

CONTRACT

This contract (the "Contract") entered into this _____ day of _____ 2023, and between SHELBY COUNTY GOVERNMENT (hereinafter referred to as "COUNTY") and PRECISE CONCRETE WORKS, LLC, (hereinafter referred to as "CONTRACTOR").

WITNESSETH

WHEREAS, COUNTY has the need for the provision of services to construct the Stream Restoration and landscape Improvements to a segment South Cypress Creek as a part of the National Resilience Disaster Grant; and

WHEREAS, COUNTY issued a Request for Quotation Number SB 1000805, on Thursday, April 20, 2023, and CONTRACTOR responded to said Sealed Bid on May 22, 2023; and

WHEREAS, CONTRACTOR has the knowledge and expertise to provide such services; and

WHEREAS, COUNTY awarded the Sealed Bid to CONTRACTOR on June 5, 2023; and

WHEREAS, the parties are desirous of entering into a contract setting forth the terms and conditions under which the CONTRACTOR will provide said services.

NOW THEREFORE, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

I. SCOPE OF WORK

1. CONTRACTOR shall provide the services as outlined within COUNTY's Sealed Bid #I000805 and CONTRACTOR's response thereto which is attached hereto as Exhibit "A" and incorporated herein by reference as if stated verbatim (the "Services").

II. TERM AND COMPENSATION

1. The term of this Contract (the "Term") will commence upon the execution of this Contract and continue for 540 days.

2. COUNTY agrees to compensate CONTRACTOR for the provision of the Services the sum total not to exceed ten million nine hundred forty-six thousand seven hundred thirty dollars AND 43/100 Dollars (\$10,946,730.43) (the "Fee") during the term of this Contract. COUNTY will reimburse CONTRACTOR for necessary and reasonable expenses.
3. The Fee shall be paid in accordance with the cost proposal on the attached Exhibit A.
4. CONTRACTOR shall submit invoices to COUNTY on a monthly basis for Services performed during the preceding month. Invoices shall be submitted in duplicate to the address set forth in Paragraph 32 of this Contract to the attention of Mr. Darren Sanders, P.E., Administrator of Roads, Bridges, and Engineering. COUNTY shall pay such invoices within thirty (30) days of its receipt and approval of said invoices. COUNTY is not obligated to pay, and will withhold from payment, any amounts COUNTY has in dispute with CONTRACTOR based on CONTRACTOR'S non-performance or negligent performance of any of the Services under this Contract.
5. CONTRACTOR shall not be permitted or authorized to incur costs beyond the extent that purchase orders have been issued on approved contracts and/or purchases prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of COUNTY contracts or purchases without prior, expressly written, appropriate authorization pursuant to COUNTY purchasing procedures and rules and regulations. COUNTY is not obligated to pay, nor shall CONTRACTOR be entitled to receive payments for contract fees and expenses incurred in violation of this provision.

III. GENERAL CONDITIONS

The parties further agree as follows:

1. CONTROL

All Services by CONTRACTOR will be performed in a manner satisfactory to COUNTY, and in accordance with the generally accepted business practices and procedures of COUNTY.

2. CONTRACTOR'S PERSONNEL

CONTRACTOR certifies that it presently has adequate qualified personnel to perform all Services required under this

Contract. All work performed during the Term of this Contract will be supervised by CONTRACTOR. CONTRACTOR further certifies that all of its employees assigned to serve COUNTY have such knowledge and experience as required to perform the duties assigned to them. Any employee of CONTRACTOR who, in the opinion of COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

3. INDEPENDENT STATUS

- a. Nothing in this Contract shall be deemed to represent that CONTRACTOR, or any of CONTRACTOR's employees or agents, are the agents, representatives, or employees of COUNTY. CONTRACTOR will be an independent CONTRACTOR over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give COUNTY the right to direct CONTRACTOR as to the details of the performance of the Services under this Contract or to exercise a measure of control over CONTRACTOR is solely for purposes of compliance with local, state and federal regulations and means that CONTRACTOR will follow the desires of COUNTY only as to the intended results of the scope of this Contract.
- b. It is further expressly agreed and understood by CONTRACTOR that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of COUNTY; that CONTRACTOR has been retained by COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to COUNTY by CONTRACTOR for the Services performed shall be on CONTRACTOR's letterhead.

4. REPORTS

CONTRACTOR shall prepare and submit quarterly reports of its activities, funded under this Contract, to the originating department and the Contract Administration Department of the COUNTY. The reports shall include an itemization of the use of COUNTY's funds and shall be inclusive of specific Services delivered. Any such reports provided to COUNTY shall be prepared with the understanding that COUNTY may make such reports available to the public. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Contract may be

subject to audit by the Director of the Division of Administration and Finance of the COUNTY. COUNTY shall have the right to withhold future disbursement of funds under this Contract and any future Contracts until this provision has been met.

5. TERMINATION OR ABANDONMENT

a. It shall be cause for the immediate termination of this Contract if, after its execution, COUNTY determines that:

i) Either CONTRACTOR or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or

ii) CONTRACTOR has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without COUNTY's consent or approval; or

iii) CONTRACTOR has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of CONTRACTOR assets.

b. COUNTY may terminate the Contract upon five (5) days written notice by COUNTY or its authorized agent to CONTRACTOR for CONTRACTOR's failure to provide the Services specified under this Contract.

c. This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination (the "Termination Date"). In the event of such termination, CONTRACTOR shall be paid for all Services rendered prior to the Termination Date, provided CONTRACTOR shall have delivered to COUNTY such statements, accounts, reports and other materials as required under this Contract; however, CONTRACTOR shall not be

compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by CONTRACTOR prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of COUNTY prior to payment for the Services rendered.

- d. Notwithstanding the above or any section herein to the contrary, CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Contract by CONTRACTOR and COUNTY may withhold any payments to CONTRACTOR for the purpose of setoff until such time as the exact amount of damages due COUNTY from CONTRACTOR is determined.

6. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to CONTRACTOR pursuant to this Contract for any Services performed by CONTRACTOR in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by CONTRACTOR to properly fulfill any of his obligations as set forth in this Contract.

7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

- a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve CONTRACTOR from performance of the Services under this Contract. COUNTY shall not be responsible for the fulfillment of CONTRACTOR's obligations to its transferors or subcontractors.
- b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

8. CONFLICT OF INTEREST

CONTRACTOR covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the

performance of the Services. CONTRACTOR warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to CONTRACTOR in connection with any work contemplated or performed relative to this Contract.

9. CONTINGENT FEES

CONTRACTOR warrants that it has not employed or retained any company or person other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

10. NON-PUBLIC INFORMATION

CONTRACTOR, for the purpose of securing a special privilege, benefit, or exemption for itself or others, including but not limited to the award of this Contract, has not sought and will not seek the disclosure or use of information from any COUNTY official, employee, or appointee that was gained by said COUNTY official, employee, or appointee by reason of his or her official COUNTY position and not available to the public generally.

11. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, CONTRACTOR agrees to permit duly authorized agents and employees of COUNTY to enter CONTRACTOR's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. CONTRACTOR will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by COUNTY or by any other governmental entity or agency

participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to COUNTY upon request.

12. DISPUTE RESOLUTION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between CONTRACTOR and COUNTY will be referred to the Shelby County Contract Administrator or its duly authorized representative, whose decision regarding same will be final. Nothing herein shall be interpreted so as to prevent either party from pursuing available remedies in a court of competent jurisdiction.

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

a. CONTRACTOR shall indemnify, defend, save and hold harmless COUNTY, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any negligent or intentionally wrongful actions or omissions that occur in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by CONTRACTOR its subcontractors, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

b. CONTRACTOR expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by CONTRACTOR shall in no way limit the responsibility to indemnify, defend, save and hold harmless COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

c. COUNTY has no obligation to provide legal counsel or defense to CONTRACTOR or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against CONTRACTOR as a result of or relating to performance of the Services under this Contract.

d. Except as expressly provided herein, COUNTY has no obligation for the payment of any judgment or the settlement of any claims against CONTRACTOR as a result

of or relating to performance of the Services under this Contract.

