

**AGREEMENT**

**Construction Contract No. GRT-20-0008022-T  
Magrino Subdivision Unit 3-Base Phase Improvement Project**

THIS AGREEMENT made the 17<sup>th</sup> day of March, 2021, between the City of San Luis, Arizona a municipal corporation of the State of Arizona ("CITY"), and DPE Construction, Inc., authorized to do business in the State of Arizona ("CONTRACTOR"). CONTRACTOR and CITY may be referred to singularly as the "Party" and collectively as the "Parties."

**WITNESSETH:** That the said Contractor, for and in consideration of the sum to be paid to Contractor by said City, and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds provide, hereby agrees, Contract, heirs, executors, administrators, successors and assigns as follows:

**ARTICLE I – SCOPE OF WORK:** The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities, required to perform all work for the construction of the project described as **Magrino Subdivision Unit 3-Base Phase Improvement Project No. GRT-20-0008022-T** and construct the material therein for the City, in a good and workmanlike and substantial manner and to the satisfaction of the City under the direction of the Economic Development Manager, or properly authorized agents and strictly pursuant to and in conformity with the Plans and Specifications prepared for the City of San Luis Public Works Department, and with such written modifications of the same and other documents that may be made by the City through Economic Development Manager or properly authorized agents, as provided herein.

**ARTICLE II – CONTRACT DOCUMENTS:** The Notice Inviting Bids, Project Plans and Specifications, Addenda, Contractor Bid Proposal as accepted by the Mayor and San Luis City Council per Council Minutes of March 17, 2021, Certificates of Insurance, License and Contract Amendments, are by this reference made a part of this Contract to the same extent as if set forth herein in full. This contract shall be subject to the Public Works Standards of the City of San Luis as adopted by Ordinance No. 359 and administered in accordance therewith. Special reference is made to the provisions for liquidated damages for failure to complete on time which shall apply to the work under this contract. In the event there is a conflict between the administration provisions of the Public Works Standards of the City of San Luis and the Notice Inviting Bids, Project Plans and Specifications, Addenda and Contractor Bid Proposal as accepted by the Mayor and San Luis City Council, hereinafter referred to collectively as "Project Documents", the Project Documents shall govern.

**ARTICLE III – TIME OF COMPLETION:** The Contractor hereby agrees to commence work on or before the tenth (10<sup>th</sup>) day after written notice to do so, and to fully complete the same within 90 calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided amendments to the contract.

**ARTICLE IV – COMPENSATION:** Contractor shall be paid, pursuant to provisions as set forth in the Contract Documents, the total sum of \$516,992 Dollars and 25 Cents (\$516,992.25), plus any approved contract amendments, for the full and satisfactory completion of all work as set forth in the Project Plans, Specifications and Contract Documents. Retention shall be in accordance with A.R.S. § 34-221.

**ARTICLE V – CONFLICT OF INTEREST:** Pursuant to A.R.S. § 38-511, the City may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the contract on behalf of the City is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the event of the foregoing, the City further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating this contract on behalf of the City from any other party to the contract, arising as a result of this contract.

**ARTICLE VI – AMBIGUITY:** This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the City of San Luis City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

**ARTICLE VII – NONDISCRIMINATION:** The Contractor, with regard to the work performed by it after award and during its performance of this contract will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, the Americans With Disability Act (Public Law 1010-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09 as amended.

**ARTICLE VIII – INDEPENDENT CONTRACTOR STATUS:** It is expressly agreed and understood by and between the parties that the Contractor is being retained by the City as an independent contractor, and as such the Contract shall not become a City employee, and is not entitled to payment or compensation from the City or to any fringe benefits to which other City employees are entitled other than that compensation as set forth in Article IV – Compensation above. As independent contractor, the Contractor further acknowledges that Contractor is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, the Contractor further agrees that Contractor will conduct itself in a manner consistent with such status, and that the Contractor will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the City, including but not limited to workmen’s compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

**ARTICLE IX – CITY FEES:** Prior to final payment to the Contractor, the City shall deduct therefrom any and all unpaid privilege, license and other taxes, fees and any and all other unpaid moneys due the City from the Contractor and shall apply to those moneys to the appropriate account. Contractor shall provide to the City any information necessary to determine the total amount(s) due.

