressly delegated to Contractor or authorized by the Town through the Town Council.

2. TERM/RENEWAL.

a. This Agreement shall be effective as of May 14, 2024 and shall terminate on the earlier to occur of: (i) termination pursuant to Section 20 hereof; (ii) completion of the Services; or (iii) December 31, 2024. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) or (ii) above, or unless the Town determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew for each succeeding year for an additional two (2) year terms commencing January 1 of the next succeeding year.

b. This Agreement is contingent upon and subject to approval by the Town Council. If such approval is granted after the effective date, the effective date shall be extended until the date such approval is received.

3. ADDITIONAL SERVICES. The Town may request, in writing, the Contractor provide additional services not set forth in **Exhibit A**. The terms and conditions of the provision of such services shall be subject to the mutual agreement of the Contractor and the Town pursuant to a written service/work order executed by an authorized representative of the Town and the Contractor or an addendum to this Agreement. Authorization to proceed with additional services shall not be given unless the Town has appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section 3, the terms and conditions of this Agreement relating to Services shall also apply to any additional services rendered.

4. REPAIRS/CLAIMS. The Contractor shall notify the Town immediately of any and all damage caused by the Contractor to Town property and that of third parties. The Contractor will promptly repair or, at the Town's option, reimburse the Town for the repair of any damage to property caused by the Contractor or its employees, agents or equipment. In addition, the Contractor shall promptly notify the Town of all potential claims of which it becomes aware. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the Town the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services, whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.

5. GENERAL PERFORMANCE STANDARDS.

a. The Contractor has by careful examination ascertained: (i) the nature and location of the Services; (ii) the configuration of the ground on which the Services are to be performed; (iii) the character, quality, and quantity of the labor, materials, equipment and facilities necessary to complete the Services; (iv) the general and local conditions pertaining to the Services; and (v) all other matters which in any way may affect the performance of the Services by the Contractor. Contractor enters into this Agreement solely because of the results of such examination and not because of any representations pertaining to the Services or the provision thereof made to it by the Town or any agent of the Town and not contained in this Agreement. The Contractor represents that it has or shall acquire the capacity and the professional experience and skill to perform the Services and that the Services shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a similar nature to those specified in this Agreement. If competent professionals find that the Contractor's performance of the Services does not meet this standard, the Contractor shall, at the Town's request, re-perform the Services not meeting this standard without additional compensation.

b. The Contractor shall use reasonable commercial efforts to perform and complete the Services in a timely manner. If performance of the Services by the Contractor is delayed due to factors beyond the Contractor's reasonable control, or if conditions or the scope or type of services are expected to change, Contractor shall give prompt notice to the Town of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.

c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.

d. The Contractor agrees that it has and will continue to comply with all Laws while providing Services under this Agreement. "Laws" means: (i) federal, state, county and local or municipal body or agency laws, statutes, ordinances and regulations; (ii) any licensing, bonding, and permit requirements; (iii) any laws relating to storage, use or disposal of hazardous wastes, substances or materials; (iv) rules, regulations, ordinances and/or similar directives regarding business permits, certificates and licenses; (v) regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970; (vi) Wage and Hour laws, Worker Compensation laws, and immigration laws.

e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, subconsultant or employee of the Town. Review, acceptance or approval by the Town of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6. MONTHLY STATUS REPORT. The Contractor shall provide to the Town, at the Town's request, on or before the 25th of each month, a narrative progress and status report describing work in progress and results achieved during the reporting period, including a description of the

Services performed during the invoice period and the Services anticipated to be performed during the ensuing invoice period (“Monthly Report”).

7. COMPENSATION AND INVOICES.

a. Compensation. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in **Exhibit A** of this Agreement, unless said reimbursement or compensation is approved in writing by the Town in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor’s actual cost, provided that the Contractor shall make a reasonable attempt to notify the Town of the estimated amount of such reimbursable costs (or any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the Town with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) (“W-9”). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as **Exhibit A-1**.

b. Invoices. Invoices for the Services shall be submitted monthly, by the 10th of each month, during the term of this Agreement and shall contain the following information:

- i. An itemized statement of the Services performed.
- ii. Any other reasonable information required by the Town to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order.

The Town shall be charged only for the actual time and direct costs incurred for the performance of the Services. Invoices received by the Town after the 10th of each month may be processed the following month.

c. Retainage. The Town shall retain 5% of the value of the Work from all progress payments to Contractor for the Work. A progress payment shall not be considered as acceptance or approval of any part of the Work, and shall not relieve Contractor of responsibility for defective materials or Work. Contractor may request that Town release and allow Contractor to withdraw the whole or any portion of the said sums retained, if Contractor deposits securities with the Town, which are acceptable to Town and approved by Town’s Representative. Such acceptable securities so deposited at all times shall have a market value at least equal in value to the amount so withdrawn. If at any time Town determines that the market value of the acceptable securities theretofore deposited has fallen below the amount so withdrawn, Town may give notice thereof to Contractor, who forthwith shall deposit additional acceptable securities in an amount sufficient to reestablish a total deposit of securities equal in value to the amount so withdrawn.

d. Public Works Compensation Terms. Pursuant to § 24-91-103.6(2), C.R.S., the Parties hereby agree that the amount of money appropriated by the Town for the Services is equal to the compensation amount and this Agreement shall not be modified to require the

Contractor to perform additional compensable work unless the Town has made lawful appropriations to cover the costs of the additional work.

8. TIME FOR PAYMENT. Payment for the Services shall be made by the Town within thirty (30) days of receipt of: (i) a timely, satisfactory and detailed invoice in the form required by Section 7; and (ii) if applicable, a reasonably satisfactory and detailed Monthly Report, for that portion of the Services performed and not previously billed. In the event that the Town contests all or a portion of an invoice, the Town shall provide timely written notice of the dispute, pay the undisputed portion of the invoice, and hold the remainder of the amount due under the Invoice, pending dispute resolution.

Interest on late payments, if any, other than disputed amounts, shall be paid by the Town at the statutory rate. The Town may determine to waive or extend the deadline for filing the Monthly Report, or may make payment for Services to the Contractor notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Contractor, if it is in the interest of the Town to do so. In the event a Town Council meeting is not scheduled in time to review payment of an invoice, the Town hereby authorizes payment for Services, subject to the appropriation and budget requirements under Section 29, without the need for additional Town Council approval, so long as any payment required to be made does not exceed the amounts appropriated for such Services as set forth in the Town's approved budget. Such payment shall require review and approval of each Monthly Report and invoice by the Town Manager or applicable Department Head, as appropriate, subject to ratification at the next succeeding special or regular Town Council meeting.

9. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor and nothing in this Agreement shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the Town. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the Town, and shall be responsible for supervising its own employees or subcontractors. The Town is concerned only with the results to be obtained. The Town shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes), workers' compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance. The Contractor shall be responsible for its safety, and the safety of its employees, subcontractors, agents, and representatives. All personnel furnished by the Contractor will be deemed employees or sub-contractors of the Contractor and will not for any purpose be considered employees or agents of the Town, and the Contractor will comply with all employment laws relative to such employees, including but not limited to Wage and Hour laws, Worker Compensation Laws, Immigration Laws and OSHA-type laws. The Contractor is not entitled to worker's compensation benefits or unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or

some other entity other than the Town, and the Contractor is obligated to pay federal and state income taxes on moneys earned pursuant to this Agreement.

10. **PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION: EMPLOYEE MEMBERSHIP.** Contractor agrees that, concurrent with execution of this Agreement, Contractor will disclose to the Town the membership status of any of Contractor's employees that are members of the Colorado Public Employees' Retirement Association pursuant to §§ 24-51-301 *et seq.*, C.R.S. Failure to meet this requirement shall be a material breach of this Agreement, and the Town's obligations to perform under this Agreement are specifically conditioned on Contractor's performance as required under this Section 10.

11. **EQUAL OPPORTUNITY / EMPLOYMENT ELIGIBILITY.** This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

12. **CONTRACTOR'S INSURANCE.**

a. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the Town, its directors, officers, employees and agents is required for Commercial General Liability and Workers Compensation coverage. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Town as an additional insured. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the Town may carry, and any insurance maintained by the Town shall be considered excess. The Town shall have the right to verify or confirm, at any time, all coverage, information or representations contained in this Agreement.

b. Prior to commencing any work under this Agreement, the Contractor shall provide the Town with a certificate or certificates evidencing the policies required by this Agreement, as well as the amounts of coverage for the respective types of coverage, which certificate(s) shall be attached hereto as **Exhibit B-1**. If the Contractor subcontracts any portion(s) of the Services, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts satisfactory to the Town and the Contractor, provided, however, that subcontractors of the Contractor shall not be required by the Town to provide coverage in excess of that which is required hereunder of the Contractor. If the coverage required expires during the term of this Agreement, the Contractor or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

c. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations contained in this Agreement; nor shall the purchase of the required insurance serve to limit the Contractor's liability under any provision in this Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

13. BONDS. The Contractor shall provide a payment bond and a performance bond, in the amount of at least one half of the contract amount, in a form acceptable to the Town, prior to execution of this Contract. The Town may make a claim on such bonds, in addition to other remedies available herein.

14. CONFIDENTIALITY AND CONFLICTS.

a. Confidentiality. Any information deemed confidential by the Town and given to the Contractor by the Town, or developed by the Contractor as a result of the performance of a particular task, shall remain confidential. In addition, the Contractor shall hold in strict confidence, and shall not use in competition, any information which the Contractor becomes aware of under or by virtue of this Agreement which the Town deems confidential, or which the Town has agreed to hold confidential, or which, if revealed to a third party, might reasonably be construed to be contrary to the interests of the Town. Confidential information shall not include, however, any information which is: (i) generally known to the public at the time provided to the Contractor; (ii) provided to the Contractor by a person or entity not bound by confidentiality to the Town; or (iii) independently developed by the Contractor without use of the Town's confidential information. During the performance of this Agreement, if the Contractor is notified that certain information is to be considered confidential, the Contractor agrees to enter into a confidentiality agreement in a form reasonably acceptable to the Town and the Contractor. The Contractor agrees that any of its employees, agents or subcontractors with access to any information designated thereunder as confidential information of the Town shall agree to be bound by the terms of such confidentiality agreement.

b. Personal Identifying Information. During the performance of this Agreement, the Town may disclosure Personal Identifying Information to the Contractor. "Personal Identifying Information" means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in § 24-73-103(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in § 18-5-701(3), C.R.S. In compliance with § 24-73-102, C.R.S., the Contractor agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Contractor; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

c. Conflicts. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the Town, the Contractor agrees to notify the Town of any conflicts of interest known to the Contractor that impact the Contractor's provision of Services to the Town.

15. OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the Town under all circumstances, upon payment to the Contractor of the

invoices representing the work by which such materials were produced. At the Town's request, the Contractor will provide the Town with all documents produced by or on behalf of the Contractor pursuant to this Agreement. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services for a period of two (2) years after termination of this Agreement, shall make them available for the Town's use and shall provide such copies to the Town upon request at no cost.

16. LIENS AND ENCUMBRANCES. The Contractor shall not have any right or interest in any Town assets, or any claim or lien with respect thereto, arising out of this Agreement or the performance of the services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the Town's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the Town. The Contractor will provide indemnification against all such liens or verified statements of claim filed with the Town for labor performed, materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 17(b), below.

17. INDEMNIFICATION.

a. The Contractor shall defend, indemnify and hold harmless the Town and each of its directors, officers, contractors, employees, agents and consultants (collectively "Town Indemnitees"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses (the "Claims"), including reasonable legal expenses and attorneys' fees actually incurred, by the Town Indemnitees arising directly or indirectly, in whole or in part, out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or employees, in connection with this Agreement and/or the Contractor's performance of the Services or work pursuant to this Agreement. Notwithstanding anything else in this Agreement or otherwise to the contrary, the Contractor is not obligated to indemnify the Town Indemnitees for the negligence of the Town or the negligence of any other Town Indemnitee, except the Contractor. Except as otherwise provided by applicable law, this indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Contractor under workers' compensation acts, disability acts or other employee benefit acts, provided that in no event shall the Contractor be liable for special/consequential or punitive damages.

b. The Contractor will at all times indemnify, defend and hold harmless the Town Indemnitees from and against any liability for claims and liens for labor performed or materials used or furnished in the performance of Contractor's Services, including any costs and expenses incurred in the defense of such claims and liens, reasonable attorneys' fees and any

damages to the Town resulting from such claims or liens. After written demand by the Town, the Contractor will immediately cause the effect of any suit or lien to be removed from the Town's property or adjacent property. In the event the Contractor fails to do so, the Town is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed, and the costs thereof, together with reasonable attorneys' fees, will be immediately due and payable by the Contractor or may, at the Town's option, be offset against any sums due and payable to Contractor pursuant to this Agreement. In the event a suit on such claim or lien is brought, the Contractor will, at the option of the Town, defend said suit at its own cost and expense, with counsel satisfactory to the Town and will pay and satisfy any such claim, lien, or judgment as may be established by the decision of the Court in such suit. The Contractor may litigate any such lien or suit, provided the Contractor causes the effect thereof to be removed promptly in advance from the Town's property or any other property.

c. This indemnity coverage shall also cover the Town's defense costs in the event that the Town, in its sole discretion, elects to provide its own defense. The Town retains the right to disapprove counsel, if any, selected by the Contractor to fulfill the foregoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised. In the event the Contractor fails to assume the defense of any Claims under this Section 17 within fifteen (15) days after notice from the Town of the existence of such Claim, the Town may assume the defense of the Claim with counsel of its own selection, and the Contractor will pay all reasonable expenses of such counsel.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary with respect to its obligations under this Agreement, including the indemnity obligations set forth in Section 17. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the Town's protection in the performance of this Agreement. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

18. ASSIGNMENT. The Contractor shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the Town. Any attempted assignment of this Agreement in whole or in part with respect to which the Town has not consented, in writing, shall be null and void and of no effect whatsoever.

19. SUBCONTRACTORS. The Contractor is solely and fully responsible to the Town for the performance of all Services in accordance with the terms set forth in this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor, and neither the Town's approval of any subcontractor, suppliers, or materialman, nor the failure of performance thereof by such persons or entities, will relieve, release, or affect in any manner the Contractor's duties, liabilities, or obligations under this Agreement. The Contractor shall not subcontract any Services without prior written approval by the Town. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without cost or penalty upon termination of this Agreement, other than payment for Services rendered prior to the date of any such termination. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the Town.

20. TERMINATION. In addition to the termination provisions contained in Section 2, above, this Agreement may be terminated for cause or for convenience by the Contractor upon delivery of thirty (30) days' prior written notice to the Town or for cause or convenience by the Town by giving the Contractor thirty (30) days' prior written notice. Each Party may terminate this Agreement for cause at any time upon such thirty (30) day written notice to the other Party setting forth the cause for termination and the notified Party's failure to cure the default within the cure period after notice of default set forth in Section 20. Such notice shall not be required for automatic expiration under Section 2, above. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Agreement which is not timely cured, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination of this Agreement, the Contractor shall cooperate with the Town to ensure a timely and efficient transition of all work and work product to the Town or its designees. All time, fees and costs associated with such transition shall not be billed by the Contractor to the Town, unless the Town terminates the Agreement for convenience.

21. DEFAULT. If either Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 22 below, and the defaulting party will have ten (10) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such ten (10)-day period and the defaulting party gives written notice to the non-defaulting party within such ten (10)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the ten (10)-day period to cure the default, provided that the defaulting party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement with thirty days advance notice and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.

22. NOTICES. Any notice or communication required under this Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 22

of this Agreement, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

To the Town: Town of Timnath
 Attn: Town Manager
 4750 Signal Tree Drive
 Timnath, CO 80547
 970-224-3211 (phone)
 970-224-3217 (fax)

With copy to: Timnath Town Attorney
 ATTN: Carolyn Steffl
 4750 Signal Tree Drive
 Timnath, Colorado 80547
 (970) 224-3211 (phone)
 (970) 224-3217 (fax)

Contractor: A-1 Chipseal Company dba Cu Onsite Solutions
 ATTN: Gil Uhrich
 2505 E. 74th Avenue
 Denver, CO 80229
 720-540-8264 (phone)
 303-464-9261 (fax)

23. AUDITS. The Town shall have the right to audit, with reasonable notice, any of the Contractor's books and records which may be necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records), and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of the Agreement and to make the same available to the Town at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.

24. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the Town.

25. BINDING AGREEMENT. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.

26. NO WAIVER. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in this Agreement, nor shall the waiver of any default be deemed a waiver of any subsequent default.

27. GOVERNING LAW.

a. Venue. Venue for all actions arising from this Agreement shall be in the District Court in and for the County in which the work is being performed. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise. At the Town's request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the Town shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated.

b. Choice of Law. Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.

c. Litigation. At the Town's request, the Contractor will consent to being joined in litigation between the Town and third parties related to the Work or this Agreement, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Town to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.

28. GOOD FAITH OF PARTIES. In the performance of this Agreement, or in considering any requested approval, acceptance, consent, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, consent, or extension of time required or requested pursuant to this Agreement.

29. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The Town does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the Town pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. The Contractor expressly understands and agrees that the Town's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Town and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the Town, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Town or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Town funds. The Town's obligations under this Agreement exist

subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.

30. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Town, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available to the Town pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S.

31. NEGOTIATED PROVISIONS AND PRIORITY. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement. In the event of a conflict between the terms of the body of this Agreement and the Exhibits attached to this Agreement, the terms of the body of this Agreement shall control. Any waiver of liability or warranty or requirement for payment of attorneys' fees by the Town contained in any Exhibit shall not be binding against the Town.

32. SEVERABILITY. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, void or unenforceable, such decision shall not affect the validity of any other portion of this Agreement which shall remain in full force and effect, the intention being that such portions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

33. NO THIRD-PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

34. OPEN RECORDS. The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202 *et seq.*, C.R.S.

35. TAX EXEMPT STATUS. The Town is exempt from Colorado State sales and use taxes. Accordingly, taxes from which the Town is exempt shall not be included in any invoices submitted to the Town. The Town shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase materials tax free. The Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

36. COUNTERPART EXECUTION. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute

one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

37. WARRANTY. The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the "Work") will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work. All Services are subject to the satisfaction and acceptance of the Town, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in this Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.

[Remainder of page intentionally left blank. Signature pages follow].

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

TOWN:

TOWN OF TIMNATH, a home rule municipal corporation and political subdivision of the State of Colorado

DocuSigned by:
Aaron Adams
A7C88DD439C4A8...
Aaron Adams, Town Manager

ATTEST:

DocuSigned by:
Milissa Peters-Garcia
07A6AF3802114D7...
Milissa Peters-Garcia, CMC Town Clerk

APPROVED AS TO FORM:

DocuSigned by:
Carolyn Steffl
F4453903ECD849F...
Carolyn R. Steffl, Town Attorney

Town's Signature Page to Independent Contractor Agreement for Asphalt Patching, Crack Sealing, Sealcoating, and Concrete Repairs Services with the Town of Timnath and A-1 Chipseal Company dba Cu Onsite Solutions, dated May 14, 2024

A-1 CHIPSEAL COMPANY DBA CU ONSITE
SOLUTIONS:

A Colorado Corporation

DocuSigned by:

C2F28FF964FF4AD...

Printed Name: Stephanie wallis

Title: Corporate Secretary

***Contractor's Signature Page to Independent Contractor Agreement for Asphalt Patching,
Crack Sealing, Sealcoating, and Concrete Repairs Services with the Town of Timnath and A-1
Chipseal Company dba Cu Onsite Solutions, dated May 14, 2024***

EXHIBIT A

SCOPE OF SERVICES

The attached Proposal 33919 from Contractor to the Town shall constitute the Scope of Services.



www.a-1chipseal.com

www.rockymountainpavement.com

Customer	Attention	Date
Town of Timnath	Earl Smith, PE	04/22/24
4800 Goodman St	(970) 224-3211	Proposal #
Timnath, CO 80547-	esmith@timnathgov.com	33919
Proposal for	Fax: (970) 224-3217	
Town of Timnath 2024 Maint - Various Locations - Timnath		