- e. CONTRACTOR shall immediately notify COUNTY of any claim or suit made or filed against CONTRACTOR or its subcontractors regarding any matter resulting from or relating to CONTRACTOR's performance of the Services under this Contract and will cooperate, assist and consult with COUNTY in the defense or investigation thereof.

14. GENERAL COMPLIANCE WITH LAWS

- a. CONTRACTOR certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.
- b. CONTRACTOR is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).
- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, CONTRACTOR agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

15. NON-DISCRIMINATION

CONTRACTOR hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of CONTRACTOR on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. CONTRACTOR shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

16. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

17. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

18. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

19. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as

a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

20. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

21. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

22. TRAVEL EXPENSES

All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by COUNTY.

23. PERFORMANCE AND LABOR AND MATERIALS BONDS

CONTRACTOR will provide COUNTY within ten (10) days from inception date of this Contract a Performance and Labor and Materials Bond each in the amount of 100% of the Contract price for each year that this contract is in effect. Said Bonds may be pro-rated for the initial year in the event that

this period of time is less than a full twelve (12) month period.

24. NON-LIABILITY FOR CONTRACTOR EMPLOYEE TAXES

Neither CONTRACTOR nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide CONTRACTOR's personnel with any benefits and shall have no liability for the following:

- a. Withholding FICA (Social Security) from CONTRACTOR's payments;
- b. Making state or federal unemployment insurance contributions on behalf of CONTRACTOR or its personnel;
- c. Withholding state and federal income tax from payment to CONTRACTOR;
- d. Making disability insurance contributions on behalf of CONTRACTOR;
- e. Obtaining workers' compensation insurance on behalf of CONTRACTOR or CONTRACTOR's personnel.

25. INCORPORATION OF OTHER DOCUMENTS

- a. CONTRACTOR shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for Proposals/Bids as well as the Response of CONTRACTOR thereto, all of which are maintained on file within the Shelby County Purchasing Department and incorporated herein by reference.
- b. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

26. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES (LOSBS)

In accordance with Shelby County Code of Ordinance Section 2-224, as amended, CONTRACTOR shall utilize LOSBs as sources of supplies, equipment, construction, and services. When COUNTY has authorized the use of a subcontractor in writing, COUNTY shall make payments to CONTRACTOR within fifteen (15) days of receiving an undisputed invoice. CONTRACTOR shall then be required to pay its subcontractors within ten (10) days of receiving CONTRACTOR's invoice payment from COUNTY. In addition, CONTRACTOR shall submit and, as necessary, update subcontractor information (including but not limited to payments thereto), for **any and all subcontractors** used on COUNTY project(s) via the purchase of goods or services, in the COUNTY's compliance tracking software, B2GNow.

The penalties for noncompliance with the ten-day timely payment requirement are listed below:

- a. Violation of the timely payment term to a subcontractor more than once in a three-month period shall result in the loss of CONTRACTOR's EOC qualification number and the ability to do future business with COUNTY for three months;
- b. Violation of the timely payment term to a subcontractor more than twice in a six-month period shall result in the loss of CONTRACTOR's EOC qualification number and the ability to do future business with COUNTY for six months;
- c. Violation of the timely payment term to a subcontractor more than three times in a one-year period shall result in the loss of CONTRACTOR's EOC qualification number and the ability to do future business with COUNTY for one-year.

CONTRACTOR may appeal the above imposed penalty to the EOC Appeals Board.

27. RIGHT TO REQUEST REMOVAL OF CONTRACTOR'S EMPLOYEES

COUNTY may interview the personnel CONTRACTOR assigns to COUNTY's work. COUNTY shall have the right, at any time, to request removal of any employee(s) of CONTRACTOR, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, CONTRACTOR shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

28. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

29. EMPLOYMENT OF ILLEGAL IMMIGRANTS

CONTRACTOR hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. CONTRACTOR shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event the CONTRACTOR fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this CONTRACT may be canceled, terminated or suspended in whole or in part by the County, and the CONTRACTOR may be prohibited from contracting to supply goods and/or services to the COUNTY for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with the COUNTY.

30. LIVING WAGE

Shelby County Government is an entity that pays a living wage to its employees. Shelby County Government also encourages those businesses providing goods and services to County to pay a living wage to their employees.

31. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CONTRACTOR, CONTRACTOR understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by CONTRACTOR due to Services performed pursuant to this Contract are subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

32. ORGANIZATION STATUS AND AUTHORITY

- a. CONTRACTOR represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the State of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.
- b. The execution, delivery and performance of this Contract by CONTRACTOR has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of CONTRACTOR, any provision of any indenture, agreement or other instrument to which CONTRACTOR is a party, or by which CONTRACTOR's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

33. INSURANCE REQUIREMENTS

- a. CONTRACTOR shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect COUNTY from claims which may arise out of or result from CONTRACTOR's operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts CONTRACTOR or subcontractor may be liable.
- b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be named as additional insured. All policies will provide for thirty (30) days written notice to COUNTY of cancellation or material change in coverage provided. If policy terms and conditions do not allow for notice to COUNTY, CONTRACTOR will immediately notify COUNTY and provide evidence of replacement coverage with no lapse. CONTRACTOR will maintain throughout the life of this

Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements:

i) Commercial General Liability Insurance -
\$1,000,000.00 limit per occurrence bodily injury and property damage/\$1,000,000.00 personal and advertising injury/\$2,000,000.00 General Aggregate/\$2,000,000.00 Products-completed Operations Aggregate, indicating the coverage is provided on a claims-made or on an occurrence basis. Shelby County Government, its elected officials, appointees, employees and members of boards, agencies, and commissions shall be named as additional insureds. The insurance shall include coverage for the following:

- a. Premises/Operation;
- b. Pollution;
- c. Products/Completed Operations;
- d. Contractual Liability;
- e. Independent Vendors/Contractors;
- f. Broad Form Property Coverage;
- g. Personal Injury.

ii) Workers Compensation and Employers' Liability Insurance - Including coverage for sole proprietors, partners, and officers, regardless of requirement by Tennessee State Statute. Policy is to be specifically endorsed to include these individuals for coverage. This policy should include Employers' Liability Coverage for \$1,000,000.00 per accident. CONTRACTOR waives its right of subrogation against Shelby County for any and all workers' compensation claims.

iii) Business Automobile Liability Insurance - \$1,000,000.00 each accident for property damage and personal injury. Shelby County Government, its elected officials, appointees, employees and members of boards, agencies, and commissions shall be named as additional insureds. Coverage is to be provided on all owned/leased autos, non-owned autos and hired autos.

iv) Umbrella - \$2,000,000.00 per occurrence.

v) Builder's Risk Insurance or Installation Floater (as applicable) - This covers building structures and personal property, vandalism, malicious mischief and all risks associated with the construction project.

- c. CONTRACTOR shall provide COUNTY with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

Shelby County Government
Contracts Administration -
County Attorney's Office
160 N. Main, Suite 950
Memphis, TN 38103

- d. Upon termination or cancellation of any claims-made insurance currently in effect under this Contract, the CONTRACTOR shall purchase an extended reporting endorsement and furnish evidence of same to COUNTY.
- e. Any coverage applicable to COUNTY will apply as primary and non-contributory regardless of any insurance or self-insurance maintained by COUNTY.

34. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Roads Bridges & Engineering
6463 Haley Road
Memphis, Tennessee 38134
Attn.: Darren Sanders, P.E.

and

Shelby County Government
Contract Administration -
County Attorney's Office
160 N. Main St., Suite 950
Memphis, Tennessee 38103

VENDOR: Precise Concrete Works, LLC
1123 S. Third Street

Memphis, Tennessee 38106
Attn: Martin Carodine

35. DATA SECURITY

CONTRACTOR warrants to COUNTY and State that it agrees to meet the spirit and intent of all compliance requirements relating to the content of data accessed. This includes, but is not limited to, Payment Card Industry (PCI) data, as defined by PCI Security Standard v3.1, Protected Health Information (PHI), as defined under the Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 160, Subpart A, §160.103 (45 C.F.R. §160.103), and Personally Identifiable Information (PII), as defined in the National Institute of Standards and Technology Special Publication 800-122 sections 2.1 and 2.2, in electronic and/or paper format. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance, including, but not limited to, Data Security - Vendor Acknowledgement agreement and Acceptable Use Policy, and to abide by SCG ITS security policies including, but not limited to, the SCG Network Security and Information Security policies.

CONTRACTOR shall apply all vendor-issued security updates for system hardware and software components maintained by the CONTRACTOR within 30 days of issuance.

Upon notification by COUNTY, CONTRACTOR shall assure that all vulnerabilities specific to the systems maintained and identified by COUNTY Approved Scanning Vendor (ASV), using the common vulnerability scoring system (CVSS), as not meeting compliance requirements, including but not limited to PCI Data Security Standards (DSS) and Health Insurance Portability and Accountability Act (HIPAA), are patched, updated, or otherwise modified to assure they meet said compliance requirements.

CONTRACTOR shall promptly report to Information Technology Security Officer any breaches of Shelby County Government data and, subsequent to any such event, appropriate corrective actions to contain and prevent recurrence.

- i) **HIPAA** - CONTRACTOR warrants to COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the

course of this Contract. CONTRACTOR warrants that it will cooperate with COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements.

ii) **PCI-DSS**-CONTRACTOR warrants to COUNTY that it is familiar with the requirements established by the Payment Card Industry Security Standards Council for PCI Data Security Standards (PCI-DSS) and will comply with all applicable PCI-DSS requirements in the course of this Contract. CONTRACTOR agrees to indemnify and hold COUNTY, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any breach of COUNTY or COUNTY customer credit card or identity information due to CONTRACTOR's actions.

iii) **Personally Identifiable Information (PII)**
-CONTRACTOR warrants to COUNTY that it will protect any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and
(2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

36. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

37. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

- COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not

filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

APPROVED AS TO FORM:
AND LEGALITY:

SHELBY COUNTY GOVERNMENT

Contract Administration/
Assistant County Attorney

Lee Harris, Mayor

Precise Concrete Works, LLC

BY:

TITLE:

Martin Case
CEO

CORPORATE ACKNOWLEDGMENT

STATE OF Tennessee
COUNTY OF Shelby

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared Martin Carrodine, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the contract, the within named bargainer, a corporation, and that he as such CEO, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as CEO/Martin Carrodine

WITNESS my hand and official seal at office this 6th day of July, 2023.

Barbara Smith
Notary Public

My Commission Expires: June 15, 2025



**SHELBY COUNTY GOVERNMENT
GRATUITY DISCLOSURE FORM
(NO COPIES ACCEPTED)**

INSTRUCTIONS: *This form is for all individuals receiving any Shelby County Government contract, subcontract, land use approval or financial grant of money to report any gratuity that has been given, directly or indirectly, to any elected official, employee or appointee (including their spouse and immediate family members) who is involved in the decision regarding the contract, land use approval, or financial grant of money.*

1. COMPANY/VENDOR NAME

Preecise Concrete Works, LLC

2. DATE OF GRATUITY

N/A

3. NATURE AND PURPOSE OF THE GRATUITY

N/A

4. NAME OF THE OFFICIAL, EMPLOYEE, APPOINTEE, OR FAMILY MEMBER WHO RECEIVED THE GRATUITY

N/A

5. NAME OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY

N/A

6. ADDRESS OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY

7. DESCRIPTION OF THE GRATUITY

N/A

8. COST OF THE GRATUITY (If cost is unknown and not reasonably discernible by the person giving the gratuity, then the person giving the gratuity shall report a good faith estimate of the cost of the gratuity.)

N/A

9. The information contained in this Gratuity Disclosure Form, and any supporting documentation or materials referenced herein or submitted herewith, is true and correct to the best of my knowledge, information and belief and I affirm that I have not given, directly or indirectly, any gratuity to any elected official, employee or appointee (including their spouse and immediate family members) that has not been disclosed and I affirm that I have not violated the provisions of the Shelby County Code of Ethics.


Signature

7-6-2023
Date

Martin Carrodine
Print Name

*A copy of your completed form will be placed on the Shelby County Internet website.
A copy of your signature will not be accepted. Form must have original signatures.*



AIA Document A312™ – 2010

Performance Bond

Bond No. 8003639

CONTRACTOR:

(Name, legal status and address)

Precise Concrete Works, LLC
dba Precise Contracting
1123 South Third St., Memphis, TN 38106

SURETY:

(Name, legal status and principal place of business)

FCCI Insurance Company
6300 University Parkway, Sarasota, FL 34240-8424

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)

Shelby County Government
160 N. Main Street
Memphis, TN 38103

CONSTRUCTION CONTRACT

Date:

Amount: \$10,946,730.43

Ten Million Nine Hundred Forty-Six Thousand Seven Hundred Thirty and 43/100 Dollars

Description:

(Name and location)

Stream Restoration and Landscape Improvements to a Segment South Cypress Creek as a part of the National Resilience Disaster Grant

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$10,946,730.43

Ten Million Nine Hundred Forty-Six Thousand Seven Hundred Thirty and 43/100 Dollars

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Precise Concrete Works, LLC

dba Precise Contracting

Signature: 

Name: Martin Caradine

and Title: CEO

(Any additional signatures appear on the last page of this Performance Bond.)

SURETY

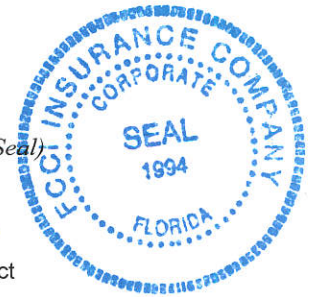
Company: (Corporate Seal)

FCCI Insurance Company

Signature: 

Name: James S. Brown, Atty-in-Fact

and Title:



(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

McDaniel-Whitley, Inc.
P.O. Box 382007
Memphis, TN 38183-2007
901.881.6464

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Init.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows: None.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____ N/A

Name and Title:

Address:

Signature: _____ N/A

Name and Title:

Address:

AIA[®] Document A312[™] – 2010

Payment Bond

Bond No. 8003639

CONTRACTOR:

(Name, legal status and address)

Precise Concrete Works, LLC
dba Precise Contracting
1123 South Third St., Memphis, TN 38106

OWNER:

(Name, legal status and address)

Shelby County Government
160 N. Main Street
Memphis, TN 38103

CONSTRUCTION CONTRACT

Date:

Amount: \$10,946,730.43

Ten Million Nine Hundred Forty-Six Thousand Seven Hundred Thirty and 43/100 Dollars

Description:

(Name and location)

Stream Restoration and Landscape Improvements to a Segment South Cypress Creek as a part of the National Resilience Disaster Grant

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$10,946,730.43

Ten Million Nine Hundred Forty-Six Thousand Seven Hundred Thirty and 43/100 Dollars

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Precise Concrete Works, LLC

dba Precise Contracting

Signature:

Name *Marjorie C. Carrodine*

and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

SURETY

Company: (Corporate Seal)

FCCI Insurance Company

Signature:

Name *James S. Brown*, Atty-in-Fact

and Title:



(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

McDaniel-Whitley, Inc.
P.O. Box 382007
Memphis, TN 38183-2007
901.881.6464

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows: None.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____ N/A _____

Signature: _____ N/A _____

Name and Title:

Name and Title:

Address:

Address:



GENERAL POWER OF ATTORNEY

Know all men by these presents: That the FCCI Insurance Company, a Corporation organized and existing under the laws of the State of Florida (the "Corporation") does make, constitute and appoint:

Michael A. McDaniel; Richard H. Whitley; Louis G. Morgan, III; James S. Brown

Each, its true and lawful Attorney-In-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed in all bonds and undertakings provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the sum of (not to exceed \$20,000,000.00): \$20,000,000.00

This Power of Attorney is made and executed by authority of a Resolution adopted by the Board of Directors. That resolution also authorized any further action by the officers of the Company necessary to effect such transaction.