**ARTICLE X – OTHER WORK IN PROJECT AREA:** The City, any other contractors, whether under contract with the City, a third party and/or utilities, may be working within the project area while this Contract is in progress. The Contractor herein acknowledges that delays and disruptions may, and in all likelihood, will occur due to other work. The Contractor’s bid shall be deemed to have recognized and included costs arising from and associated with other work in the project area disclosed by the Contract Documents or which would be apparent to an experienced contractor exercising due diligence during inspection of the project documents, the Contractor’s site inspection. No payment will be for any delays or disruptions in

the work schedule that are wholly the fault of the Contractor, its agents, employees or any of the Contractor's subcontractors. In the event that the Contractor or within the Contractor's control then the Contract may be adjusted pursuant to the Delay's and Extension of Time provisions of this Contract and a timely request submitted for Contract Amendment. Failure to submit a timely request for Contract Amendment shall be deemed a waiver of any entitlement to additional compensation.

**ARTICLE XI – MISCELLANEOUS:**

- A. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project, which is the subject of the Agreement.
  
- B. The parties hereto expressly covenant and agree that in the event of litigation, the parties hereby agree to submit to a trial before the Court. The Contractor further agrees that this provision shall be contained in all subcontracts relate to the project, which is the subject of this Agreement.
  
- C. Any notices to be given by either party after award of the project must be in writing, and personally delivered or emailed to the addresses:  
Jenny Torres  
San Luis Economic Development Manager  
1090 E. Union Street (if personally delivered)  
POB 1170 (if mailed)  
San Luis, AZ 85349  
[jt Torres@sanluisaz.gov](mailto:jt Torres@sanluisaz.gov)
  
- D. This Agreement shall be construed under the laws of the State of Arizona.
  
- E. This Agreement represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreement, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Contractor. Written and signed amendments shall automatically become part of the Agreement, and shall superseded any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.
  
- F. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
  
- G. No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or medication thereof in writing. No evidence of modification or

waiver other than evidence of any such written notice, waiver or modification shall be introduced in any proceeding.

- H. In the event of a discrepancy between this Agreement and other documents incorporated into this Agreement, this Agreement shall control.
- I. **Non-Availability of Funds:** Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of the termination under this paragraph.
- J. **Successors and Assigns:** This Agreement is not assignable unless both parties mutually consent otherwise in writing. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors and assigns of both parties.
- K. **Governing Law:** The laws of the State of Arizona govern this Agreement as to validity, interpretation and performance.
- L. **Venue:** The parties must institute and maintain any legal actions or other judicial proceedings arising from this Agreement in a court of competent jurisdiction in Yuma County, Arizona.
- M. **Waiver:** If either party fails to require the other party to perform any provision of this Agreement that failure does not prevent the party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Agreement if the other party fails to exercise a right or remedy.
- N. **Severability:** If any terms, parts or provisions of this Agreement are for any reason invalid or unenforceable, the remaining terms, parts or provisions are nevertheless valid and enforceable.
- O. **Integration:** This Agreement contains the entire agreement between the parties, and no oral or written statements, promises or inducements made by either party or its agents not contained or specifically referred to in this Agreement is valid or binding. All modifications to this Agreement must be in writing, signed and endorsed by the parties.
- P. **No partnership:** Nothing in the Agreement constitutes a partnership or joint venture between the parties, and neither party is the principal or agent of the other.
- Q. **Compliance with Law:** The Contractor must comply with all federal, state and local laws and ordinances applicable to its performance under this contract. The Contractor will comply with the Americans with Disabilities Act (ADA) and will indemnify the City for any costs, including but not limited to, damages, attorney's fees, and staff time in any action or proceeding brought alleging violation of the ADA. The Contractor will not discriminate against any person on the basis

of violation of the ADA. The Contractor will not discriminate against any person on the basis of race, religion, color, age, sex or national origin in the performance of this Contract and must comply with the terms of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964). In addition, the CONTRACTOR must include similar requirements of subcontractors in any contracts entered into for performance of the CONTRACTOR's obligations under this Contract. The CONTRACTOR agrees not to participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Arizona state law. In addition, the CONTRACTOR must include similar requirements of all subcontractors in contracts entered for performance of the CONTRACTOR's obligations under this Contract.