Item#	Description	Qty/Unit	Unit Price	Total Price
	Option# 1 Timnath 2024 Roadway Maintenance			
01	Asphalt Patching Excavate to a depth of 5" in failed areas, Dispose, Compact, Prep subgrade, apply tack coat, and replace with 5" of compacted full depth asphalt.	445 TON	\$301.00	\$133,945.00
	Summerfield and Riverpass intersection alligatored asphalt	55 TONS		
	Summerfield and Riverpass intersection alligatored asphalt	7 TONS		
	CR 5 between Buss Grove and Prospect; shoulder	18 TONS		
	CR 5 between Buss Grove and Prospect; culvert	11 TONS		
	CR 5 between Buss Grove and Prospect; culvert	5 TONS		
	Buss Grove between CR 5 between and timnath pkwy; cross	10 TONS		
	Buss Grove between CR 5 between and timnath pkwy; shoulder	3 TONS		
	Buss Grove between CR 5 between and timnath pkwy; shoulder	13 TONS		
	Colorado Blvd. south of Harmony Road alligatored asphalt	324 TONS		
02	4" MILL REMOVE/PATCHBACK LARGE SETTLED CRACKS Excavate in failed areas, Dispose, Compact, Prep subgrade, apply tack coat, and replace with 5" of compacted full depth asphalt.	3,284 LF	\$32.00	\$105,088.00
	· Cloudburst and Foxfire intersection area	96LF Large Cracks		
	to Mill/patch			
	· Sunny Crest near Yellowtail	98LF Large Cracks		
	to Mill/patch			
	· Outlook Ave., Dixon St., and Watts St. (Fairview Village)	226LF Large		
	Cracks to Mill/patch			
	· Claret St. from Mayfair south to Spring Valley	224LF Large		
	Cracks to Mill/patch			
	· Mayfair from Claret to Quarry	160LF Large Cracks		
	to Mill/patch			
	· Calgary St. from Mayfair to Fenceline	224LF Large Cracks		
	to Mill/patch			
	· Sienna Dr. from Summerfields to 3 Bells	288LF Large		
	Cracks to Mill/patch			
	· Sunny Crest from Jasper to end of cul de sac	32LF Large		
	Cracks to Mill/patch			
	· Serratoga Falls Pkwy CR 5 to Waterfall St.	48LF Large		
	Cracks to Mill/patch			
	· Waterfall Street from Serratoga Falls Pkwy to Hawkshead Ct.	448LF Large		
	Cracks to Mill/patch			
	· Hawkshead Ct. from Skipping Stone to end of cul de sac	352LF Large		
	Cracks to Mill/patch			
	· Terrace View St. from Skipping Stone to Waterfall	608LF Large		
	Cracks to Mill/patch			
	· Skipping Stone Ct. from Hawkshead Ct. to end of cul de sac	256LF Large		
	Cracks to Mill/patch			
	· Signal Ct. from Hawkshead Ct. to end of cul de sac	224LF Large		
	Cracks to Mill/patch			

03	Infrared Heat Patching	38 EA	\$229.00	\$8,702.00
	4705 Weitzel Street, NEXT TO CONCRETE	1ea		
	6878 Ridgeline Dr, NEXT TO CONCRETE	4ea		
	6910 Ridgeline Dr, NEXT TO CONCRETE	3ea		
	Outlook NS S CR 5along concrete	10ea		
	6651 Ridgeline Dr, NEXT TO CONCRETE	2ea		
	Grand park and Club dr.Manhole	2ea		
	1197-1273 S Co Rd 3, middle road	2ea		
	Rd 3,middle road	1ea		
	Rd 3, and Mulberry along concrete	2ea		
	6780 Clovis Ct,along curb	2ea		
	Harmony Road at Main StreetPotholed asphalt intersection	5ea		
	Harmony Road at Main StreetPotholed asphalt intersection	4ea		
04	Remove and Replace 24" Curb and Gutter	10 LF	\$90.00	\$900.00
	Sawcut, Remove, Dispose, Compact and Prep top of subgrade for new concrete at a minimum depth of 6"			
	6780 Clovis Ct, curb 10'			
05	Remove and Replace Concrete	155 SF	\$36.25	\$5,618.75
	Sawcut, Remove, Dispose, Compact and Prep top of subgrade for new concrete at a minimum depth of 6"			
	6972-6878 Ridgeline Dr, 52.5sf			
	6910 Ridgeline Dr, 67.5sf			
	6651 Ridgeline Dr, 35sf			
06	Landscape repair next to concrete walks/curbs	35 LF	\$9.00	\$315.00
07	Crackseal	55,140 LBS	\$3.98	\$219,457.20
	Clean and fill cracks with hot pour rubberized crack sealer.			
	*Transition crack seal (concrete to asphalt) joint will be sealed unless otherwise stated.			
	*All cracks 1/4" or greater will be sealed unless otherwise specified.			
	*SETTLING OF CRACK SEAL MATERIAL MAY OCCUR. BUT DOES NOT AFFECT PERFORMANCE.			
	*ALLIGATORED AREAS WILL NOT BE CRACK SEALED.			
	3 Bell Pkwy – Railroad Tracks south to Summerfields□	8922LBS		
	Cloudburst and Foxfire intersection area	6169LBS		
	Banner Street from Sienna to Summerfield	1905LBS		
	Grainery and Yellowtail intersection area	1600LBS		
	Sunny Crest near Yellowtail	2811LBS		
	Tuxedo Park Rd. from Summerfields to Nokoni Ct.	1934LBS		
	Lulu City Dr. from Nokoni Ct. to Saddle Horn	1998LBS		
	Brookline Dr. from Twin Bridge to Fireside	919LBS		
	Eagle Creek Dr. from School House to Long Dr.	1299LBS		
	Outlook Ave., Dixson St., and Watts St. (Fairview Village)	1676LBS		
	Goodman Street; entire length but not too bad	2010LBS		
	4800 Goodman; parking lot	412LBS		
	4750 Signal Tree; parking lot	716LBS		
	Long Dr. from wheatfield to .twing bridge Never cracksealed	4090LBS		
	Brookvalley Ct,	372LBS		
	Silver Ct,	423LBS		
	White River Ct,	511LBS		
	Cottage Ct,	416LBS		
	Claret St. from Mayfair south to Spring Valley	2090LBS		
	Mayfair from Claret to Quarry	782LBS		
	Calgary St. from Mayfair to Fenceline	1871LBS		
	Sienna Dr. from Summerfields to 3 Bells	3334LBS		
	Sunny Crest from Jasper to end of cul de sac	905LBS		
	Serratoga Falls Pkwy CR 5 to Waterfall St.	1334LBS		
	Waterfall Street from Serratoga Falls Pkwy to Hawkshead Ct.	1456LBS		
	Hawkshead Ct. from Skipping Stone to end of cul de sac	1665LBS		
	Terrace View St. from Skipping Stone to Waterfall	1826LBS		
	Skipping Stone Ct. from Hawkshead Ct. to end of cul de sac	835LBS		
	Signal Ct. from Hawkshead Ct. to end of cul de sac	862LBS		
08	Budget for additional quantities if requested	1 EA	\$25,000.00	\$25,000.00
	Accepted_____	Total for Option# 1		\$499,025.95

Additional Charges If Required :

BILLING:

*A 2.9% credit card processing fee will be assessed from service provider

BONDING:

*Performance and Payment bond Included in Bid

ASPHALT:

*Bid is based on industry standards, but if existing is thicker than bid additional charges will apply for extra removal and replacement.

*If existing asphalt or concrete is thicker than proposed depth additional cost will apply price per SY inch.

*Unstable Sub Grade repair will be charged at a time and material rate.

CONCRETE:

*Bid is based on industry standards, but if existing is thicker than bid additional charges will apply for extra removal and replacement.

Notes:

GENERAL CONTRACT NOTES:

*The signer of this contract serves as the authorized agent for the owner and binds the written contract to the owner.

*This work can be scheduled only after receipt of signed contract.

*Due to the volatility of labor, fuel, asphalt materials, trucking, subcontractors, and emulsions, pricing is subject to change. You will be notified of any increases to obtain approval prior to mobilization of crews.

*Pricing for this quotation is applicable for 30 days from date of quote.

*A-1 Chipseal Company and Rocky Mountain Pavement must truck over existing asphalt to complete our work and shall not be held liable or responsible for damage to existing lot due to necessary trucking.

*This is a unit price proposal; final billing will be based on final in place quantities.

Exclusions:

GENERAL EXECLUSIONS:

* permits, lab, density, compaction and materials testing, engineering fees, surveying, striping.

EXCLUSIONS CONCRETE:

*Shrinkage cracking may occur in new concrete outside of installed control joints and is not cause for warranty.

*Winter Protection includes blankets and tarps for concrete areas done late in the season.

EXCLUSIONS CRACKSEAL:

*Herbicide/ Weed Control is the owner representative's responsibility.

EXCLUSIONS SUBGRADE WORK:

*Any subgrade excavation or removal below depth quoted.

*Any import or export of material from site.

*Frost Removal.

*Dewatering or water removal.

*Prime coat/Tack Coat.

*Storm water management plan or implementation.

PREVAILING WAGES:

*Prevailing Wages are not included, an additional 25% will be added to final cost if needed.

UTILITY ADJUSTMENTS:

*Raising or lowering manholes or water valves.

*Utility relocation.

WEEKEND OR NIGHT WORK:

*Weekend or Night Work.

See attached terms and conditions

Accepted by: _____ Date: _____ Estimator: *Gil Uhrich*

Gil Uhrich
(720)703-5807
gil@asphaltrepair.com

Accepted by: _____ Date: _____
Authorized Agent(s)

Phone: 970.472.5255 Fax: 303.650.9669

18110 Co Rd 33 - Platteville, CO 80651

A-1 Chipseal Co. & Rocky Mountain Pavement, LLC is an Equal Employment Opportunity Employer.

EXHIBIT A-1
CONTRACTOR'S COMPLETED W-9

Form **W-9**
(Rev. March 2024)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Go to www.irs.gov/FormW9 for instructions and the latest information.

Give form to the
requester. Do not
send to the IRS.

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)
A-1 Chipseal Company

2 Business name/disregarded entity name, if different from above.
Cu Onsite Solutions

3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only **one** of the following seven boxes.

Individual/sole proprietor C corporation S corporation Partnership Trust/estate

LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) _____
Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner.

Other (see instructions) _____

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
Exempt payee code (if any) _____
Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____
(Applies to accounts maintained outside the United States.)

3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions

5 Address (number, street, and apt. or suite no.). See instructions.
2505 E. 74th Ave.

6 City, state, and ZIP code
Denver, CO 80229

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

			-					
--	--	--	---	--	--	--	--	--

or

Employer identification number

8	4	-	1	2	1	6	8	1	7
---	---	---	---	---	---	---	---	---	---

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person *Aphani Wali* Date *3/26/2024*

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

EXHIBIT B

INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Section 12 of this Agreement.

1. Standard Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.
2. Commercial General Liability Insurance with minimum limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate, and \$1,000,000 umbrella. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to, to the extent applicable:
 - a. premises operations;
 - b. personal injury liability without employment exclusion;
 - c. limited contractual;*
 - d. broad form property damages;
 - e. medical payments;
 - f. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

***This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement.**
3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. **This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of operation or use of an automobile.**
4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the Town covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the Town. Such bond shall protect the Town against any fraudulent or dishonest act which may result in the loss of money, securities,

or other property belonging to or in the possession of the Town. Said bond shall be in an amount as determined by the Town, from a surety acceptable to the Town.

5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.