The signatures below and the seal of the Corporation may be affixed by facsimile, and any such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached.

In witness whereof, the FCCI Insurance Company has caused these presents to be signed by its duly authorized officers and its corporate Seal to be hereunto affixed, this 23rd day of July, 2020.

Attest: Christina D. Welch
Christina D. Welch, President
FCCI Insurance Company



Christopher Shoucair
Christopher Shoucair,
EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

State of Florida
County of Sarasota

Before me this day personally appeared Christina D. Welch, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2027



PEGGY SNOW
Commission # HH 326535
Expires February 27, 2027

Peggy Snow
Notary Public

State of Florida
County of Sarasota

Before me this day personally appeared Christopher Shoucair, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2027



PEGGY SNOW
Commission # HH 326535
Expires February 27, 2027

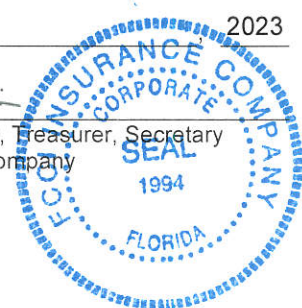
Peggy Snow
Notary Public

CERTIFICATE

I, the undersigned Secretary of FCCI Insurance Company, a Florida Corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the February 27, 2020 Resolution of the Board of Directors, referenced in said Power of Attorney, is now in force.

Dated this _____ day of _____, 2023

Christopher Shoucair
Christopher Shoucair, EVP, CFO, Treasurer, Secretary
FCCI Insurance Company





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/06/2023

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).

PRODUCER McDaniel-Whitley, Inc. P.O. Box 382007 Memphis TN 38183-2007		CONTACT NAME: Justin Golding PHONE (A/C, No, Ext): (901) 881-6464 E-MAIL ADDRESS: jgolding@mcwins.com FAX (A/C, No): (901) 881-6467																						
INSURED Precise Concrete Works LLC dba: Precise Contracting LLC 1123 S 3rd Street Memphis TN 38106		<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: National Trust Insurance Company</td> <td></td> <td>20141</td> </tr> <tr> <td>INSURER B: Evanston Insurance Company</td> <td></td> <td></td> </tr> <tr> <td>INSURER C: FCCI Insurance Company</td> <td></td> <td>10178</td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A: National Trust Insurance Company		20141	INSURER B: Evanston Insurance Company			INSURER C: FCCI Insurance Company		10178	INSURER D:			INSURER E:			INSURER F:		
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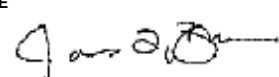
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE 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"/> COMMERCIAL GENERAL LIABILITY <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	CPP10003435705	11/20/2022	11/20/2023	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
							Jobsite Pollution	\$ 1,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	CA10000774007	11/20/2022	11/20/2023	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"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	XOBW9149122	11/20/2022	11/20/2023	EACH OCCURRENCE	\$ 2,000,000
							AGGREGATE	\$ 2,000,000
								\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	Y	WC010006364303	11/20/2022	11/20/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Installation Floater Rented/Leased Equipment			CPP10003435705	11/20/2022	11/20/2023	Limit/Deductible:	\$250k/\$1k
							Limit/Deductible:	\$1M/\$1k

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

Re: South Cypress Creek Restoration & Landscape Improvement Project - Shelby County Government, its elected officials, appointees, employees and members of boards, agencies and commissions are named as additional insureds where required by written contract. Coverage is on a primary and non-contributory basis. A waiver of subrogation applies in favor of the certificate holder where required by contract. In the event of material change or cancellation, certificate holder will be provided 30 days notice.

CERTIFICATE HOLDER**CANCELLATION**

Shelby County Government Contracts Administration County Attorney's Office 160 N Main; Ste 950 Memphis TN 38103	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –
AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION
AGREEMENT WITH YOU – ONGOING OPERATIONS AND
PRODUCTS-COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE (OPTIONAL)

Name of Additional Insured Persons or Organizations
(As required by written contract or agreement per Paragraph A. below.)

Locations of Covered Operations
(As per the written contract or agreement, provided the location is within the "coverage territory".) BLANKET

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

A. 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 writing in a contract or agreement in effect during the term of this policy that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above; and
3. The particular person or organization, if any, scheduled above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" occurring after the execution of the contract or agreement described in Paragraph 1. above and 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; or
3. "Your work" performed for the additional insured and included in the "products-completed operations hazard" if such coverage is specifically required in the written contract or agreement.

However, the insurance afforded to such additional insured(s) described above:

1. Only applies to the extent permitted by law;
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured;
3. Will not be broader than that which is afforded to you under this policy; and
4. Nothing herein shall extend the term of this policy.

- B.** The insurance provided to the additional insured 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:
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.
- C.** This insurance is excess over any other valid and collectible insurance available to the additional insured whether on a primary, excess, contingent or any other basis; unless the written contract or agreement requires that this insurance be primary and non-contributory, in which case this insurance will be primary and non-contributory relative to insurance on which the additional insured is a Named Insured.
- D.** With respect to the insurance afforded to these additional insureds, the following is added to **SECTION III – LIMITS OF INSURANCE:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph **A.1.**; or
2. Available under the applicable Limits of Insurance;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance.

- E. SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

Paragraph **2. Duties In The Event of Occurrence, Offense, Claim Or Suit** is amended to add the following additional conditions applicable to the additional insured:

An additional insured under this endorsement must as soon as practicable:

1. Give us written notice of an "occurrence" or an offense which may result in a claim or "suit" under this insurance, and of any claim or "suit" that does result;
2. Send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions; and
3. Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover under this endorsement and agree to make available all such other insurance. However, this condition does not affect Paragraph **C.** above.

We have no duty to defend or indemnify an additional insured under this endorsement until we receive from the additional insured written notice of a claim or "suit".

- F.** This endorsement does not apply to any additional insured or project that is specifically identified in any other additional insured endorsement attached to the **COMMERCIAL GENERAL LIABILITY COVERAGE FORM.**

FIRST CHOICE CONTRACTORS LIABILITY ENDORSEMENT

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FIRST CHOICE CONTRACTORS LIABILITY ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

NOTE: The following are additions, replacements and amendments to the Commercial General Liability Coverage Form, and will apply unless excluded by separate endorsement(s) to the Commercial General Liability Coverage Form.

The **COMMERCIAL GENERAL LIABILITY COVERAGE FORM** is amended as follows:

SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE is amended as follows:

1. Extended "Property Damage"

Exclusion 2.a., Expected or Intended Injury, is replaced with the following:

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

2. Non-owned Watercraft

Exclusion 2.g. (2) (a) is replaced with the following:

- (a) Less than 51 feet long; and

3. Property Damage Liability – Borrowed Equipment

The following is added to Exclusion 2.j. (4):

Paragraph (4) of this exclusion does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations. The most we will pay for "property damage" to any one borrowed equipment item under this coverage is \$25,000 per "occurrence". The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

4. Limited Electronic Data Liability

Exclusion 2.p. is replaced with the following:

- p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

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 \$10,000.