- R. Time is of the Essence: Time is of the essence in this Contract. Unless otherwise specifically provided, any consent to delay in the CONTRACTOR's performance of its obligation is applicable only to the transaction to which it relates and is not applicable to any other obligation or transaction.
- S. CONFLICT OF INTEREST. This contract is subject to the Conflict of Interest provisions of the Arizona Revised Statutes §38-511, as amended.
- T. NOTIFICATIONS Written notice of a change of address of either party must be given in writing to the other party. Notice of change of address is deemed effective 5 days after mailing by the party changing address.
- U. The Professional shall obtain and maintain in effect during the term of, and until final acceptance of all work under this Agreement, a policy or policies of liability insurance with the following coverage:
  - 1) Commercial General Liability – Occurrence Form  
Policy shall include bodily injury, property damage, personal injury, broad form contractual liability, and XCU coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Legal Liability (Damage to Rented Premises)	\$100,000

The policy shall be endorsed to include the following additional insured language:

“The City of San Luis shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Professional.”

- 2) Profession Liability (Errors and Omission Liability)

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years at the time work under this contract is completed.

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

- 3) Business Automobile Liability (if applicable) Bodily Injury and Property Damage for any owned, hired and/or non-owned vehicles used in the performance of this Contract

Combined Single Limit (CSL)                      \$1,000,000

(b) City and Professional waive all rights against each other and their director, officers, partners, commissioners, officials, agents, sub-contractors and employees for damages covered by property insurance during and after completion of the Services.

(c) All insurance required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. Section 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

(d) Prior to commencing work under this Agreement, the Professional shall provide City with evidence that it is either a "self-insured employer" or a "carrier insured employer" for Workers' Compensation as required by A.R.S. 23-901 et seq., or that it employs no persons subject to the requirement for such coverage.

(e) Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

(f) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of San Luis Risk Management Division. All insurance is to be placed with an insurer admitted in the state in which operations are taking place.

(g) Verification of Coverage: Professional shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Please note the contract number on the Certificate.

V. Under A.R.S. § 41-4401:

- a. Contractor warrants its compliance with all federal immigration laws and regulations that relate to its employees and its compliance with A.R.S. § 23-214, subsection A.

- b. That a breach of a warranty under paragraph "a" shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the contract.
- c. That the CITY retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the Agreement to ensure that the contractor or subcontractor is complying with the warranty under paragraph "a."

W. Boycott CONTRACTOR certifies, to the extent permitted by law, that it does not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel under A.R.S. § 35-393.01.

IN WITNESS WHEREOF, have been duly executed by the parties hereinabove named, on the date and year first above written.

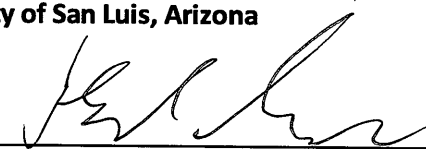
ATTEST:

\_\_\_\_\_  
 Witness, if Contractor is an Individual

  
 \_\_\_\_\_  
 (Authorized Signature)

By: James Allen  
 \_\_\_\_\_  
 (Printed Name)

Title: Vice President  
 \_\_\_\_\_

**City of San Luis, Arizona**  
  
 \_\_\_\_\_  
 Gerardo Sanchez, Mayor

ATTEST:

  
 \_\_\_\_\_  
 Sonia Cornelio, City Clerk

APPROVED AS TO FORM:

  
 \_\_\_\_\_  
 Kay Marion Macuil, City Attorney

MAGRINO INDUSTRIAL PARK UNIT NO. 3 BASE PHASE ROADWAY IMPROVEMENTS

**CONTRACT PERFORMANCE SURETY BOND**

Bond No. 30103458

STATUTORY PERFORMANCE BOND PURSUANT TO  
TITLE 34, CHAPTER 2, ARTICLE 2,  
OF THE ARIZONA REVISED STATUTES  
(Penalty of this Bond must be 100% of the Contract amount)