EXHIBIT B-1
CERTIFICATE(S) OF INSURANCE

AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY Moody Insurance Agency, Inc.		NAMED INSURED A-1 Chipseal Company, DBA: Rocky Mountain Pavement, LLC;	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance: Notes

CONTRACTUAL LIABILITY APPLIES PER POLICY TERMS AND CONDITIONS

Additional Named Insureds:
A-1 Chipseal Company
DBA Rocky Mountain Pavement, LLC
Black Rock Material & Supply, LLC
DBA Rocky Mountain Parking Lot Services
DBA CU Onsite, LLC

Location Schedule:
2505 E. 74th Avenue, Denver, CO 80229
7231-35 Cole View, Colorado Springs, CO 80915
20 Monarch Lane, Pueblo, CO 81004
10800 Highway 90, Arvada CO 80403
2645 E. 74th Ave, Denver, CO, 80229

Inland Marine Policy:
Policy Number: S2501487
Policy Effective Dates: 2-1-2024 to 2-1-2025
Insurer: Selective Insurance Company of America
Total Combined Scheduled Contractor's Equipment Value: \$8,732,630
Scheduled Contractor's Equipment Deductible: \$10,000
Leased & Rented Equipment From Others Limit: \$1,000,000

General Liability Policy:
General Liability Deductible: \$2,000
CG 73 00 01/19 From Attached Includes:
Blanket Additional Insured status applies only to the extent provided in form CG 79 88 10/23.
Blanket Waiver of Subrogation applies only to the extent provided in from CG 73 00 10/23.
General Liability Policy is Primary and Non-Contributory only to the extent provided in form CG 79 88 10/23.

Auto Liability Policy:
Physical Damage Deductibles: Comprehensive: \$2,000, Collision: \$2,000
CA 78 09 / From Attached Includes:
Blanket Additional Insured status applies only to the extent provided in form CA 78 09 4/23.
Blanket Waiver of Subrogation applies only to the extent provided in from CA 78 09 4/23.

Umbrella Policy:
Umbrella Policy is on a follow1) form basis for underlying insurance coverages: General Liability, Automobile Liability, and Employers Liability.
Additional insured status will follow when required by written contract, including Primary and Non-Contributory Status.

Worker's Compensation Policy:
359-B Form Attached Includes:
Blanket Waiver of Subrogation status applies when required by written contract.

****Please Note Hard Copies of Endorsement will not be sent out via mail. All Endorsements will only be sent electronically via email. Please send your email request to certrequest@moodyins.com for forms and future mailings****



7501 E. Lowry Blvd.
Denver, CO 80230-7006
303.361.4000 / 800.873.7242
Pinnacol.com

NCCI #: WC000313B
Policy #: 4055760

A-1 Chipseal Company dba Rocky Mounta
Rocky Mountain Pavement LLC
2505 E 74th Ave
Denver, CO 80229

Moody Insurance Agency Inc
8055 E. Tufts Ave
Ste 1000
Denver, CO 80237
(303) 824-6600

ENDORSEMENT: Blanket Waiver of Subrogation

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

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

SCHEDULE

To any person or organization when agreed to under a written contract or agreement, as defined above and with the insured, which is in effect and executed prior to any loss.

Effective Date: February 1, 2024 Expires on: February 1, 2025
Pinnacol Assurance has issued this endorsement January 31, 2024

ElitePac® Commercial Automobile Extension

COMMERCIAL AUTO
CA 78 09 11 17

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

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

AMENDMENTS TO SECTION II - LIABILITY COVERAGE

A. If this policy provides Auto Liability coverage for Owned Autos, the following extensions are applicable accordingly:

NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following is added to **SECTION II, A.1. - Who Is An Insured:**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no similar insurance available to that organization. However:

1. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
2. Coverage does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization.

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.

EXPENSES FOR BAIL BONDS AND LOSS OF EARNINGS

Paragraphs (2) and (4) of **SECTION II, A.2.a. - Supplementary Payments** are deleted in their entirety and replaced with the following:

- (2) Up to the Limit of Insurance shown on the ElitePac Schedule for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" covered under this policy. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request. This includes actual loss of earnings because of time off from work, which we will pay up to the Limit of Insurance shown on the ElitePac Schedule.

EMPLOYEE INDEMNIFICATION AND EMPLOYER'S LIABILITY AMENDMENT

The following is added to **SECTION II, B.4. - Exclusions:**

This exclusion does not apply to a "volunteer worker" who is not entitled to workers compensation, disability or unemployment compensation benefits.

FELLOW EMPLOYEE COVERAGE

The **Fellow Employee** Exclusion, **SECTION II, B.5. -** is deleted in its entirety.

CARE, CUSTODY OR CONTROL AMENDMENT

The following is added to **SECTION II, B.6. - Exclusions:**

This exclusion does not apply to property owned by anyone other than an "insured", subject to the following:

1. The most we will pay under this exception for any one "accident" is the Limit of Insurance stated in the ElitePac Schedule; and
2. A per "accident" deductible as stated in the ElitePac Schedule applies to this exception.

B. If this policy provides Auto Liability coverage for Owned Autos or Non-Owned Autos, the following extension is applicable accordingly:

LIMITED LIABILITY COMPANIES

The following is added to **SECTION II, A.1. - Who Is An Insured:**

If you are a limited liability company, your members and managers are "insureds" while using a covered "auto" you don't own, hire or borrow during the course of their duties for you.

BLANKET ADDITIONAL INSUREDS - As Required By Contract

The following is added to **SECTION II, A.1. - Who Is An Insured:**

00000FS 2501487 249

Any person or organization whom you have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional "insured" on your policy. Such person or organization is an additional "insured" only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by your ownership, maintenance or use of a covered "auto". This coverage shall be primary and non-contributory with respect to the additional "insured". This provision only applies if:

1. It is required in the written contract, written agreement or written permit identified in this section;
 2. It is permitted by law; and
 3. The written contract or written agreement has been executed (executed means signed by a named insured) or written permit issued prior to the "bodily injury" or "property damage".
- C. If this policy provides Auto Liability coverage for Non-Owned Autos, the following extension is applicable accordingly:

EMPLOYEES AS INSURED

If this policy provides Auto Liability coverage for Non-Owned Autos, the following is added to **SECTION II, A.1. - Who Is An Insured:**

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.

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

AMENDMENTS TO SECTION III - PHYSICAL DAMAGE COVERAGE

If this policy provides Comprehensive, Specified Causes of Loss or Collision coverage, the following extensions are applicable for those "autos" for which Comprehensive, Specified Causes of Loss or Collision coverage is purchased:

TOWING AND LABOR

SECTION III, A.2. - Towing is deleted in its entirety and replaced with the following:

We will pay all reasonable towing and labor costs up to the maximum Limit of Insurance shown on the ElitePac Schedule per tow each time a covered "Private Passenger Auto", "Social Service Van or Bus" or "Light Truck" is disabled and up to the maximum Limit of Insurance per tow each time a covered "Medium Truck", "Heavy Truck" or "Extra Heavy Truck" is disabled.

For labor charges to be eligible for reimbursement the labor must be performed at the place of disablement.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

GLASS BREAKAGE DEDUCTIBLE

The following is added to **SECTION III, A.3. - Glass Breakage - Hitting A Bird Or Animal - Falling Objects or Missiles:**

If damaged glass is repaired rather than replaced, no deductible will apply for such repair. This extension does not apply to Emergency Services Organizations and Governmental Entities.

ADDITIONAL TRANSPORTATION EXPENSES SECTION III, A.4.a. - Transportation Expenses is deleted in its entirety and replaced with the following:

We will pay up to the maximum Limit of Insurance shown on the ElitePac Schedule for temporary transportation expenses that you incur because of any "loss" to a covered "auto", but only if the covered "auto" carries the coverages and meets the requirements described in 1. or 2. below:

1. We will pay temporary transportation expenses for total theft of a covered "auto". We will only pay for such expenses incurred during the period beginning 24 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".
2. For "loss" other than total theft of a covered "auto" under Comprehensive or Specified Causes of Loss Coverage, or for any "loss" under Collision Coverage to a covered "auto", we will only pay for those temporary transportation 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 number of days reasonably required to repair or replace the covered "auto" or 30 days.

Paragraph 2. of this extension does not apply while there are spare or reserve "autos" available to you for your operations.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

HIRED AUTO PHYSICAL DAMAGE COVERAGE

The following is added to **SECTION III, A.4. - Coverage Extensions:**

Physical Damage coverage is hereby extended to apply to Physical Damage "loss" to "autos" leased, hired, rented or borrowed without a driver. We will provide coverage equal to the broadest coverage available to any covered "auto" shown in the Declarations. But, the most we will pay for "loss" to each "auto" under this coverage extension is the lesser of:

1. The Limit of Insurance stated in the ElitePac Schedule; or
2. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
3. The actual cost of repairing or replacing the damaged or stolen property with other property of like kind and quality. A part is of like kind and quality when it is of equal or better condition than the pre-accident part. We will use the original equipment from the manufacturer when:
 - (a) The operational safety of the vehicle might otherwise be impaired;
 - (b) Reasonable and diligent efforts to locate the appropriate rebuilt, aftermarket or used part have been unsuccessful; or
 - (c) A new original equipment part of like kind and quality is available and will result in the lowest overall repair cost.

For each leased, hired, rented or borrowed "auto" our obligation to pay "losses" will be reduced by a deductible equal to the highest deductible applicable to any owned "auto" for that coverage. No deductible will be applied to "losses" caused by fire or lightning.

SECTION IV, B.5. Other Insurance Condition, Paragraph 5.b. is deleted in its entirety and 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 or agreement in that "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".

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

HIRED AUTO LOSS OF USE COVERAGE

The following is added to **SECTION III, A.4. - Coverage Extensions:**

We will pay expenses for which you are legally responsible to pay up to the Limit of Insurance shown on the ElitePac Schedule per "accident" for loss of use of a leased, hired, rented or borrowed "auto" if it results from an "accident".

This coverage extension does not apply to Emergency Services Organizations, Governmental Entities, and Schools.

AUTO LOAN/LEASE GAP COVERAGE (Not Applicable in New York)

The following is added to **SECTION III, A.4. - Coverage Extensions:**

In the event of a total "loss" to a covered "auto" we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

1. The amount paid under the Physical Damage Coverage Section of the policy; and
2. Any:
 - a. Overdue lease/loan payments at the time of "loss";
 - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear, high mileage or similar charges;
 - c. Security deposits not refunded by the lessor or financial institution;
 - d. Costs for extended warranties, credit life, health, accident, or disability insurance purchased with the loan or lease; and
 - e. Carry-over balances from previous leases or loans.

You are responsible for the deductible applicable to the "loss" for the covered "auto".

PERSONAL EFFECTS

The following is added to **SECTION III, A.4. - Coverage Extensions:**

If this policy provides Comprehensive Coverage for a covered "auto" you own and that covered "auto" is stolen, we will pay up to the Limit of Insurance shown on the ElitePac Schedule, without application of a deductible, for lost personal effects that were in the covered "auto" at the time of theft. Personal effects do not include jewelry, tools, money, or securities. This coverage is excess over any other collectible insurance.