We have no duty to investigate or defend claims or "suits" covered by this Limited Electronic Data Liability coverage.

The following definition is added to **SECTION V – DEFINITIONS** of the Coverage Form:

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

For purposes of this **Limited Electronic Data Liability** coverage, the definition of "Property Damage" in **SECTION V – DEFINITIONS** of the Coverage Form is 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;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it;
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

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

SECTION I – COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY is amended as follows:

Paragraph 2.e. Exclusions – the Contractual Liability Exclusion is deleted.

SECTION I – COVERAGES, the following coverages are added:

COVERAGE D. VOLUNTARY PROPERTY DAMAGE

1. Insuring Agreement

We will pay, at your request, for "property damage" caused by an "occurrence", to property of others caused by you, or while in your possession, arising out of your business operations. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

2. Exclusions

This insurance does not apply to:

"Property Damage" to:

- a. Property at premises owned, rented, leased or occupied by you;
- b. Property while in transit;
- c. Property owned by, rented to, leased to, loaned to, borrowed by, or used by you;
- d. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;
- e. Property caused by or arising out of the "products-completed operations hazard";
- f. Motor vehicles;
- g. "Your product" arising out of it or any part of it; or
- h. "Your work" arising out of it or any part of it.

3. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. We will then pay the amount of loss in excess of \$250 up to the applicable limit of insurance.

4. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance afforded under COVERAGE D is excess over any other valid and collectible property or inland marine insurance (including the deductible applicable to the property or inland marine coverage) available to you whether primary, excess, contingent or any other basis.

Coverage D covers unintentional damage or destruction, but does not cover disappearance, theft, or loss of use.

The insurance under COVERAGE D does not apply if a loss is paid under COVERAGE E.

COVERAGE E. CARE, CUSTODY OR CONTROL

1. Insuring Agreement

We will pay those sums that the insured becomes legally obligated to pay as damages because of "property damage" caused by an "occurrence", to property of others while in your care, custody, or control or property of others as to which you are exercising physical control if the "property damage" arises out of your business operations. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

2. Exclusions

This insurance does not apply to:

"Property Damage" to:

- a. Property at premises owned, rented, leased or occupied by you;
- b. Property while in transit;
- c. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;
- d. Property caused by or arising out of the "products-completed operations hazard";
- e. Motor vehicles;
- f. "Your product" arising out of it or any part of it; or
- g. "Your work" arising out of it or any part of it.

3. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. We will then pay the amount of loss in excess of \$250 up to the applicable limit of insurance.

4. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance afforded under COVERAGE E is excess over any other valid and collectible property or inland marine insurance (including the deductible applicable to the property or inland marine coverage) available to you whether primary, excess, contingent or any other basis.

The insurance under COVERAGE E does not apply if a loss is paid under COVERAGE D.

COVERAGE F. LIMITED PRODUCT WITHDRAWAL EXPENSE

1. Insuring Agreement

- a. If you are a "seller", we will reimburse you for "product withdrawal expenses" associated with "your product" incurred because of a "product withdrawal" to which this insurance applies.

The amount of such reimbursement is limited as described in SECTION III - LIMITS OF INSURANCE. No other obligation or liability to pay sums or perform acts or services is covered.

- a. This insurance applies to a "product withdrawal" only if the "product withdrawal" is initiated in the "coverage territory" during the policy period because:
 - (1) You determine that the "product withdrawal" is necessary; or
 - (2) An authorized government entity has ordered you to conduct a "product withdrawal".
- c. We will reimburse only those "product withdrawal expenses" which are incurred and reported to us within one year of the date the "product withdrawal" was initiated.
- d. The initiation of a "product withdrawal" will be deemed to have been made only at the earliest of the following times:
 - (1) When you have announced, in any manner, to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to conduct a "product withdrawal" This applies regardless of whether the determination to conduct a "product withdrawal" is made by you or is requested by a third party;
 - (2) When you received, either orally or in writing, notification of an order from an authorized government entity to conduct a "product withdrawal"; or
 - (3) When a third party has initiated a "product withdrawal" and you communicate agreement with the "product withdrawal", or you announce to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to participate in the "product withdrawal", whichever comes first.
- e. "Product withdrawal expenses" incurred to withdraw "your products" which contain:
 - (1) The same "defect" will be deemed to have arisen out of the same "product withdrawal"; or
 - (2) A different "defect" will be deemed to have arisen out of a separate "product withdrawal" if newly determined or ordered in accordance with paragraph 1.b of this coverage.

2. Exclusions

This insurance does not apply to "product withdrawal" expenses" arising out of:

- a. Any "product withdrawal" initiated due to:
 - (1) The failure of "your products" to accomplish their intended purpose, including any breach of warranty of fitness, whether written or implied. This exclusion does not apply if such failure has caused or is reasonably expected to cause "bodily injury" or physical damage to tangible property.
 - (2) Copyright, patent, trade secret or trademark infringements;
 - (3) Transformation of a chemical nature, deterioration or decomposition of "your product", except if it is caused by:
 - (a) An error in manufacturing, design, processing or transportation of "your product"; or
 - (b) "Product tampering".
 - (4) Expiration of the designated shelf life of "your product".
- b. A "product withdrawal", initiated because of a "defect" in "your product" known to exist by the Named Insured or the Named Insured's "executive officers", prior to the inception date of this Coverage Part or prior to the time "your product" leaves your control or possession.
- c. Recall of any specific products for which "bodily injury" or "property damage" is excluded under Coverage A - Bodily Injury And Property Damage Liability by endorsement.
- d. Recall of "your products" which have been banned from the market by an authorized government entity prior to the policy period.
- e. The defense of a claim or "suit" against you for "product withdrawal expenses".

3. For the purposes of the insurance afforded under COVERAGE F, the following is added to 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition under SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

e. Duties In The Event Of A "Defect" Or A "Product Withdrawal"

- (1) You must see to it that we are notified as soon as practicable of any actual, suspected or threatened "defect" in "your products", or any governmental investigation, that may result in a "product withdrawal". To the extent possible, notice should include:
 - (a) How, when and where the "defect" was discovered;
 - (b) The names and addresses of any injured persons and witnesses; and
 - (c) The nature, location and circumstances of any injury or damage arising out of use or consumption of "your product".
- (2) If a "product withdrawal" is initiated, you must:
 - (a) Immediately record the specifics of the "product withdrawal" and the date it was initiated;
 - (b) Send us written notice of the "product withdrawal" as soon as practicable; and
 - (c) Not release, consign, ship or distribute by any other method, any product, or like or similar products, with an actual, suspected or threatened defect.
- (3) You and any other involved insured must:
 - (a) Immediately send us copies of pertinent correspondence received in connection with the "product withdrawal";
 - (b) Authorize us to obtain records and other information; and
 - (c) Cooperate with us in our investigation of the "product withdrawal".

4. For the purposes of this Coverage F, the following definitions are added to the Definitions Section:

- a. "Defect" means a defect, deficiency or inadequacy that creates a dangerous condition.
- b. "Product tampering" is an act of intentional alteration of "your product" which may cause or has caused "bodily injury" or physical injury to tangible property.

When "product tampering" is known, suspected or threatened, a "product withdrawal" will not be limited to those batches of "your product" which are known or suspected to have been tampered with.