Project Name: Magrino Industrial Park Unit No. 3 Base Phase Roadway Improvements  
For: City of San Luis

KNOW ALL PERSONS BY THESE PRESENTS: that

DPE Construction, Inc.  
(Name of Contractor)

1636-A E. 20th Street, Yuma, AZ 85365  
(Address of Contractor)

a Corporation, hereinafter called Principal, and  
(Corporation, Partnership, or Individual)

Western Surety Company  
(Name of Surety)

151 N. Franklin Street, Floor 9, Chicago, IL 60606  
(Address of Surety)

Hereinafter called Surety, are held and firmly bound unto

City of San Luis  
(Name of Owner)

P. O. Box 1170, San Luis, AZ 85349  
(Address of Owner)

Hereinafter called OWNER in the total aggregate penal sum of

Five Hundred Sixteen Thousand Nine Hundred Ninety-Two and 25/100

----- Dollars (\$516,992.25)

in lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the 17th day of March 2021, **Magrino Industrial Park Unit No. 3 Base Phase Roadway Improvements**, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of Contract and any extension of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation is void. Otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length herein.  
The prevailing party in a suit on this bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge

### MAGRINO INDUSTRIAL PARK UNIT NO. 3 BASE PHASE ROADWAY IMPROVEMENTS

of the Court. NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the OWNER with or without notice to the SURETY and during the one year guaranty period and if the PRINCIPAL shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to WORK to be performed there under or the SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change. Extension of time, alteration or addition to the terms of the Contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the Contract price more than 20 percent, so as to bind. The PRINCIPAL and the SURETY to the full and faithful performance of the CONTRACT as so amended. The term "Amendment", wherever used in this BOND, and whether referring to this BOND, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and the PRINCIPAL shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The OWNER is the only beneficiaries hereunder.

MAGRINO INDUSTRIAL PARK UNIT NO. 3 BASE PHASE ROADWAY IMPROVEMENTS

IN WITNESS WHEREOF, this instrument is executed in four

Counterparts, each one of which shall be deemed an original, this the 29th day of March, 2021.

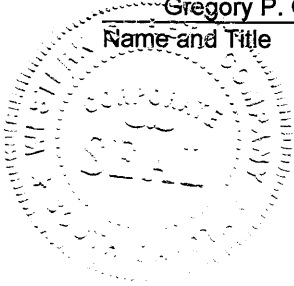
Constructors Bonding, Inc. of Nevada  
Agency of Record

P. O. Box 36797, Las Vegas, NV 89133-6797  
Agency Address

Western Surety Company  
Surety [Seal]  
By [Signature]

Surety Signature {Attach current power of attorney}

Gregory P. Griffith, Attorney-in-fact  
Name and Title



DPE Construction, Inc.  
Principal [Seal]

By [Signature]  
Principal Signature

James Allen, U.P.  
Name and Title

NOTE: Date of BOND must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

\*\*\*END OF SECTION\*\*\*

MAGRINO INDUSTRIAL PARK UNIT NO. 3 BASE PHASE ROADWAY IMPROVEMENTS

DOCUMENT 00520
LABOR AND MATERIALS SURETY BOND Bond No. 30103458

STATUTORY PAYMENT BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Contract amount)

Project Name: Magrino Industrial Park Unit No. 3 Base Phase Roadway Improvements
For: City of San Luis

KNOW ALL MEN BY THESE PRESENTS:

That, DPE Construction, Inc. (hereinafter called the Principal), as Principal, and Western Surety Company (hereinafter called Surety) a corporation organized and existing under the laws of the State of South Dakota with its principal office in the City of Chicago, IL, and duly licensed and possessing a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance, as Surety, are held firmly bound unto Greater Yuma Port Authority, Inc., State of Arizona (hereinafter called Obligee) in the amount of: Five Hundred Sixteen Thousand Nine Hundred Ninety-Two and 25/100 Dollars (\$ 516,992.25) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the 17th day of March 2021, for Magrino Industrial Park Unit No. 3 Base Phase Roadway Improvements, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the Contract, this obligation is void, otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this 29th day of March, 2021.