AIRBAG COVERAGE

The following is added to **SECTION III, B.3.a. - Exclusions:**

Mechanical breakdown does not include the accidental discharge of an airbag.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

EXPANDED AUDIO, VISUAL, AND DATA ELECTRONIC EQUIPMENT COVERAGE

SECTION III, B.4. - Exclusions

This exclusion does not apply to the following:

1. Global positioning systems;
2. "Telematic devices"; or
3. Electronic equipment that reproduces, receives or transmits visual or data signals and accessories used with such equipment, provided such equipment is:

00000FS 2501487 251

- a. Permanently installed in or upon the covered "auto" at the time of the "loss";
- b. Removable from a housing unit that is permanently installed in the covered "auto" at the time of the "loss";
- c. Designed to be solely operated by use of power from the "auto's" electrical system; or
- d. Designed to be used solely in or upon the covered "auto".

For each covered "loss" to such equipment, a deductible of \$50 shall apply, unless the deductible otherwise applicable to such equipment is less than \$50, at which point the lower deductible, if any, will apply.

COMPREHENSIVE DEDUCTIBLE - LOCATION TRACKING DEVICE

The following is added to **SECTION III, D. - Deductible:**

Any Comprehensive Coverage Deductible shown in the Declarations will be reduced by 50% for any "loss" caused by theft if the covered "auto" is equipped with a location tracking device and that device was the sole method used to recover the "auto".

PHYSICAL DAMAGE LIMIT OF INSURANCE

SECTION III, C. - Limit Of Insurance is deleted in its entirety and replaced with the following:

The most we will pay for a "loss" in any one "accident" is the lesser of:

1. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
2. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

AMENDMENTS TO SECTION IV - BUSINESS AUTO CONDITIONS

DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The following is added to **SECTION IV, A.2.a. - Duties In The Event Of Accident, Claim, Suit Or Loss:**

The notice requirements for reporting "accident" claim, "suit" or "loss" information to us, including provisions related to the subsequent investigation of such "accident", claim, "suit" or "loss" do not apply until the "accident", claim, "suit" or "loss" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;

3. An executive officer or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company;
5. Your elected or appointed officials, trustees, board members or your insurance manager, if you are an organization other than a partnership, joint venture or limited liability company.

But, this section does not amend the provisions relating to notification of police or protection or examination of the property that was subject to the "loss".

WAIVER OF SUBROGATION

SECTION IV, A.5. - Transfer Of Rights Of Recovery Against Others To Us is deleted in its entirety and replaced with the following:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" resulting from the ownership, maintenance or use of a covered "auto" but only when you have assumed liability for such "bodily injury" or "property damage" in an "insured contract". In all other circumstances, if a person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us.

MULTIPLE DEDUCTIBLES

The following is added to **SECTION IV, A. - Loss Conditions:**

If a "loss" from one event involves two or more covered "autos" and coverage under Comprehensive or Specified Causes of Loss applies, only the highest applicable deductible will be applied.

CONCEALMENT, MISREPRESENTATION OR FRAUD

The following is added to **SECTION IV, B.2. - Concealment, Misrepresentation Or Fraud:**

If you should unintentionally fail to disclose any existing hazards in your representations to us prior to the inception date of the policy or during the policy period in connection with any newly discovered hazards, we will not deny coverage under this Coverage Form based upon such failure.

POLICY PERIOD, COVERAGE TERRITORY

SECTION IV, B.7. - Policy Period, Coverage Territory is deleted in its entirety and replaced with the following:

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the "Coverage Territory".

We also cover "loss" to or "accidents" involving a covered "auto" while being transported between any of these places.

TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US - DEDUCTIBLES

The following is added to **SECTION IV, B.8. - Two Or More Coverage Forms Or Policies Issued By Us:**

If a "loss" covered under this Coverage Form also involves a "loss" to other property resulting from the same "accident" that is covered under this policy or another policy issued by us or any member company of ours, only the highest applicable deductible will be applied.

AMENDMENTS TO SECTION V - DEFINITIONS

BODILY INJURY INCLUDING MENTAL ANGUISH (Not Applicable in New York)

The definition of bodily injury is deleted in its entirety and replaced by the following:

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

ADDITIONS TO SECTION V - DEFINITIONS

COVERAGE TERRITORY

"Coverage Territory" means:

1. The United States of America (including its territories and possessions), Canada and Puerto Rico; and
2. Anywhere in the world, except for any country or jurisdiction that is subject to trade or other economic sanction or embargo by the United States of America, if a covered "auto" is leased, hired, rented, or borrowed without a driver for a period of 30 days or less, and the insured's responsibility to pay "damages" is determined in a "suit" on the merits in and under the substantive law of the United States of America (including its territories and possessions), Puerto Rico, or Canada, or in a settlement we agree to.

If we are prevented by law, or otherwise, from defending the "insured" in a "suit" brought in a location described in Paragraph 2. above, the insured will conduct a defense of that "suit". We will reimburse the "insured" for the reasonable and necessary expenses incurred for the defense of any such "suit" seeking damages to which this insurance applies, and that we would have paid had we been able to exercise our right and duty to defend.

EXTRA HEAVY TRUCK

"Extra Heavy Truck" means a truck with a gross vehicle weight rating of 45,001 pounds or more.

HEAVY TRUCK

"Heavy Truck" means a truck with a gross vehicle weight rating of 20,001 pounds to 45,000 pounds.

LIGHT TRUCK

"Light Truck" means a truck with a gross vehicle weight rating of 10,000 pounds or less.

MEDIUM TRUCK

"Medium Truck" means a truck with a gross vehicle weight rating of 10,001 pounds to 20,000 pounds.

PRIVATE PASSENGER AUTO

"Private Passenger Auto" means a four-wheel "auto" of the private passenger or station wagon type. A pickup, panel truck or van not used for business is included within the definition of a "private passenger auto".

SOCIAL SERVICE VAN OR BUS

"Social Service Van or Bus" means a van or bus used by a government entity, civic, charitable or social service organization to provide transportation to clients incidental to the social services sponsored by the organization, including special trips and outings.

TELEMATIC DEVICE

"Telematic Device" includes devices designed for the collection and dissemination of data for the purpose of monitoring vehicle and/or driver performance. This includes Global Positioning System technology, wireless safety communications and automatic driving assistance systems, all integrated with computers and mobile communications technology in automotive navigation systems.

VOLUNTEER WORKER

"Volunteer worker" means a person who performs business duties for you, for no financial or other compensation.

00000FS 2501487 253

ElitePac®
Commercial Automobile Extension

COMMERCIAL AUTO
CA 78 16 11 17

SCHEDULE OF COVERAGE EXTENSIONS AND LIMITS OF INSURANCE

This ElitePac Schedule is a summary of additional coverages, coverage modifications and corresponding Limits of Insurance that supplements the Business Auto Coverage Form. No coverage is provided by this summary. Refer to the actual endorsement for changes affecting your insurance protection.

DESCRIPTION	
AMENDMENTS TO SECTION II - LIABILITY COVERAGE	
Newly Acquired Or Formed Organizations	Coverage Extension
Limited Liability Companies	Coverage Extension
Employees As Insureds	Coverage Extension
Blanket Additional Insureds	Coverage Extension
Expenses For Bail Bonds And Loss Of Earnings	
Bail Bonds	\$3,000 Per "Accident"
Loss Of Earnings	\$1,000 Per Day
Employee Indemnification and Employer's Liability Amendment	Coverage Extension
Fellow Employee Coverage	Coverage Extension
Care, Custody Or Control Amendment	\$1,000 per "Accident"; \$500 Deductible Per "Accident"
AMENDMENTS TO SECTION III - PHYSICAL DAMAGE COVERAGE	
Towing And Labor	Coverage Extension
Private Passenger Auto, Social Service Van or Bus, Light Truck Medium, Heavy and Extra Heavy Trucks	\$75 Per Tow \$150 Per Tow
Glass Breakage Deductible	Coverage Extension
Additional Transportation Expenses	\$60 per day up to a maximum of \$1,800
Hired Auto Physical Damage Coverage	\$75,000 per "loss"
Hired Auto Loss of Use Coverage	\$750 Per "Accident"
Auto Loan/Lease Gap Coverage (Not Available in New York)	Coverage Extension
Personal Effects	\$500 Per "Accident"
Airbag Coverage	Coverage Extension
Expanded Audio, Visual, And Data Electronic Equipment Coverage	Coverage Extension
Comprehensive Deductible - Location Tracking Device	Coverage Extension
Physical Damage Limit Of Insurance	Coverage Extension



DESCRIPTION	
AMENDMENTS TO SECTION IV - BUSINESS AUTO CONDITIONS	
Duties In The Event Of Accident, Claim, Suit Or Loss	Coverage Extension
Waiver of Subrogation	Coverage Extension
Multiple Deductibles	Coverage Extension
Concealment, Misrepresentation Or Fraud	Coverage Extension
Policy Period, Coverage Territory	Coverage Extension
Two Or More Coverage Forms Or Policies Issued By Us - Deductibles	Coverage Extension
AMENDMENTS TO SECTION V - DEFINITIONS	
Bodily Injury Including Mental Anguish (Not Applicable in New York)	Broadened Definition
Coverage Territory	Broadened Definition

General Liability Extension EndorsementCOMMERCIAL GENERAL LIABILITY
CG 73 00 01 19**SUMMARY OF COVERAGES (including index)**

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. No coverage is provided by this summary. Refer to the actual endorsement (Pages 3-through-9) for changes affecting your insurance protection.

DESCRIPTION	PAGE FOUND
Additional Insureds - Primary and Non-Contributory Provision	Page 8
Blanket Additional Insureds - As Required By Contract	Page 5
<ul style="list-style-type: none"> • Owners, Lessees or Contractors (includes Architects, Engineers or Surveyors) • Lessors of Leased Equipment • Managers or Lessors of Premises • Mortgagees, Assignees and Receivers • Any Other person or organization other than a joint venture • Grantors of Permits 	
Broad Form Vendors Coverage	Page 7
Damage To Premises Rented To You (Including Fire, Lightning or Explosion)	Page 3
Electronic Data Liability (\$100,000)	Page 4
Employee Definition Amended	Page 9
Employees As Insureds Modified	Page 5
Employer's Liability Exclusion Amended (Not applicable in New York)	Page 3
Incidental Malpractice Exclusion modified	Page 7
Knowledge of Occurrence, Claim, Suit or Loss	Page 7
Liberalization Clause	Page 8
Mental Anguish Amendment (Not applicable to New York)	Page 9
Newly Formed or Acquired Organizations	Page 5
Non-Owned Aircraft	Page 3
Non-Owned Watercraft (under 60 feet)	Page 3
Not-for-profit Members - as additional insureds	Page 5
Personal And Advertising Injury - Discrimination Amendment (Not applicable in New York)	Page 8
Products Amendment (Medical Payments)	Page 4
Supplementary Payments Amended - Bail Bonds (\$5,000) and Loss of Earnings (\$1,000)	Page 4
Two or More Coverage Parts or Policies Issued By Us	Page 8
Unintentional Failure to Disclose Hazards	Page 8
Waiver of Transfer of Rights of Recovery (subrogation)	Page 8
When Two or More Coverage Parts of this Policy Apply to a Loss	Page 3

200000FS 2501487150



THIS PAGE IS INTENTIONALLY LEFT BLANK.