- c. "Product withdrawal" means the recall or withdrawal of "your products", or products which contain "your products", from the market or from use, by any other person or organization, because of a known or suspected "defect" in "your product", or a known or suspected "product tampering", which has caused or is reasonably expected to cause "bodily injury" or physical injury to tangible property.
- d. "Product withdrawal expenses" means those reasonable and necessary extra expenses, listed below paid and directly related to a "product withdrawal":
 - (1) Costs of notification;
 - (2) Costs of stationery, envelopes, production of announcements and postage or facsimiles;
 - (3) Costs of overtime paid to your regular non-salaried employees and costs incurred by your employees, including costs of transportation and accommodations;
 - (4) Costs of computer time;
 - (5) Costs of hiring independent contractors and other temporary employees;
 - (6) Costs of transportation, shipping or packaging;
 - (7) Costs of warehouse or storage space; or

- (8) Costs of proper disposal of "your products", or products that contain "your products", that cannot be reused, not exceeding your purchase price or your cost to produce the products; but "product withdrawal expenses" does not include costs of the replacement, repair or redesign of "your product", or the costs of regaining your market share, goodwill, revenue or profit.
- e. "Seller" means a person or organization that manufactures, sells or distributes goods or products. "Seller" does not include a "contractor" as defined elsewhere in this endorsement.

The insurance under COVERAGE F does not apply if a loss is paid under COVERAGE G.

COVERAGE G. CONTRACTORS ERRORS AND OMISSIONS

1. Insuring Agreement

If you are a "contractor", we will pay those sums that you become legally obligated to pay as damages because of "property damage" to "your product", "your work" or "impaired property", due to faulty workmanship, material or design, or products including consequential loss, to which this insurance applies. The damages must have resulted from your negligent act, error or omission while acting in your business capacity as a contractor or subcontractor or from a defect in material or a product sold or installed by you while acting in this capacity. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

We have no duty to investigate or defend claims or "suits" covered by this Contractors Errors or Omissions coverage.

This coverage applies only if the "property damage" occurs in the "coverage territory" during the policy period.

This coverage does not apply to additional insureds, if any.

Supplementary Payments – Coverage A and B do not apply to Coverage G. Contractors Errors and Omissions.

2. Exclusions

This insurance does not apply to:

- a. "Bodily injury" or "personal and advertising injury".
- b. Liability or penalties arising from a delay or failure to complete a contract or project, or to complete a contract or project on time.
- c. Liability because of an error or omission:
 - (1) In the preparation of estimates or job costs;
 - (2) Where cost estimates are exceeded;
 - (3) In the preparation of estimates of profit or return on capital;
 - (4) In advising or failure to advise on financing of the work or project; or
 - (5) In advising or failing to advise on any legal work, title checks, form of insurance or suretyship.
- d. Any liability which arises out of any actual or alleged infringement of copyright or trademark or trade dress or patent, unfair competition or piracy, or theft or wrongful taking of concepts or intellectual property.
- e. Any liability for damages:
 - (1) From the intentional dishonest, fraudulent, malicious or criminal acts of the Named Insured, or by any partner, member of a limited liability company, or executive officer, or at the direction of any of them; or
 - (2) Which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually expected or intended.

- f. Any liability arising out of manufacturer's warranties or guarantees whether express or implied.
- g. Any liability arising from "property damage" to property owned by, rented or leased to the insured.
- h. Any liability incurred or "property damage" which occurs, in whole or in part, before you have completed "your work." "Your work" will be deemed completed at the earliest of the following times:
 - (1) When all of the work called for in your contract or work order has been completed;
 - (2) When all the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
 - (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service or maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as complete.

- i. Any liability arising from "property damage" to products that are still in your physical possession.
- j. Any liability arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
 - (1) Providing engineering, architectural or surveying services to others; and
 - (2) Providing or hiring independent professionals to provide engineering, architectural or surveying services in connection with construction work you perform.

Professional services include the preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications. Professional services also include supervisory or inspection activities performed as part of any related architectural or engineering activities.

But, professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with construction work you perform.

- k. Your loss of profit or expected profit and any liability arising therefrom.
- l. "Property damage" to property other than "your product," "your work" or "impaired property."
- m. Any liability arising from claims or "suits" where the right of action against the insured has been relinquished or waived.
- n. Any liability for "property damage" to "your work" if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
- o. Any liability arising from the substitution of a material or product for one specified on blueprints, work orders, contracts or engineering specifications unless there has been written authorization, or unless the blueprints, work orders, contracts or engineering specifications were written by you, and you have authorized the changes.
- p. Liability of others assumed by the insured under any contract or agreement, whether oral or in writing. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

3. For the purposes of Coverage G, the following definition is added to the Definitions section:

- a. "Contractor" means a person or organization engaged in activities of building, clearing, filling, excavating or improvement in the size, use or appearance of any structure or land. "Contractor" does not include a "seller" as defined elsewhere in this endorsement.

4. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. The limits of insurance will not be reduced by the application of the deductible amount.

We may pay any part or all of the deductible amount to effect settlement of any claim or "suit", and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

5. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance under COVERAGE G does not apply if a loss is paid under COVERAGE F.

COVERAGE H. LOST KEY COVERAGE

1. Insuring Agreement

We will pay those sums, subject to the limits of liability described in SECTION III LIMITS OF INSURANCE in this endorsement and the deductible shown below, that you become legally obligated to pay as damages caused by an "occurrence" and due to the loss or mysterious disappearance of keys entrusted to or in the care, custody or control of you or your "employees" or anyone acting on your behalf. The damages covered by this endorsement are limited to the:

- a. Actual cost of the keys;
- b. Cost to adjust locks to accept new keys; or
- c. Cost of new locks, if required, including the cost of installation.

2. Exclusions

This insurance does not apply to:

- a. Keys owned by any insured, employees of any insured, or anyone acting on behalf of any insured;
- b. Any resulting loss of use; or
- c. Any of the following acts by any insured, employees of any insured, or anyone acting on behalf of any insured:
 - 1) Misappropriation;
 - 2) Concealment;
 - 3) Conversion;
 - 4) Fraud; or
 - 5) Dishonesty.

3. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$1,000. The limits of insurance will not be reduced by the application of the deductible amount.

We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

EXPANDED COVERAGE FOR TENANT'S PROPERTY AND PREMISES RENTED TO YOU

The first paragraph after subparagraph (6) in Exclusion j., Damage to Property is amended to read as follows:

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section **III** – Limits Of Insurance.

SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGE A and B is amended as follows:

All references to SUPPLEMENTARY PAYMENTS – COVERAGES A and B are amended to SUPPLEMENTARY PAYMENTS – COVERAGES A, B, D, E, G, and H.

1. Cost of Bail Bonds

Paragraph 1.b. is replaced with the following:

- b. Up to \$2,500 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.

2. Loss of Earnings

Paragraph 1.d. is 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 \$500 a day because of time off from work.

SECTION II – WHO IS AN INSURED is amended as follows:

1. Incidental Malpractice

Paragraph 2.a.(1)(d) is replaced with the following:

- (d) Arising out of his or her providing or failing to provide professional health care services. However, this exclusion does not apply to a nurse, emergency medical technician or paramedic employed by you to provide medical services, unless:
 - (i) You are engaged in the occupation or business of providing or offering medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction; or
 - (ii) The “employee” has another insurance that would also cover claims arising under this provision, whether the other insurance is primary, excess, contingent or on any other basis.

2. Broadened Who Is An Insured

The following are added to Paragraph 2.:

Subsidiaries

- e. Your subsidiaries if:
 - (1) They are legally incorporated entities; and
 - (2) You own more than 50% of the voting stock in such subsidiaries as of the effective date of this policy. If such subsidiaries are not shown in the Declarations, you must report them to us within 180 days of the inception of your original policy.

Additional Insureds

- f. Any person or organization described in paragraphs g. through k. below whom you are required to add as an additional insured on this policy under a written contract or agreement in effect during the term of this policy, provided the written contract or agreement was executed prior to the “bodily injury”, “property damage” or “personal and advertising injury” for which the additional insured seeks coverage.

