

REQUIREMENTS AGREEMENT

C-2008-424-12-23

THIS AGREEMENT (the "Agreement") is entered into effective as of **December 23, 2008** by and between **Border Pacific Railroad, DBA Border Pacific Materials** ("Seller") and **Hidalgo County, Texas** ("Buyer").

WHEREAS, Buyer has solicited proposals for the supply of its requirements of Hidalgo County "**Aggregate Limestone Grade 4, Type A,**" as further described in Exhibit "A" which is attached hereto and incorporated herein by reference for all purposes (the "Products") for a period of six months; and

WHEREAS, Seller has submitted a proposal to supply Buyer's requirements; and

WHEREAS, Buyer has determined that Seller has submitted the lowest and best bid to meet Buyer's requirements for the Product.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, all of the Products that Buyer may require for use by Buyer in "**Aggregate Limestone Grade 4, Type A, (OPTION II ONLY of Exhibit B)**" for projects within **HIDALGO COUNTY PRECINCT NO. 1**. Term of contract is for a period of one (1) year beginning **December 23, 2008** and ending on **December 22, 2009** with County's option to renew for an additional one (1) year on an "As Needed Basis" under the same rates, terms and conditions. County may extend this agreement for an additional sixty (60) days grace period. (If applicable) under the same rates, terms, and condition, and it is agreed that the Products will meet the specifications set forth in Exhibit "A" hereto.

2. When Buyer determines that it needs a quantity of the Products to be delivered, it will, according to its Purchasing Policies, complete and submit to Seller a Purchase Order describing the type and quantity of the Products required. The Products are to be delivered by Buyer to the location in Hidalgo County specified by Buyer in its Purchase Order.

3. Buyer agrees to pay Seller for each Purchase Order based on the prices set out in Exhibit "B". Seller shall render invoices for each Purchase Order, and the invoices shall be paid by Buyer on or before the 30th day following receipt of the invoice.

4. County and Seller agree that either party may terminate this contract upon thirty (30) days written notice at any time for any reason or no reason at all.

5. General Provisions.

a. **Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

b. **No Waiver.** No waiver by Buyer of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

c. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Buyer and Seller, and not otherwise.

d. **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

e. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to Buyer: Hidalgo County
Attention: County Judge
100 E. Cano, 2nd Floor
Edinburg, Texas 78539

If to Seller: Border Pacific RailRoad, DBA Border Pacific Materials
Attn: Sofia Cantu
PO Box 156
Rio Grande City Texas 78582

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

f. **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

g. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

h. **Assignment.** This Agreement shall not be assignable.

i. **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

j. **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate

k. **Authority to Execute.** The execution and performance of this Agreement by Buyer and Seller have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Buyer and Seller in accordance with its terms.

l. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of Buyer under this Agreement, Buyer may terminate this Agreement upon sixty (60) days written notice to Seller. Buyer agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Buyer pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp. 1996).

m. **Insurance.** Company shall provide insurance in force on all its vehicles and all persons connected with providing services under this Contract naming County as an additional insured (with coverages and in the amounts described on Exhibit "C" attached hereto and incorporated herein at this point for all purposes), and shall furnish to County certificates of such insurance coverage.

n. **Purchasing Ethics.** Seller represents and warrants it has not, during the process of being awarded this contract violated the following ethical standards of Buyer and, upon and after the execution of this Agreement, agrees to abide by the following ethical standards of Buyer:

(1) It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of Hidalgo County, or for any elected official, department head or employee or former elected official, department head or employee of Hidalgo County, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an officer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advise, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor pending before any department or agency of Hidalgo County.

(2) It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hidalgo County, or any person associated therewith, as an inducement for the award of a subcontract or order.

EXECUTED effective as of the day and year first above written.

APPROVED BY COMMISSIONERS COURT ON, 12-23-08.