General Liability Extension Endorsement

COMMERCIAL GENERAL LIABILITY
CG 73 00 01 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The SECTIONS of the Commercial General Liability Coverage Form identified in this endorsement will be amended as shown below. However, if (a) two or more Coverage Parts of this policy, or (b) two or more forms or endorsements within the same Coverage Part apply to a loss, coverage provision(s) with the broadest language will apply, unless specifically stated otherwise within the particular amendment covering that loss.

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

COVERAGES - Amendments

SECTION I - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

EXCLUSIONS

Employer's Liability Amendment

(This provision is not applicable in the State of New York).

The following is added to Exclusion e. Employer's Liability under COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions:

This exclusion also does not apply to any "temporary worker".

Non-Owned Aircraft, Auto or Watercraft

A. Paragraph (2) of Exclusion g. Aircraft, Auto Or Watercraft under COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions is deleted in its entirety and replaced with the following:

- (2) A watercraft you do not own that is:
(a) Less than 26 feet long and not being used to carry persons or property for a charge; or
(b) At least 26 feet, but less than 60 feet long, and not being used to carry persons or property for a charge. Any person is an insured who uses or is responsible for the use of such watercraft with your expressed or implied consent. However, if the insured has any other valid and collectible insurance for "bodily injury" or "property damage" that would be covered under this provision, or on any other basis, this coverage is then excess, and subject to Condition 4. Other Insurance, b. Excess Insurance under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS.

B. The following is added to Exclusion g. Aircraft, Auto Or Watercraft under COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions:

This exclusion does not apply to:

- (6) Any aircraft, not owned or operated by any insured, which is hired, chartered or loaned with a paid crew. However, if the insured has any other valid and collectible insurance for "bodily injury" or "property damage" that would be covered under this provision, or on any other basis, this coverage is then excess, and subject to Condition 4. Other Insurance, b. Excess Insurance under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS.

Damage To Premises Rented to You

A. The last paragraph of Paragraph 2. Exclusions under COVERAGE A BODILY INJURY AND PROPERTY DAMAGE is deleted in its entirety and replaced with the following:

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

200000FS 25014871.51



B. Paragraph 6. under SECTION III - LIMITS OF INSURANCE is deleted in its entirety and replaced with the following:

6. Subject to Paragraph 5. above, the most we will pay under **COVERAGE A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage caused by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner, for all such damage caused by fire, lightning or explosion proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of the three, is the amount shown in the Declarations for the Damage To Premises Rented To You Limit.

C. Paragraph a. of Definition 9. "Insured contract" under SECTION V - DEFINITIONS is deleted in its entirety and replaced with the following:

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, lightning or explosion to premises while rented to you or temporarily occupied by you with the permission of the owner is not an "insured contract";

Electronic Data Liability

A. Exclusion p. Access or Disclosure Of Confidential Or Personal Information And Data-related Liability under COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions is deleted in its entirety and replaced by the following:

p. Access or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information or any other type of nonpublic information; or
- (2) 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.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

B. The following paragraph is added to SECTION III - LIMITS OF INSURANCE:

Subject to 5. above, the most we will pay under **COVERAGE A** for "property damage" because of all loss of "electronic data" arising out of any one "occurrence" is a sub-limit of \$100,000.

SECTION I - COVERAGE C MEDICAL PAYMENTS EXCLUSIONS

Any Insured Amendment

Exclusion **a. Any Insured** under **COVERAGE C MEDICAL PAYMENTS, 2. Exclusions** is deleted in its entirety and replaced with the following:

a. Any Insured

To any insured.

This exclusion does not apply to:

- (1) "Not-for-profit members";
- (2) "Golfing facility" members who are not paid a fee, salary, or other compensation; or
- (3) "Volunteer workers".

This exclusion exception does not apply if **COVERAGE C MEDICAL PAYMENTS** is excluded by another endorsement to this Coverage Part.

Product Amendment

Exclusion **f. Products-Completed Operations Hazard** under **COVERAGE C MEDICAL PAYMENTS, 2. Exclusions** is deleted in its entirety and replaced with the following:

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

This exclusion does not apply to "your products" sold for use or consumption on your premises, while such products are still on your premises.

This exclusion exception, does not apply if **COVERAGE C MEDICAL PAYMENTS** is excluded by another endorsement to this Coverage Part.

SECTION I - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

Expenses For Bail Bonds And Loss Of Earnings

A. Subparagraph 1.b. under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B is deleted in its entirety and replaced with the following:

b. Up to \$5,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

B. Subparagraph 1.d. under **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** is deleted in its entirety and replaced with the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

SECTION II - WHO IS AN INSURED - Amendments

Not-for-Profit Organization Members

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

If you are an organization other than a partnership, joint venture, or a limited liability company, and you are a not-for-profit organization, the following are included as additional insureds:

- 1. Your officials;
- 2. Your trustees;
- 3. Your members;
- 4. Your board members;
- 5. Your commission members;
- 6. Your agency members;
- 7. Your insurance managers;
- 8. Your elective or appointed officers; and
- 9. Your "not-for-profit members".

However only with respect to their liability for your activities or activities they perform on your behalf.

Employees As Insureds Modified

- A. Subparagraph 2.a.(1)(a) under **SECTION II - WHO IS AN INSURED** does not apply to "bodily injury" to a "temporary worker" caused by a co-"employee" who is not a "temporary worker".
- B. Subparagraph 2.a.(2) under **SECTION II - WHO IS AN INSURED** does not apply to "property damage" to the property of a "temporary worker" or "volunteer worker" caused by a co-"employee" who is not a "temporary worker" or "volunteer worker".
- C. Subparagraph 2.a.(1)(d) under **SECTION II - WHO IS AN INSURED** does not apply to "bodily injury" caused by cardio-pulmonary resuscitation or first aid services administered by a co-"employee".

With respect to this provision only, Subparagraph (1) of Exclusion 2. e. **Employer's Liability** under **SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** does not apply.

Newly Formed Or Acquired Organizations

- A. Subparagraph 3.a. under **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced with the following:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier. However, **COVERAGE A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

- B. The following paragraph is added to **SECTION II - WHO IS AN INSURED**, Paragraph 3:

If you are engaged in the business of construction of dwellings three stories or less in height, or other buildings three stories or less in height and less than 25,000 square feet in area, you will also be an insured with respect to "your work" only, for the period of time described above, for your liability arising out of the conduct of any partnership or joint venture of which you are or were a member, even if that partnership or joint venture is not shown as a Named Insured. However, this provision only applies if you maintain or maintained an interest of at least fifty percent in that partnership or joint venture for the period of that partnership or joint venture.

This provision does not apply to any partnership or joint venture that has been dissolved or otherwise ceased to function for more than thirty-six months.

With respect to the insurance provided by this provision, **Newly Formed or Acquired Organizations**, the following is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY**, Paragraph 4. **Other Insurance**, Subparagraph b. **Excess Insurance**:

The insurance provided by this provision, **Newly Formed or Acquired Organizations**, is excess over any other insurance available to the insured, whether primary, excess, contingent or on any other basis.

(All other provisions of this section remain unchanged)

Blanket Additional Insureds - As Required By Contract

Subject to the **Primary and Non-Contributory** provision set forth in this endorsement, **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured:

A. Owners, Lessees or Contractors/Architects, Engineers and Surveyors

- 1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional insured on your commercial general liability policy; and

200000FS 2501487152



2. Any other person or organization, including any architects, engineers or surveyors not engaged by you, whom you are required to add as an additional insured under your policy in the contract or agreement in Paragraph 1. above:

Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts of omissions of those acting on your behalf;

in the performance of your ongoing operations performed for the additional insured in Paragraph 1., above.

However, 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 architectural, engineering or surveying services by or for you, including:

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

Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

A person or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

B. Other Additional Insureds

Any of the following persons or organizations with whom you have agreed in a written contract, written agreement or written permit that such persons or organizations be added as an additional insured on your commercial general liability policy:

1. Lessors of Leased Equipment

Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

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

2. Managers or Lessors of Premises

Any person or organization from whom you lease premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you.

This insurance does not apply to any "occurrence" which takes place after you cease to be a tenant of that premises.

3. Mortgagees, Assignees or Receivers

Any person or organization with respect to their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance or use of your premises.

This insurance does not apply to any "occurrence" which takes place after the mortgage is satisfied, or the assignment or receivership ends.

4. Any Person or Organization Other Than A Joint Venture

Any person or organization (other than a joint venture of which you are a member), but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts of omissions of those acting on your behalf in the performance of your ongoing operations or in connection with property owned by you.

5. State or Governmental Agency or Political Subdivision - Permits or Authorizations

Any state or governmental agency or subdivision or political subdivision, but only with respect to:

- a. 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; or
- b. The following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

- (1) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;
- (2) The construction, erection or removal of elevators; or
- (3) The ownership, maintenance or use of any elevators covered by this insurance.

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" arising out of operations performed for the federal government, state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

With respect to Paragraphs 2. through 4., this insurance does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

The provisions of this coverage extension do not apply unless the written contract or written agreement has been signed by the Named Insured or written permit issued prior to the "bodily injury" or "property damage" or "personal and advertising injury".

Broad Form Vendors Coverage

Subject to the **Primary and Non-Contributory** provision set forth in this endorsement, **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization (referred to below as vendor) for whom you have agreed in a written contract or written agreement to provide coverage as an additional insured under your policy. Such person or organization is an additional insured only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business. However, the insurance afforded the vendor does not apply to:

- a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement; however this exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b. Any express warranty unauthorized by you;

- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product; or
- f. Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part of ingredient of any other thing or substance by or for the vendor; however this insurance does not apply to any insured person or organization, from who you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

The provisions of this coverage extension do not apply unless the written contract or written agreement has been signed by the Named Insured prior to the "bodily injury" or "property damage".

Incidental Malpractice

Subparagraph 2.a.(1)(d) under **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced with the following:

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

This does not apply to nurses, emergency medical technicians or paramedics if you are not in the business or occupation of providing any such professional services.

This also does not apply to "bodily injury" caused by cardio-pulmonary resuscitation or first aid services administered by a co-"employee".

This provision does not apply if you are a Social Service or Senior Living risk.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS - Amendments

Knowledge Of Occurrence, Claim, Suit Or Loss

The following is added to Paragraph 2. **Duties in the Event of Occurrence, Offense, Claim or Suit** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

The requirements under this paragraph do not apply until after the "occurrence" or offense is known to:

- 1. You, if you are an individual;
- 2. A partner, if you are a partnership;

200000FS 2501487153



3. An "executive officer" or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company; or
5. Your elected or appointed officials, officers, members, trustees, board members, commission members, agency members, or your administrator or your insurance manager if you are an organization other than a partnership, joint venture, or limited liability company.