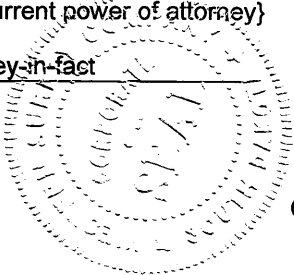
Constructors Bonding, Inc. of Nevada
Agency of Record
P. O. Box 36797, Las Vegas, NV 89133-6797
Agency Address

Western Surety Company
Surety [Seal]
By Gregory P. Griffith
Surety Signature {Attach current power of attorney}

DPE Construction, Inc.
Principal [Seal]
By James Allen
Principal Signature

Gregory P. Griffith, Attorney-in-fact
Name and Title

James Allen, U.P.
Name and Title



# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

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

**Crysta J Powell, Gregory P Griffith, Stephanie L Bucholz, Debra K Williams, Individually**

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

### - In Unlimited Amounts -

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

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

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 21st day of May, 2019.



WESTERN SURETY COMPANY

*Paul T. Bruflat*  
Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 21st day of May, 2019, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

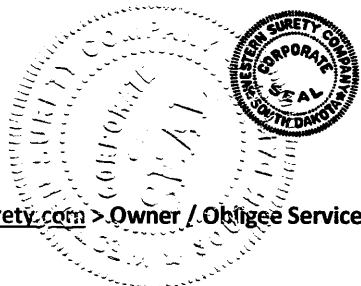
June 23, 2021



*J. Mohr*  
J. Mohr, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 29th day of March, 2021.



WESTERN SURETY COMPANY

*L. Nelson*  
L. Nelson, Assistant Secretary

Form F4280-7-2012

Go to [www.cnasurety.com](http://www.cnasurety.com) > Owner / Obligor Services > Validate Bond Coverage, if you want to verify bond authenticity.

**Authorizing By-Law**

**ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY**

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

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



**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

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

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

Schedule

ANY PERSON OR ORGANIZATION REQUIRED BY A WRITTEN CONTRACT, A CONDITION OF WHICH REQUIRES YOU TO OBTAIN THIS WAIVER FROM US.

The following statement only applies to policies or exposure in Missouri: Any person or organization for which the employer has agreed by written contract, executed prior to loss, may execute a waiver of subrogation. However, for purposes of work performed by the employer in Missouri, this waiver of subrogation does not apply to any construction group of classifications as designated by the waiver of right to recover from others (subrogation) rule in our manual.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. **(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective 01/01/2021	Policy No. SNWC318002	Endorsement No.
Insured DPE Construction, Inc.		Premium \$
Insurance Company StarNet Insurance Company		

Countersigned by \_\_\_\_\_



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/26/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Yuma Insurance, Inc. P.O. Box 5713 Yuma AZ 85366	<b>CONTACT NAME:</b> Taylour Stewart	
	<b>PHONE (A/C, No, Ext):</b> 928-344-3500	<b>FAX (A/C, No):</b> 928-344-3507
<b>E-MAIL ADDRESS:</b> taylour.stewart@yumainsurance.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A :</b> EMCASCO Insurance Company		21407
<b>INSURER B :</b> Employers Mutual Casualty Comp		21415
<b>INSURER C :</b> Starstone Specialty Insurance		44776
<b>INSURER D :</b> James River Ins Co		12203
<b>INSURER E :</b>		
<b>INSURER F :</b>		

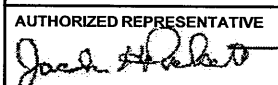
**INSURED** DPECON-01  
 DPE Construction, Inc. Don Peterson Engineers, Inc.  
 1636-A East 20th Street  
 Yuma AZ 85365

**COVERAGES** **CERTIFICATE NUMBER:** 770148078 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	5D90827	8/1/2020	8/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> OTHER:			5E90827	8/1/2020	8/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			5J90827	8/1/2020	8/1/2021	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	1st Layer \$2M Excess			86216X200ALI	8/1/2020	8/1/2021	Occurrence/Aggregate 2,000,000 Occurrence/Aggregate 2,000,000 Lease/Rent EQ \$1k Ded 25,000
D	2nd Layer \$2M Excess			000939661	8/1/2020	8/1/2021	
B	Leased Rented Equip			5C90827	8/1/2020	8/1/2021	