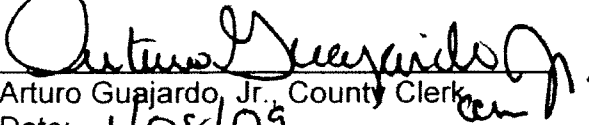
APPROVED AS TO FORM:

Atlas & Hall, L.L.P

By: [Signature]
Date: 1-5-09

HIDALGO COUNTY
By: [Signature]
Juan D. Salinas, III, County Judge
Date: _____

ATTEST:


Arturo Guajardo, Jr., County Clerk
Date: 1/08/09

Border Pacific Railroad
DBA Border Pacific Materials

By: Sofia Cantu

Printed Name: Sofia Cantu

Title: Accounting Dept. Manager

Date: 1/09/09

**EXHIBIT “A”
SPECIFICATIONS**

EXHIBIT "A"

HIDALGO COUNTY PRECINCT NO. 1
(all funding sources, i.e. R&B, CIP, and CAP)
"Aggregate Limestone Grade 4"
BID NO.: 2008-424-12-10CGV

SPECIFICATIONS:

I. INFORMATION / INSTRUCTIONS TO BIDDERS:

Hidalgo County Precinct No. 1 is requesting sealed bids for the purchase of Aggregate Limestone Grade 4, Type A (material). The material will be purchased on an "As Needed Basis" as required by Hidalgo County Pct. 1.

- Delivery hours: To be arranged by Precinct No. 1
- Delivery Location: Sunrise Hill Park located on Mile 11 N. and 1 ½ miles W from FM 1015, Weslaco Tx.
- Contact Person: Roman Rodriguez, Foreman
(956) 968-8733

II. TERMS AND CONDITIONS:

- a. Bid price shall be per ton.
- b. The contract term will be for a period of one (1) year with county's option to extend the contract for an additional one (1) year under the same terms, conditions and costs remaining unchanged.
- c. The County has the option to extend a 60 day grace period at the end of the contract for unforeseen delays on subsequent contract award. It is agreed and understood that Hidalgo County will purchase no more material than is needed. Prices must remain firm during the contract period unless modifications are agreed and approved by Hidalgo County Commissioners Court.
- d. Hidalgo County reserves the right to reject any/all bids, to waive any/all formalities or technicalities, or to accept the bid considered the best and most advantageous to the County. Hidalgo County Precinct No. 1 reserves the right to hold the bids received for a period of (90) ninety days without taking action hereon.
- e. Hidalgo County reserves the right to award the bid to one or multiple bidders whichever is in the best interest of the County.

- f. Any contract awarded to a successful bidder will be in effect until: (a) the contract expires, (b) delivery and acceptance of products and/or performance of service ordered, (c) terminated by County with thirty (30) days written notice prior to cancellation.
- g. The contract for the material shall remain in effect until contract expires, delivery/completion of services ordered or terminated by either party with a thirty (30) day written notice prior to any cancellation. The successful bidder must state in writing the reasons for such cancellation. Hidalgo County reserves the right to award canceled contract to next lowest bidder as it deems to be in the best interest of the County.
- h. Insurance Certificates as per **"Exhibit C"** must be submitted to the Purchasing Department prior to any services being performed by the awarded bidder.
- i. In the event the material furnished does not meet all County's requirement (regardless of weather, test's acceptability, method of repair or other conditions), the County reserves the option to require the material supplier to replace or to reimburse the County for unused portion of material found to be unsatisfactory.
- j. Hidalgo County reserves the right to seek purchases for **"Aggregate Limestone Grade 4, Type A"** from State Contracts whenever it is in the best interest of the County to do so.
- k. All costs and expenses associated with the preparation and submission of (bids, proposals and/or quotes) shall be the responsibility of the bidder and no reimbursements for such charges or expenses shall be passed onto Hidalgo County.
- l. **All applicable forms in this packet must be filled out in its entirety and submitted with bid response. Incomplete sections may be considered for probable cause of disqualification and/or non-compliance.**

Market Volatility and Unit Price Adjustments:

Hidalgo County recognizes that during periods of national crisis and unstable economic conditions, unforeseen price increases might affect costs for goods and services contracted on an annual basis. The following procedure may be employed to mediate price volatility:

- 1) **Requesting Price Adjustment:** Upon written request of the Vendor to the County Purchasing Agent, the County may review evidence of prevailing industry-wide market conditions that warrant an adjustment in bid prices contained in the contract.
 - a. A Vendor must tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Such written request must be accompanied by a certified copy of the supplier's advisory

- or notification to the vendor of the price changes.
- b. The Vendor must put the Purchasing Agent on the mailing lists for such publications so that the Purchasing Agent can monitor said changes. Such membership shall be at no cost to the County.
 - c. The County Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the County.
 - d. No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice.
 - e. The County may only grant a price increase if the evidence presented is deemed reliable. Should the County allow a price increase, the approved price change shall be honored for all orders received by the vendor or contractor after the effective date of such price change. Approved price changes are not applicable to orders already issued and in process at time of price change.
- 2) **Price Reduction:** Vendor shall notify the County at the time when the Vendor's costs for items and/or supplies reduce due to stabilization in the market at which time prices for items on this contract shall be reduced accordingly. Failure by the Vendor to notify the County of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the County shall not be obligated to pay the Vendor the difference between the contract price and the price adjustment.
 - 3) **Time frame for Adjusted Price Increases:** Price increases are only valid for the quarter in which they are requested and approved. Prices shall return to the original contract price at the beginning of the following quarter unless a Vendor notifies the County in writing within ten (10) days of expiration of the quarter in which the price increase is in effect, that it desires to have the price increase continue or that the Vendor is requesting a different price increase for the following quarter. Such request must be supplemented with sufficient justification to demonstrate that the price increase remains necessary. The County Purchasing Department shall have sole discretion whether to grant the price increase extension. The County too, shall have discretion to unilaterally reduce, eliminate or extend a price adjustment to the Vendor at any time upon written notice from the County to the Vendor demonstrating justification for such reduction, elimination or extension of the price adjustment.
 - 4) **Allowable Review Periods:** Price adjustment reviews may only be requested by the Vendor on a quarterly basis. However, the County may at its own discretion, conduct temporary price adjustment reviews at any time. The County Purchasing Agent and/or the County Auditor reserve the right to audit and/or examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.
 - 5) **Dollar Limit to Price Changes:** The total increase in contract price shall not exceed twenty-five percent (25%) of the original contract price during the contract term.

III. ADDITIONAL INFORMATION

DISCLOSURE OF CONFLICT OF INTEREST: Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor, person, consultant or contractor considering doing business with Hidalgo County ("the County") to disclose in the Conflict of Interest Questionnaire ("the CIQ") attached as **Exhibit D**, the vendor, person, consultant or contractor's affiliation or business relationship that might cause a conflict of interest with the County. By law, the CIQ must be filed with the Hidalgo County Clerk's Office no later than the seventh business day after the date the person becomes aware of facts that require that statement to be filed. The disclosure requirement applies to a person or business who contracts or seeks to contract with Hidalgo County for the sale or purchase of property, goods or service. Any purchase order or contract resulting from this process shall be considered null and void if the successful participant fails to comply with Texas Local Government Code Chapter 176. Vendors, consultants, contractors and others who desire to conduct business with Hidalgo County are encouraged to refer to Texas Local Government Code Chapter 176 for the details of this law. An offense under Texas Local Government Code Chapter 176 is a Class C Misdemeanor.