Primary and Non-Contributory Provision

The following is added to Paragraph 4. **Other Insurance, b. Excess Insurance** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is primary to and we will not seek contribution from any other insurance available to an additional insured under this policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in a written contract, written agreement or written permit that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

Unintentional Failure To Disclose Hazards

The following is added to Paragraph 6. **Representations** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

However, if you should unintentionally fail to disclose any existing hazards in your representations to us at the inception date of the policy, or during the policy period in connection with any additional hazards, we shall not deny coverage under this Coverage Part based upon such failure to disclose hazards.

Waiver Of Transfer Of Rights Of Recovery

The following is added to Paragraph 8. **Transfer of Rights Of Recovery Against Others To Us** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

We will waive any right of recovery we may have against a person or organization because of payments we make for "bodily injury" or "property damage" arising out of your ongoing operations or "your work" done under a written contract or written agreement and included in the "products-completed operations hazard", if:

1. You have agreed to waive any right of recovery against that person or organization in a written contract or written agreement;
2. Such person or organization is an additional insured on your policy; or

3. You have assumed the liability of that person or organization in that same contract, and it is an "insured contract".

The section above only applies to that person or organization identified above, and only if the "bodily injury" or "property damage" occurs subsequent to the execution of the written contract or written agreement.

Liberalization

The following condition is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

If we revise this Coverage Part to provide more coverage without additional premium charge, subject to our filed company rules, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

Two or More Coverage Parts or Policies Issued By Us

(This provision is not Applicable in the state of New York or Wisconsin).

The following condition is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

It is our intention that the various coverage parts or policies issued to you by us, or any company affiliated with us, do not provide any duplication or overlap of coverage. We have exercised diligence to draft our coverage parts and policies to reflect this intention. However, if the facts and circumstances that will respond to any claim or "suit" give rise to actual or claimed duplication or overlap of coverage between the various coverage parts or policies issued to you by us or any company affiliated with us, the limit of insurance under all such coverage parts or policies combined shall not exceed the highest applicable limit under this coverage, or any one of the other coverage forms or policies.

This condition does not apply to any Excess or Umbrella policy issued by us specifically to apply as excess insurance over this coverage part or policy to which this coverage part is attached.

SECTION V - DEFINITIONS

Discrimination

(This provision does not apply in New York).

- A. The following is added to Definition 14. "Personal and advertising injury":

"Personal and advertising injury" also means "discrimination" that results in injury to the feelings or reputation of a natural person, however only if such "discrimination" or humiliation is:

1. Not done by or at the direction of:
 - a. The insured; or

b. Anyone considered an insured under SECTION II - WHO IS AN INSURED;

- 2. Not done intentionally to cause harm to another person.
- 3. Not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.
- 4. Not arising out of any "advertisement" by the insured.

B. The following definition is added to SECTION V - DEFINITIONS:

"Discrimination" means:

- a. Any act or conduct that would be considered discrimination under any applicable federal, state, or local statute, ordinance or law;
- b. Any act or conduct that results in disparate treatment of, or has disparate impact on, a person, because of that person's race, religion, gender, sexual orientation, age, disability or physical impairment; or
- c. Any act or conduct characterized or interpreted as discrimination by a person based on that person's race, religion, gender, sexual orientation, age, disability or physical impairment.

It does not include acts or conduct characterized or interpreted as sexual intimidation or sexual harassment, or intimidation or harassment based on a person's gender.

Electronic Data

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, cell, data processing devices or any other media which are used with electronically controlled equipment. For the purpose of the Electronic Data Liability coverage provided by this endorsement, Definition 17. "Property damage" is deleted in its entirety and replaced by the following:

17. "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; or

- b. 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 purpose of the Electronic Data Liability coverage provided by this endorsement, "electronic data" is not tangible property.

Employee Amendment

Definition 5. "Employee" under **SECTION V - DEFINITIONS** is deleted in its entirety and replaced by the following:

- 5. "Employee" includes a "leased worker", or a "temporary worker". If you are a School, "Employee" also includes a student teacher.

Golfing Facility

The following definition is added to **SECTION V - DEFINITIONS:**

"Golfing facility" means a golf course, golf club, driving range, or miniature golf course.

Mental Anguish Amendment

(This provision does not apply in New York).

Definition 3. "Bodily injury" under **SECTION V - DEFINITIONS** is deleted in its entirety and replaced with the following:

- 3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. This includes mental anguish resulting from any bodily injury, sickness or disease sustained by a person. (In New York, mental anguish has been determined to be "bodily injury").

Not-for-profit Member

The following definition is added to **SECTION V - DEFINITIONS:**

"Not-for-profit member" means a person who is a member of a not-for-profit organization, including clubs and churches, who receives no financial or other compensation.

20000FS 2501487154



Contracting, Installation, Service and Repair General Liability Extended ElitePac® Endorsement

COMMERCIAL GENERAL LIABILITY
CG 79 88 01 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

1. BLANKET ADDITIONAL INSUREDS

a. Ongoing Operations

SECTION II – WHO IS AN INSURED is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional insured on your commercial general liability policy; and
2. Any other person or organization, including any architects, engineers or surveyors not engaged by you, whom you are required to add as an additional insured under your policy in the contract or agreement in Paragraph 1. above;

Such person or organization is an additional insured only with respect to liability arising out of your ongoing operations performed under that contract, agreement, or permit when that contract, agreement, or permit requires the additional insured be added with respect to liability arising out of your ongoing operations.

If the written contract, written agreement, or written permit does not require that the additional insured be added with respect to liability arising out of your ongoing operations, then such person or organization is an additional insured only with respect to "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by your ongoing operations performed under that contract, agreement, or permit.

b. Completed Operations

SECTION II – WHO IS AN INSURED is amended to include as an additional insured:

1. Any person or organization for whom you are performing or have performed operations when you and such person or organization have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional insured on your commercial general liability policy; and
2. Any other person or organization, including any architects, engineers or surveyors not engaged by you, whom you are required to add as an additional insured under your policy in the contract or agreement in Paragraph 1. above;

Such person or organization is an additional insured only with respect to their liability arising out of "your work" performed under that contract, agreement, or permit and included in the "products-completed operations hazard" when that contract, agreement, or permit requires the additional insured be added with respect to liability arising out of "your work" performed under that contract, agreement, or permit and included in the "products-completed operations hazard".

200000FS 2501487156



If the written contract, written agreement, or written permit does not require that the additional insured be added with respect to liability arising out of "your work" performed under that contract, agreement, or permit and included in the "products-completed operations hazard", then such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by "your work" performed under that contract, agreement, or permit and included in the "products-completed operations hazard".

- c. The coverages provided in Paragraphs a. and b. do not apply unless the written contract or written agreement has been signed by the Named Insured or written permit issued prior to the "bodily injury", "property damage" or "personal and advertising injury".

d. Exclusions

- (1) With respect to the insurance afforded to additional insureds under a. **Ongoing Operations** the following is added to 2. **Exclusions** under **SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" occurring after:

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

- (2) With respect to the insurance afforded to these additional insureds under a. **Ongoing Operations** and b. **Completed Operations**, the following is added to 2. **Exclusions** under **SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

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 architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

e. Conditions

With respect to the insurance afforded to these additional insureds under a. **Ongoing Operations** and b. **Completed Operations** the following is added to Paragraph 4. **Other Insurance**, a. **Primary Insurance** under **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is primary and will not contribute with any other insurance available to an additional insured under this coverage part provided that:

- (1) The additional insured is a Named Insured under such other insurance.
- (2) You have agreed in a written contract, written agreement or written permit to include that additional insured on your General Liability policy on a primary and/or non-contributory basis.

2. PROPERTY DAMAGE CARE, CUSTODY OR CONTROL

The following is added to **Exclusion j**, under **SECTION I – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Paragraphs (4) and (5) do not apply for the limited purpose of providing the coverage and sub-limits of liability as set forth below.

We will pay those sums that the insured becomes legally obligated to pay as damages arising out of "property damage" to:

- (1) Personal property in the care, custody or control of the insured; and

- (2) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations.

The most we will pay under (1) and (2) above in any one "occurrence" or for all damages during any one policy period is a sub-limit of \$100,000.

These limits are included in and not in addition to the Limits of Insurance shown in the Declarations of the Commercial General Liability Policy.

Our right and duty to defend the insured against any "suit" for damages under (1) and (2) above ends when we have used up the applicable sub-limit of liability in the payment of judgments or settlements under it.

3. OTHER INSURANCE AMENDMENT — SUPPLEMENTAL COVERAGE FOR INSURED'S INVOLVEMENT IN A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM OR SIMILAR PROJECT

The following is added to **SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 4. **Other Insurance b. Excess Insurance (1)(a)**:

- (v) That is covered by a consolidated (wrap-up) or similar insurance program provided by the prime contractor/project manager or owner of the construction project in which you are involved for your ongoing operations or operations included within the "products-completed operations hazard", unless such consolidated (wrap-up) or similar program is specifically excluded from coverage on this policy.

4. FELLOW EMPLOYEE EXTENSION

Under **SECTION II — WHO IS AN INSURED** Paragraphs 2.a. and 2.a. (1) are replaced by the following:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture, or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. The Employers Liability exclusion (**SECTION I COVERAGES; COVERAGE A, exclusion e.**) does not apply to this provision. However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury" or "personal and advertising injury":

- (a) Arising out of his or her providing or failing to provide professional health care services.

5. CONTRACTUAL LIABILITY (RAILROADS)

Definition 9. Insured Contract is amended as follows:

Paragraph c. is deleted in its entirety and replaced with the following:

Any easement or license agreement;

Paragraph f.(1) is deleted in its entirety.

6. CONTRACTUAL LIABILITY AMENDMENT — (PERSONAL AND ADVERTISING INJURY)

If it is required in a written contract, written agreement or written permit with the insured that any contractual liability exclusion for Personal Injury be removed from the policy, then Exclusion e. **Contractual Liability** under **COVERAGE B PERSONAL AND ADVERTISING INJURY, 2. Exclusions** is deleted in its entirety and replaced with the following:

e. Contractual Liability

"Personal and advertising Injury" for which the insured has assumed liability in a contract or agreement arising out of an "advertisement". This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

7. WAIVER OF GOVERNMENTAL IMMUNITY

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

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

8. DAMAGE TO PREMISES RENTED TO YOU

The Limit of Insurance for Damage To Premises Rented To You is increased to \$1,000,000.

200000FS 2501487157



- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action taken in the hindering or defending against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

18. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits, unemployment compensation law, or any similar law.

19. Your Product

"Loss" arising out of "your product". However, this exclusion does not apply to any "loss" arising out of any waste generated for "your work" that is relinquished to others to recycle or beneficial reuse.