However, the insurance afforded to such additional insured(s):

- (1) Only applies to the extent permitted by law;
- (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured;
- (3) Will not be broader than that which is afforded to you under this policy;
- (4) Is subject to the conditions described in paragraphs g. through k. below; and
- (5) Nothing herein shall extend the term of this policy.

g. Owner, Lessor or Manager of Premises

If the additional insured is an owner, lessor or manager of premises, such person or organization shall be covered only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part, by you or those acting on your behalf in connection with the ownership, maintenance or use of that part of any premises leased to you and subject to the following additional exclusions:

- (1) Any “occurrence” that takes place after you cease to occupy those premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

h. State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations

If the additional insured is the state or any political subdivision, the state or political subdivision shall be covered only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit or authorization. This insurance does not apply to:

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

i. Lessor of Leased Equipment

If the additional insured is a lessor of leased equipment, such lessor shall be covered 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). 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.

j. Mortgagee, Assignee, or Receiver

If the additional Insured is a mortgagee, assignee, or receiver of premises, such mortgagee, assignee or receiver of premises is an additional insured 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.

k. Vendor

If the additional insured is a vendor, such vendor is an additional insured only with respect to liability for “bodily injury” or “property damage” caused by “your products” which are distributed or sold in the regular course of the vendor’s business, subject to the following additional exclusions:

- (1) The insurance afforded to 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. This exclusion does not apply to liability for damages that the vendor would have in absence of the contract or agreement.
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in “your 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 distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the 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 the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of 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 the 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.

3. Newly Formed or Acquired Organizations

Paragraph 3. is amended as follows:

- a. Coverage under this provision is afforded until the end of the policy period.
- d. Coverage A does not apply to product recall expense arising out of any withdrawal or recall that occurred before you acquired or formed the organization.

SECTION III – LIMITS OF INSURANCE is amended as follows:

1. Paragraph 2. is replaced with the following:

- 2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";
 - c. Damages under Coverage B;
 - d. Voluntary "property damage" payments under Coverage D;
 - e. Care, Custody or Control damages under Coverage E.; and
 - f. Lost Key Coverage under Coverage H.

2. Paragraph 5. is replaced with the following:

- 5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A;
 - b. Medical expenses under Coverage C;
 - c. Voluntary "property damage" payments under Coverage D;
 - d. Care, Custody or Control damages under Coverage E;
 - e. Limited Product Withdrawal Expense under Coverage F;
 - f. Contractors Errors and Omissions under Coverage G.; and,
 - g. Lost Key Coverage under Coverage H.

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

3. Paragraph 6. is replaced with the following:

6. Subject to Paragraph 5. above the Damage To Premises Rented To You Limit 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 or explosion, while rented to you or temporarily occupied by you with permission of the owner.

The Damage to Premises Rented to You Limit is the higher of the Each Occurrence Limit shown in the Declarations or the amount shown in the Declarations as Damage To Premises Rented To You Limit.

4. Paragraph 7. is replaced with the following:

7. Subject to Paragraph 5. above, the higher of \$10,000 or the Medical Expense Limit shown in the Declarations is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

5. Paragraph 8. is added as follows:

8. Subject to Paragraph 5. above, the most we will pay under Coverage D. Voluntary Property Damage for loss arising out of any one "occurrence" is \$1,500. The most we will pay in any one-policy period, regardless of the number of claims made or suits brought, is \$3,000.

6. Paragraph 9. is added as follows:

9. Subject to Paragraph 5. above, the most we will pay under Coverage E. Care, Custody or Control for "property damage" arising out of any one "occurrence" is \$1,000. The most we will pay in any one-policy period, regardless of the number of claims made or suits brought, is \$5,000.

7. Paragraph 10. is added as follows:

10. Subject to Paragraph 5. above, the most we will pay under Coverage F. Limited Product Withdrawal Expense for "product withdrawal expenses" in any one-policy period, regardless of the number of insureds, "product withdrawals" initiated or number of "your products" withdrawn is \$10,000.

8. Paragraph 11. is added as follows:

11. Subject to Paragraph 5. above, the most we will pay under Coverage G. Contractors Errors and Omissions for damage in any one-policy period, regardless of the number of insureds, claims or "suits" brought, or persons or organizations making claim or bringing "suits" is \$10,000.

For errors in contract or job specifications or in recommendations of products or materials to be used, this policy will not pay for additional costs of products and materials to be used that would not have been incurred had the correct recommendations or specifications been made.

9. Paragraph 12. is added as follows:

12. Subject to Paragraph 5. above, the most we will pay under Coverage H., Lost Key Coverage for damages arising out of any one occurrence is \$50,000.

10. Paragraph 13. is added as follows:

13. The General Aggregate Limit applies separately to:

- a. Each of your projects away from premises owned by or rented to you; or
- b. Each "location" owned by or rented to you.

"Location" as used in this paragraph means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

11. Paragraph 14. is added as follows:

14. With respect to the insurance afforded to any additional insured provided coverage under this endorsement:

If coverage provided to the 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;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

1. Subparagraph 2.a. of Duties In The Event Of Occurrence, Offense, Claim, or Suit is replaced with the following:

- a. 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. This requirement applies only when the “occurrence” or offense is known to the following:
 - (1) An individual who is the sole owner;
 - (2) A partner, if you are a partnership or joint venture;
 - (3) An “executive officer” or insurance manager, if you are a corporation;
 - (4) A manager, if you are a limited liability company;
 - (5) A person or organization having proper temporary custody of your property if you die;
 - (6) The legal representative of you if you die; or
 - (7) A person (other than an “employee”) or an organization while acting as your real estate manager.

To the extent possible, notice should include:

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

2. The following is added to Subparagraph 2.b. of Duties In The Event Of Occurrence, Offense, Claim, or Suit:

The requirement in 2.b.applies only when the “occurrence” or offense is known to the following:

- (1) An individual who is the sole owner;
- (2) A partner or insurance manager, if you are a partnership or joint venture;
- (3) An “executive officer” or insurance manager, if you are a corporation;
- (4) A manager or insurance manager, if you are a limited liability company;
- (5) Your officials, trustees, board members or insurance manager, if you are a not-for-profit organization;
- (6) A person or organization having proper temporary custody of your property if you die;
- (7) The legal representative of you if you die; or
- (8) A person (other than an “employee”) or an organization while acting as your real estate manager.

3. The following is added to paragraph 2. of Duties in the Event of Occurrence, Offense, Claim or Suit:

- e. If you report an “occurrence” to your workers compensation carrier that develops into a liability claim for which coverage is provided by the Coverage Form, failure to report such an “occurrence” to us at the time of the “occurrence” shall not be deemed a violation of paragraphs a., b., and c. above. However, you shall give written notice of this “occurrence” to us as soon as you become aware that this “occurrence” may be a liability claim rather than a workers compensation claim.

4. Paragraph 6. is replaced with the following:

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

Any error or omission in the description of, or failure to completely describe or disclose any premises, operations or products intended to be covered by the Coverage Form will not invalidate or affect coverage for those premises, operations or products, provided such error or omission or failure to completely describe or disclose premises, operations or products was not intentional.

You must report such error or omission to us as soon as practicable after its discovery. However, this provision does not affect our right to collect additional premium charges or exercise our right of cancellation or nonrenewal.

5. The following is added to paragraph 8. Transfer Of Rights Of Recovery Against Others To Us:

We waive any right of recovery against any person or organization, because of any payment we make under this Coverage Part, to whom the insured has waived its right of recovery in a written contract or agreement. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.

6. Paragraph 10. is added as follows:

10. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in the applicable state(s).

AUTO FIRST CHOICE COVERAGE ENDORSEMENT

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO FIRST CHOICE COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

NOTE: The following are additions, replacements and amendments to the Business Auto Coverage Form, and will apply unless excluded by separate endorsement(s) to the Business Auto Coverage Form.