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 Construction Contract No. GRT-20-0008022-T  
 Magrino Subdivision Unit 3-Base Phase Improvement Project  
 The City of San Luis shall be named as Additional Insured with respect to liability arising out of the activities performed by, or on behalf of the Professional.  
 per attached form CG7578 0219 Include Additional Insured and Waive of Subrogation

<b>CERTIFICATE HOLDER</b>  City of San Luis PO BOX 1170 San Luis AZ 85349 USA	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
--	--

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**GENERAL LIABILITY ELITE EXTENSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The COMMERCIAL GENERAL LIABILITY COVERAGE FORM is amended to include the following clarifications and extensions of coverage. The provisions of the Coverage Form apply unless modified by endorsement.

**A. EXPECTED OR INTENDED INJURY**

**Section I – Coverage A**, Exclusion **a.** is amended as follows:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of an insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**B. NON-OWNED WATERCRAFT**

**Section I – Coverage A**, Exclusion **g.(2)** is amended as follows:

- (2) A watercraft you do not own that is:
  - (a) Less than 60 feet long; and
  - (b) Not being used to carry person(s) or property for a charge;

**C. EXTENDED PROPERTY DAMAGE COVERAGE**

**Section I – Coverage A**, Exclusions **j.(3)** and **(4)** is amended to add the following:

Paragraphs **(3)** and **(4)** of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

SCHEDULE	
Limits Of Insurance	Deductible
\$5,000 Each Occurrence	\$250 Per Claim
\$10,000 Annual Aggregate	

- a. The each occurrence limit listed above is the most we will pay for all damages because of "property damage" to property in the care, custody and control of or property loaned to an insured as the result of any one "occurrence", regardless of the number of:
  - (1) insureds;
  - (2) claims made or "suits" brought;
  - (3) persons or organizations making claims or bringing "suits".

The aggregate limit listed above is the most we will pay for all damages because of "property damage" to property in the care custody and control of or property loaned to an insured during the policy period.

Any payment we make for damages because of "property damage" to property in the care, custody and control of or property loaned to an insured will apply against the General Aggregate Limit shown in the declarations.

- b. Our obligation to pay damages on your behalf applies only to the amount of damages in excess of the deductible amount listed above. We may pay any part or all of the deductible amount listed above. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and upon notification by us, you will promptly reimburse us for that part of the deductible we paid.
- c. If two or more coverages apply under one "occurrence", only the highest per claim deductible applicable to these coverages will apply.
- d. Insurance provided by this provision is excess over any other insurance, whether primary, excess, contingent or any other basis. Since insurance provided by this endorsement is excess, we will have no duty to defend any claim or "suit" to which insurance provided by this endorsement applies if any other insurer has a duty to defend such a claim or "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.

**D. PROPERTY DAMAGE – ELEVATORS**

**Section I – Coverage A.2. Exclusions** paragraphs **j.(3)**, **j.(4)**, **j.(6)** and **k.** do not apply to use of elevators. This insurance afforded by this provision is excess over any valid and collectible property insurance (including any deductible) available to the insured and **Section IV – Commercial General Liability Conditions** Paragraph **4. Other Insurance** is changed accordingly.

## E. FIRE, LIGHTNING OR EXPLOSION DAMAGE

Except where it is used in the term "hostile fire", the word fire includes fire, lightning or explosion wherever it appears in the Coverage Form.

Under **Section I – Coverage A**, the last paragraph (after the exclusions) is replaced with the following:

Exclusions **c.** through **n.** do not apply to damage by fire, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III – Limits of Insurance**.

## F. MEDICAL PAYMENTS

If **Section I – Coverage C. Medical Payments Coverage** is not otherwise excluded from this Coverage Form:

The requirement, in the Insuring Agreement of Coverage C., that expenses must be incurred and reported to us within **one year** of the accident date is changed to **three years**.

## G. SUPPLEMENTARY PAYMENTS

**Supplementary Payments – Coverages A and B Paragraphs 1.b. and 1.d.** are replaced by the following:

**1.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 the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

**1.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 \$500 a day because of time off from work.

## H. SUBSIDIARIES AS INSURED

**Section II – Who Is An Insured** is amended to add the following:

**1.f.** Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this policy. However, insured does not include any subsidiary that is an insured under any other general liability policy, or would have been an insured under such a policy but for termination of that policy or the exhaustion of that policy's limits of liability.