B. With respect only to the Sudden And Accidental Discharge, Release, Or Escape of Pollutants Liability Insuring Agreement, this insurance does not apply to:

1. Asbestos

"Loss" in any way involving asbestos, asbestos products, asbestos fibers, or asbestos dust. However, this exclusion does not apply to asbestos in groundwater or soil.

2. Capital Expenditures

Any "capital expenditure" at a "covered location". However, this exclusion does not apply to any "capital expenditure" related to "emergency response costs" covered under Insuring Agreement **A.4. Crisis Management And Emergency Response Costs**, if shown as covered in the Declarations.

3. Lead Paint

"Loss" in any way involving a "pollution condition" that results from the existence, required removal, voluntary removal, or abatement of paint containing lead. However, this exclusion does not apply to lead based paint in groundwater or soil.

4. Material Change In Use

"Loss" in any way involving a change in the use or operations at a "covered location" that materially increases the likelihood or severity of a "pollution condition" or "claim" as compared with use or operations existing at this Policy's inception date as disclosed to us on the application and all supporting documentation.

5. Underground Storage Tanks

"Loss" in any way involving any "underground storage tank" at a "covered location", whether operational, closed, or removed.

6. Wells

"Loss" in any way involving the discharge, escape, migration, release or seepage of oil, gas, drilling fluid, or any other fluid, from any oil, gas, mineral or geothermal well.

SECTION III – WHO IS AN INSURED

Each of the following is an insured under all Insuring Agreements and Supplementary Payments:

A. If you are designated in the Declarations as:

1. An individual, you, and your spouse or "domestic partner", but only with respect to the conduct of a business of which you are the sole owner.
2. A partnership or joint venture, your members, your partners, and their spouses or "domestic partners", but only with respect to the conduct of your business.
3. A limited liability company, your members but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

4. An organization other than a partnership, joint venture, or limited liability company. Your "executive officers" and directors, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- B.** Any subsidiary company of yours, other than a partnership, joint venture, or limited liability company, and any company over which you have active control or majority ownership interest, or exercise management or financial control is a Named Insured with respect to the conduct of your business, provided:
1. You report all such entities to us within 90 days after you have acquired the organization; and
 2. There is no other similar primary insurance available to that organization, unless such entity has been specifically endorsed onto this Policy.
- However:
- a. Coverage is afforded only until the 90th day after you acquire the subsidiary or the end of the Policy Period, whichever is earlier; and
 - b. Coverage does not apply to "loss" that first commences before you acquired the subsidiary.
- C.** Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture, or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of "your work".
- D.** In the event of your bankruptcy, your trustees, and in the event of your death or incapacity, your legal representatives, or executors, but only with respect to such trustee's, representative's, or executor's vicarious liability resulting from "your work".
- E.** Any organization, other than a partnership, joint venture, or limited liability company, you newly form during the Policy Period and over which you maintain ownership or majority interest, will qualify as an insured, if:
1. You have contractually agreed to provide insurance for such organization;
 2. There is no other similar primary insurance available to that organization, unless such entity has been specifically endorsed onto this Policy; and
 3. You report to us within 90 days after such formation that you formed the organization.

However:

- a. Coverage is afforded only until the 90th day after you form the organization or the end of the Policy Period, whichever is earlier; and
 - b. Coverage does not apply to "loss" that first commences before you formed the organization.
- F.** Any person or organization with whom you have agreed to provide additional insured status in a written contract or agreement, executed prior to the:
1. Commencement of "your work"; and
 2. Date the "pollution condition" first commenced.

Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage", or "cleanup costs" resulting from a "pollution condition" caused in whole or in part by "your work".

However, any insurance afforded to such insured:

- a. Only applies to the extent permitted by law;
- b. Will not be broader than that which you are required by the written contract or agreement to provide for such insured; and
- c. Is limited to the lesser of the Limits Of Insurance shown in the Declarations or the amount required by the written contract or agreement.

This Paragraph F. does not apply to any person or organization specifically named as an additional insured in an endorsement attached to this Policy.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for "losses" that are not payable under the terms of this Policy or that are in excess of the applicable Limit Of Insurance. An agreed settlement means a settlement and release of liability signed by the insured and the claimant or the claimant's legal representative.

F. Other Insurance

If other valid and collectible insurance is available to the insured for "loss" we cover under this Policy, our obligations are limited as follows:

1. Primary Insurance

This insurance is primary except when Paragraph 2. below applies. If this insurance is primary:

- a. This insurance is not contributory with any other insurance available to any third party liability policy if required by a written contract, signed by both parties, and executed prior to the commencement of operations or "your work".
- b. Our obligations are not affected unless any of the other insurance is also primary. In that case, we will share with all such other insurance by the method described in Paragraph 3. below.

2. Excess Insurance

a. This insurance is excess over:

- (1) Any other insurance, whether primary, excess, contingent, or on any other basis, if you are an insured on an insurance policy that applies to "your work" performed at a specific job site and that insurance policy applies to a specific job site;
- (2) Any other insurance, whether primary, excess, contingent, or on any other basis if you are an insured on an insurance policy that applies to "your work" performed at a specific job site and that insurance policy applies to a specific job site;
- (3) Any other valid and collectible insurance available to you covering liability for "losses" arising out of "your work", including that work for which you have been added as an additional insured by an endorsement, by definition in a contract or agreement, or by combination thereof;
- (4) Any other valid and collectible insurance available to any person or entity performing functions for others on your behalf as defined in "your work" in this Policy;
- (5) Any valid and collectible project-specific insurance policy, owner's protective insurance policy, owner-controlled insurance policy, contractor-controlled insurance policy, wrap-up policy, or similar insurance program under which an insured is covered; or
- (6) Any other valid and collectible insurance, whether primary, excess, contingent, or on any other basis, covering a:
 - (a) "Transportation pollution condition", if Insuring Agreement A.2. Transportation Pollution Liability is shown as purchased in the Declarations; or
 - (b) "Pollution condition" on a "non-owned disposal site", if Insuring Agreement A.3. Non-Owned Disposal Site Liability is shown as purchased in the Declarations.

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

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

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

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

3. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the "loss" remains, whichever comes first. However, our contribution will not apply until our applicable Deductible or Self-Insured Retention is satisfied.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

G. Premium Audit

1. We will compute all premiums for this Policy in accordance with our rules, rates, rating plans, and minimum premium requirements.
2. Premium shown as Advance And Deposit Premium in the Declarations is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured shown in the Declarations. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the Policy Period is more than the greater of the earned premium or Minimum Retained Premium shown in the Declarations, we will return the excess to the first Named Insured.
3. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

H. Representations

By accepting this Policy, you agree:

1. The statements in the applications, other materials submitted to us, and Declarations are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this Policy in reliance upon your representations.

I. Separation Of Insureds

Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first Named Insured shown in the Declarations, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom a "claim" is made.

J. Transfer Of Rights Of Recovery Against Others To Us

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

However, we will waive any right of recovery we may have against any person(s) or organization(s) to whom the insured agrees in a written contract signed by both parties prior to the "loss", to provide a waiver of transfer of rights of recovery with respect to "claims" that result from "your work" under such contract(s). This waiver will not apply for "losses" resulting from the sole negligence of such person(s) or organization(s).

SECTION VI – EXTENDED REPORTING PERIOD

With respect only to the Sudden And Accidental Discharge, Release, Or Escape of Pollutants Liability Insuring Agreement:

- A. We will provide one or more Extended Reporting Periods, as described below, if:
 1. The coverage provided for Sudden And Accidental Discharge, Release, Or Escape Or Pollutants Liability is cancelled or not renewed; or
 2. We renew or replace the coverage provided for Sudden And Accidental Discharge, Release, Or Escape Or Pollutants Liability with insurance that:
 - a. Has a retroactive date later than the Retroactive Date shown in the Declarations; or

OTHER INSURANCE CONDITION FOR ADDITIONAL INSURED — NON-CONTRIBUTORY - BLANKET BASIS

COMMERCIAL UMBRELLA LIABILITY
CXL 449 06 17

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY COVERAGE PART

The following is added to **SECTION IV — CONDITIONS**, Paragraph H. **Other Insurance**:

With respect to each additional insured under **SECTION II, WHO IS AN INSURED**, Paragraph A.5., this insurance is (i) excess over any "underlying policy", and (ii) primary to, and we will not seek contribution from, any other insurance providing coverage to any such additional insured whether primary or excess. However, we will not waive our right to seek contribution from other insurance unless:

- a. The additional insured is a Named Insured under such other insurance;
- b. The additional insured is included as an additional insured on an "underlying policy";
- c. You have agreed in a written contract, written agreement or written permit that this insurance would be primary to and/or would not seek contribution from any other insurance provided to the additional insured; and
- d. The written contract or written agreement has been executed (executed means signed by the Named Insured) or written permit issued prior to the "bodily injury" or "property damage" or "personal and advertising injury".

The most we will pay on behalf of the additional insured is the amount of insurance required by the written contract, written agreement or written permit, less any amounts payable by any "underlying insurance", subject to **SECTION III — LIMITS OF INSURANCE**.

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

00000FS 2501487 346

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US — BLANKET BASIS (WAIVER OF SUBROGATION)

COMMERCIAL UMBRELLA LIABILITY
CXL 456 06 22

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY COVERAGE PART

A. The following is added to Paragraph M. Transfer Of Rights Of Recovery Against Others To Us under SECTION IV — CONDITIONS:

We will waive any right of recovery against a person or organization because of payments we make under this Commercial Umbrella Liability Coverage Part. This waiver applies only if the insured has agreed in a written contract or written agreement to:

1. Either:
 - a. Waive any right of recovery against that person or organization; or
 - b. Assume the liability of that person or organization pursuant to a written contract or written agreement that qualifies as an "insured contract";
2. And:
 - a. Include such person or organization as an additional insured on your Commercial Umbrella Liability Coverage Part; and
 - b. The "underlying insurance" contains a substantially similar waiver of recovery rights.

Such waiver by us applies only to the person or organization identified above and only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.

B. The following Definition is added to SECTION V — DEFINITIONS:

"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, except in connection with construction or demolition operations on or within 50 feet of a railroad;

- 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 a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) 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 (2) above and supervisory, inspection, architectural or engineering activities.

00000FS 2501487 348

EXHIBIT C

CERTIFICATE OF GOOD STANDING WITH COLORADO SECRETARY OF STATE

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

A-1 CHIPSEAL COMPANY

is a

Corporation

formed or registered on 11/09/1992 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19921107820 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 04/24/2024 that have been posted, and by documents delivered to this office electronically through 04/26/2024 @ 12:01:21 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 04/26/2024 @ 12:01:21 in accordance with applicable law. This certificate is assigned Confirmation Number 15983238 .



A handwritten signature in blue ink that reads "Jena Griswold".

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's website is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's website, <https://www.coloradosos.gov/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our website, <https://www.coloradosos.gov> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."