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

The Business Auto Coverage Form is amended as follows:

SECTION II – COVERED AUTOS LIABILITY COVERAGE is amended as follows:

A. Paragraph 1. Who Is An Insured in section **A. Coverage** is amended by the addition of the following:

- d. Any legally incorporated subsidiary of yours in which you own more than 50% of the voting stock on the effective date of this coverage form. However, “insured” does not include any subsidiary that is an “insured” under any other liability policy or would be an “insured” under such a policy but for its termination or the exhaustion of its limits of insurance. In order for such subsidiaries to be considered insured under this policy, you must notify us of such subsidiaries within 60 days of policy effective date.
- e. Any organization you newly acquire or form during the policy period, other than a partnership or joint venture, and over which you maintain sole ownership or a majority interest. However, coverage under this provision:
 - (1) Does not apply if the organization you acquire or form is an “insured” under another liability policy or would be an “insured” under such a policy but for its termination or the exhaustion of its limits of insurance;
 - (2) Does not apply to “bodily injury” or “property damage” that occurred before you acquired or formed the organization; and
 - (3) Is afforded only for the first 90 days after you acquire or form the organization or until the end of the policy period, whichever comes first.
- f. Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the “bodily injury” or “property damage” occurs and that is in effect during the policy period, to be named as an additional insured is an “insured” for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an “insured” under the Who Is An Insured provision contained in Section II.
- g. Any “employee” of yours using:
 - (1) a covered “auto” you do not own, hire or borrow, or a covered “auto” not owned by an “employee” or a member of his or her household, while performing duties related to the conduct of your business or your personal affairs; or
 - (2) 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. However, your “employee” does not qualify as an insured under this paragraph (2) while using a covered “auto” rented from you or from any member of the “employee’s” household
- h. Your members, if you are a limited liability company, while using a covered “auto” you do not own, hire or borrow, while performing duties related to the conduct of your business or your personal affairs.

B. Paragraphs (2) and (4) under section 2. **Coverage Extensions, a. Supplementary Payments** are deleted and replaced by the following:

- (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" solely at our request, including actual loss of earnings up to \$500 a day because of time off from work.

C. Paragraph 5. under section B. **Exclusions** is deleted and replaced by the following:

5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of a fellow "employee's" employment or while performing duties related to the conduct of your business. However, this exclusion does not apply to your "employees" that are officers or managers if the "bodily injury" results from the use of a covered "auto" you own, hire or borrow. Coverage is excess over any other collectible insurance; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

SECTION III – PHYSICAL DAMAGE COVERAGE is amended as follows:

A. Paragraph 4. **Coverage Extensions** under section A. **Coverage** is deleted and replaced by the following:

4. Coverage Extensions

a. Transportation Expenses

We will pay up to \$50 per day to a total maximum of \$1,500 for temporary transportation expense incurred by you due to covered loss to any covered auto. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 24 hours after a loss and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

b. Loss of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for hired "autos";
- (2) Specified Causes of Loss only if the Declarations indicate that Specified Causes of Loss Coverage is provided for hired "autos"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for hired "autos".

However, the most we will pay for any expenses for loss of use to any one vehicle is \$75 per day, to a total maximum of \$1,500.

B. The following is added to paragraph 4. **Coverage Extensions** under section A. **Coverage**:

c. Fire Department Service Charge

When a fire department is called to save or protect a covered "auto", its equipment, its contents, or occupants from a covered cause of loss, we will pay up to \$1,000 for your liability for fire department service charges assumed by contractor or agreement prior to loss.

No deductible applies to this additional coverage.

d. Auto Loan/Lease Gap Coverage

The following provisions apply:

- (1) If a long term leased "auto", under an original lease agreement, is a covered "auto" under this coverage form and the lessor of the covered "auto" is named as an additional insured under this policy, in the event of a total loss to the leased covered "auto", we will pay any unpaid amount due on the lease, less the amount paid under the Physical Damage Coverage Section of the policy; and less any:
 - (a) Overdue lease or loan payments including penalties, interest, or other charges resulting from overdue payments at the time of the "loss";
 - (b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - (c) Security deposits not refunded by the lessor;
 - (d) Costs for extended warranties, Credit Life Insurance, Health Accident or Disability Insurance purchased with the loan or lease; and
 - (e) Carry-over balances from previous loans or leases.
- (2) If an owned "auto" is a covered "auto" under this coverage form and the loss payee of the covered "auto" is named a loss payee under this policy, in the event of a total loss to the covered "auto", we will pay any unpaid amount due on the loan, less the amount paid under the Physical Damage Coverage Section of the policy; and less any:
 - (a) Overdue loan payments at the time of the "loss";
 - (b) Costs for extended warranties, Credit Life Insurance, Health Accident or Disability Insurance purchased with the loan; and
 - (c) Carry-over balances from previous loans.

C. Paragraph 3. under section B. Exclusions is deleted and replaced by the following:

3. We will not pay for "loss" due and confined to:
 - a. Wear and tear, freezing, mechanical or electrical breakdown
 - b. Blowouts, punctures or other road damage to tires

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

However, this exclusion does not include the discharge of an airbag in a covered "auto" you own that inflates due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b and A.1.c.**but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated

We will pay up to a maximum of \$1,000 for any one "loss".

D. Section D. Deductible is deleted and replaced by the following:

D. Deductible

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations prior to the application of the Limit of Insurance provided that:

1. The Comprehensive or Specified Causes of Loss Coverage deductible applies only to "loss" caused by:
 - a. Theft or mischief or vandalism; or
 - b. All perils.

2. Regardless of the number of covered "autos" damaged or stolen, the maximum deductible applicable for all "loss" in any one event caused by:
 - a. Theft or mischief or vandalism; or
 - b. All perils;will be equal to five times the highest deductible applicable to any one covered "auto" on the Policy for Comprehensive or Specified Causes of Loss Coverage. The application of the highest deductible used to calculate the maximum deductible will be made regardless of which covered "autos" were damaged or stolen in the "loss".
3. Any Comprehensive Coverage deductible shown in the Declarations does not apply to:
 - a. "Loss" arising out of theft of your vehicle if your vehicle is equipped with an active GPS tracking system.
 - b. Glass damage if repaired rather than replaced.

SECTION IV – BUSINESS AUTO CONDITIONS is amended as follows:

- A. The following is added to paragraph a. under section **A. Loss Conditions, 2. Duties in the Event of Accident, Claim, Suit or Loss**:

This duty applies when the "accident", claim, "suit" or "loss" is first known to:

- (a) You, if you are an individual;
- (b) A partner, if you are a partnership;
- (c) An executive officer or insurance manager, if you are a corporation; or
- (d) A member or manager, if you are a limited liability company.

- B. Condition **5. Transfer of Rights of Recovery against Others to Us** under section **A. Loss Conditions** is deleted and replaced by the following:

5. Transfer of Rights of Recovery against Others to Us

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. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. However, if the insured has waived rights to recover through a written contract, or if your work was commenced under a letter of intent or work order, subject to a subsequent reduction in writing of such a waiver with customers whose customary contracts require a waiver, we waive any right of recovery we may have under this coverage form.

- C. The following is added to Condition **2. Concealment, Misrepresentation or Fraud** under section **B. General Conditions**:

However, if you unintentionally fail to disclose any hazards at the inception of your policy, we will not deny coverage under this coverage form because of such failure. This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

- D. Paragraph b. of Condition **5. Other Insurance** under section **B. General Conditions** is deleted and replaced by the following:

- b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own;
 - (1) Any covered "auto" you lease, hire, rent or borrow; and
 - (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "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", nor is any "auto" you hire from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

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

All persons or organizations that, in a written contract executed by both parties prior to the date of the injury covered by this policy, require you to obtain this agreement from us.

NOTE: This endorsement does not apply to any work completed at job sites located in Kentucky.

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 **11-20-22** Policy No. **WC0100063643-03**
Insured **PRECISE CONCRETE WORKS LLC**
Insurance Company **Monroe Guaranty Insurance Company**

Endorsement No.
Premium \$ **Incl .**

Countersigned By _____