## I. BLANKET ADDITIONAL INSUREDS – AS REQUIRED BY CONTRACT

**1. Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) subject to provisions in Paragraph **2.** below, (hereinafter referred to as additional insured) when you and such person(s) or organization(s) have agreed in a written contract or written agreement that such person(s) or organization(s) be added as an additional insured on your policy provided that the written contract or agreement is:

- a. Currently in effect or becomes effective during the policy period; and
- b. Executed prior to an "occurrence" or offense to which this insurance would apply.

However, the insurance afforded to such additional insured:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured; and
- c. Applies only if the person or organization is not specifically named as an additional insured under any other provision of, or endorsement added to, **Section II – Who Is An Insured** of this policy.

**2.** As provided herein, the insurance coverage provided to such additional insureds is limited to:

- a. Any Controlling Interest, but only with respect to their liability arising out of their financial control of you; or premises they own, maintain, or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- b. Any architect, engineer, or surveyor engaged by you 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 or omissions of those acting on your behalf:

- (1) In connection with your premises; or
- (2) In the performance of your ongoing operations.

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

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

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

- c. Any manager or lessor of a premises leased to you, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
  - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- d. Any state or governmental agency or subdivision or political subdivision, subject to the following:
    - (1) This insurance applies only with respect to the following hazards for which any 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:
      - (a) 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; or
      - (b) The construction, erection or removal of elevators; or
      - (c) The ownership, maintenance or use of any elevators covered by this insurance.
    - (2) This insurance applies only with respect to operations performed by you or on your behalf for which any state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

This insurance does not apply to:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" 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".
- e. Any vendor, but 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.

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

- (1) The insurance afforded any vendor does not apply to:
  - (a) "Bodily injury" or "property damage" for which any vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that any 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 any vendor;
  - (d) Repackaging, except when 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 any vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
  - (f) Demonstration, installation, servicing or repair operations, except such operations performed at any vendor's premises in connection with the sale of the product;
  - (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for any vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of any vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (i) The exceptions contained in Subparagraphs (d) or (f); or
  - (ii) Such inspections, adjustments, tests or servicing as any vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- f. Any Mortgagee, Assignee Or Receiver, but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you.
 

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.
- g. Any Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you.
 

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

  - (1) This insurance does not apply to:
    - (a) Any "occurrence" which takes place after you cease to lease that land; or
    - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- h. 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(s) or organization(s).

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

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.

- i. Any Owners, Lessees, or Contractors for whom you are performing operations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
  - (1) Your acts or omissions; or
  - (2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

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

This insurance does not apply to:

- (1) "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.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

- (2) "Bodily injury" or "property damage" 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 location 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.

j. Any Grantor of Licenses to you, but only with respect to their liability as grantor of licenses to you.

Their status as additional insured under this endorsement ends when:

1. The license granted to you by such person(s) or organization(s) expires; or
2. Your license is terminated or revoked by such person(s) or organization(s) prior to expiration of the license as stipulated by the contract or agreement.

k. Any Grantor of Franchise, but only with respect to their liability as grantor of a franchise to you.

l. Any Co-owner of Insured Premises, but only with respect to their liability as co-owner of any insured premises.

m. Any Concessionaires Trading Under Your Name, but only with respect to their liability as a concessionaire trading under your name.

3. Any insurance provided to any additional insured does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or its agents, "employees" or any other representative of the additional insured.

4. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits of Insurance:**

If coverage provided to any additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
  - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

#### **J. COVERAGE FOR INJURY TO CO-EMPLOYEES AND/OR YOUR OTHER VOLUNTEER WORKERS**

**Section II – Who is an Insured, Paragraph 2.a. (1)** is amended to add the following:

e. Paragraphs (a), (b), and (c) do not apply to your "employees" or "volunteer workers" with respect to "bodily injury" to a co-"employee" or other "volunteer worker".