Please Submit completed CIQ forms to the Hidalgo County Clerk's Office located at 100 N. Closner, Edinburg, Texas 78539-Hidalgo County Courthouse. **COMPLETION AND SUBMISSION OF FORM CIQ IS THE SOLE RESPONSIBILITY OF THE PROSPECTIVE PARTICIPANT.**

Further information required for this project can be addressed to, Hidalgo County Purchasing Department at (956) 318-2626. Hidalgo County is requesting that any and all questions, inquiries, and clarifications regarding quotes, bids, proposals, or statements of qualifications be addressed to, Martha L. Salazar, CPPB, Purchasing Agent, 2802 S. Business Hwy 281, Edinburg, Texas 78539. **TELEPHONE INQUIRIES WILL NOT BE ACCEPTED. ALL WRITTEN INQUIRIES WILL BE ACCEPTED VIA FACSIMILE NO LATER THAN, Wednesday, December 3, 2008, 5:00 P.M.** Responses will be sent to all applicants via facsimile by no later than, **5:00 P.M., Friday, December 5, 2008.**

**EXHIBIT “B”
PAYMENT SCHEDULE**

EXHIBIT "B"

HIDALGO COUNTY PRECINCT No. 1

"Aggregate Limestone Grade 4"

BID NO.: 2008-424-12-10-CGV

BID PAGE

MATERIAL: Aggregate Limestone Grade 4, Type A

<p><u>Option I:</u></p> <p>Price per ton delivered to Pct. 1 Sunrise Hill Yard (located at FM 1015 and Mile 11- ½ M East</p>	<p>\$ <u>21.81</u> per ton</p>
<p>* <u>Option II:</u></p> <p>Price per ton to be pick up at vendor location by Hidalgo County Precinct #1 located at:</p> <p>Physical location: <u>901 E 4th St</u> <u>Rio Grande City Tx 78582</u></p>	<p>\$ <u>13.48</u> per ton</p>

Term: The term of the contract will be for a period of one (1) year with the County's option to extend the contract for an additional (1) year under the same rates, terms and conditions.

COMPANY NAME:	Border Pacific Railroad, D.B.A, Border Pacific materials	
ADDRESS:	P.O Box 156 / 901 E 4 th st	
CITY/STATE/ZIP CODE:	Rio Grande City, Tx 78582	
PHONE NUMBER:	956-487-5927	CELLULAR NUMBER:
FAX NUMBER:	956-487-4182 or 487-4678	
AUTHORIZED SIGNATURE:	<i>Sofia Cantu</i>	
PRINTED NAME:	Sofia Cantu	
TITLE:	Accounting Department Manager	
DATE:	12/10/08	

**EXHIBIT “C”
INSURANCE
REQUIREMENTS**

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/30/09

PRODUCER Willis of Texas, Inc. (956)682-9423 FAX(956)687-1286 1400 N McColl Rd Suite 105 McAllen, TX 78501	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED Border Pacific Railroad Fast Trucking Inc P O BOX 156 Rio Grande City, TX 78582	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:80%;">INSURERS AFFORDING COVERAGE</td> <td style="width:20%;">NAIC #</td> </tr> <tr> <td>INSURER A: Steadfast Insurance Co.</td> <td>26387</td> </tr> <tr> <td>INSURER B: Redland Insurance Company</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Steadfast Insurance Co.	26387	INSURER B: Redland Insurance Company		INSURER C:		INSURER D:		INSURER E:	
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INSURER C:													
INSURER D:													
INSURER E:													

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS																
A		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <hr/> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	SCC382948808	05/15/09	05/15/10	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$																
B		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	RICHHU0001306	03/13/09	03/13/10	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$																
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$																
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <hr/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$																
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%;"></td> <td style="width:10%;">WC STATU-TORY LIMITS</td> <td style="width:10%;">OTH-ER</td> <td style="width:10%;"></td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td></td> <td></td> <td>\$</td> </tr> </table>		WC STATU-TORY LIMITS	OTH-ER		E.L. EACH ACCIDENT			\$	E.L. DISEASE - EA EMPLOYEE			\$	E.L. DISEASE - POLICY LIMIT			\$
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E.L. DISEASE - EA EMPLOYEE			\$																			
E.L. DISEASE - POLICY LIMIT			\$																			
		OTHER																				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

***Willis of Texas of McAllen acting in behalf and under the instructions of Deep South Surplus of Texas L P**

CERTIFICATE HOLDER

Hidalgo County Purchasing Dept.
 2812 S. Business Hwy 281
 Edinburg, TX 78539

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Brian E Lewis

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.