Damages owed to an injured co-"employee" or "volunteer worker" will be reduced by any amount paid or available to the injured co-"employee" or "volunteer worker" under any other valid and collectible insurance.

#### **K. HEALTH CARE SERVICE PROFESSIONALS AS INSUREDS - INCIDENTAL MALPRACTICE**

**Section II – Who is an Insured, Paragraph 2.a. (1)** (d) is amended as follows:

This provision does not apply to Nurses, Emergency Medical Technicians, or Paramedics who provide professional health care services on your behalf.

However this exception does not apply if you are in the business or occupation of providing any such professional services.

#### **L. NEWLY FORMED OR ACQUIRED ORGANIZATIONS**

**Section II – Who Is An Insured, Paragraph 3.a.** is replaced by the following:

**3.a.** Coverage under this provision is afforded until the end of the policy period.

This provision does not apply if newly formed or acquired organizations coverage is excluded either by the provisions of the Coverage Form or by endorsements.

#### **M. DAMAGE TO PREMISES RENTED TO YOU**

**Section III – Limits of Insurance, Paragraph 6.** is replaced by the following:

Subject to 5.a. above, the Damage To Premises Rented To You Limit, or \$500,000, whichever is higher, is 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 by fire, smoke or leakage from automatic protection systems, while rented to you or temporarily occupied by you with permission of the owner.

#### **N. MEDICAL PAYMENTS – INCREASED LIMITS**

**Section III – Limits of Insurance, Paragraph 7.** is replaced by the following:

7. Subject to Paragraph 5. above, \$10,000 is the Medical Expense Limit we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, unless the amount shown on the Declarations of this Coverage Part for Medical Expense Limit states:

- (a) No Coverage; or
- (b) \$1,000; or
- (c) \$5,000; or
- (d) A limit higher than \$10,000.

**O. DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT**

**Section IV – Commercial General Liability Conditions** Paragraph 2. is amended to add the following:

- e. The requirement in Condition 2.a. that you must see to it that we are notified as soon as practicable of an “occurrence” or an offense which may result in a claim, applies only when the “occurrence” or offense is known to:
  - (1) You, if you are an individual or a limited liability company;
  - (2) A partner, if you are a partnership;
  - (3) A member or manager, if you are a limited liability company;
  - (4) An “executive officer” or insurance manager, if you are a corporation; or
  - (5) A trustee, if you are a trust.
- f. The requirement in Condition 2.b. that you must see to it that we receive notice of a claim or “suit” as soon as practicable will not be considered breached unless the breach occurs after such claim or “suit” is known to:
  - (1) You, if you are an individual or a limited liability company;
  - (2) A partner, if you are a partnership;
  - (3) A member or manager, if you are a limited liability company;
  - (4) An “executive officer” or insurance manager, if you are a corporation; or
  - (5) A trustee, if you are a trust.

**P. PRIMARY AND NONCONTRIBUTORY – ADDITIONAL INSURED EXTENSION**

**Section IV – Commercial General Liability Conditions** Paragraph 4. **Other Insurance** is amended to add the following:

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

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured. However, if the additional insured has been added as an additional insured on other policies, whether primary, excess, contingent or on any other basis, this insurance is excess over any other insurance regardless of the written agreement between you and an additional insured.

**Q. UNINTENTIONAL FAILURE TO DISCLOSE EXPOSURES**

**Section IV – Commercial General Liability Conditions** Paragraph 6. **Representations** is amended to add the following:

If you unintentionally fail to disclose any exposures existing at the inception date of your policy, we will not deny coverage under the Coverage Form solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

This provision does not apply to any known injury or damage which is excluded under any other provision of this policy.

**R. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

**Section IV – Commercial General Liability Condition** Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of:

- 1. Your ongoing operations; or
- 2. “Your work” included in the “products-completed operations hazard”.

However, this waiver applies only when you have agreed in writing to waive such rights of recovery in a contract or agreement, and only if the contract or agreement:

- 1. Is in effect or becomes effective during the term of this policy; and
- 2. Was executed prior to loss.

**S. MENTAL ANGUISH**

**Section V – Definition 3.** is replaced by the following: “Bodily injury” means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from bodily injury, sickness or disease.

**T. LIBERALIZATION**

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.