



**Roll Call Number**

22-0646

**Agenda Item Number**

60A

DATE April 18, 2022

APPROVAL OF CONTRACT AND BOND  
AND PERMISSION TO SUBLET ON  
POLICE STATION EXTERIOR MASONRY REPAIR  
\$244,000.00

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the contract and bond, in the amount of \$244,000.00, executed by TNT Tuckpointing and Building Restoration, L.L.C., Joshua L. Smyser, Member, 202 Iowa Street, Stockton, IA, 52769 dated April 18, 2022, for the construction of the following improvement:

Police Station Exterior Masonry Repair, 102022001

The improvement includes tuckpointing of joints and stone repair to the Police Station buildings; all in accordance with the contract documents, including Plan File No. 634-042/048, located at 25 E. 1st Street, Des Moines, Iowa

the same to be performed in accordance with the plans and specifications which have been heretofore approved by this Council, be and the same are hereby approved, subject to receipt of the contract and bond approved as to form by the Legal Department, and certificate of insurance acceptable to the Engineering Departments. The attached "Contractor's Anticipated DBE/TSB Utilization" shows the Contractor's efforts to solicit DBE/TSB Participation in accordance with the Disadvantaged Business Enterprise/Targeted Small Business (DBE/TSB) Program.

BE IT FURTHER RESOLVED: That the Mayor be and is hereby authorized and directed to execute said contract on behalf of the City of Des Moines, subject to receipt of the contract and bond approved as to form by the Legal Department, and certificate of insurance acceptable to the Engineering Department, and the City Clerk, be and is hereby authorized and directed to attest to same. No contract shall be deemed to exist between the City of Des Moines and said Bidder until said contract has been executed by the Bidder, and shall have been approved by this Council and executed by the Mayor and attested to by the City Clerk.

BE IT FURTHER RESOLVED: That after said contract has been executed by the Mayor, the City Clerk be and is hereby authorized and directed to return the Contractor's bid security in accordance with the Instructions to Bidders.

BE IT FURTHER RESOLVED: That the attached Permission to Sublet form, from said Contractor requesting permission to sublet designated items, be and is hereby approved, subject to receipt of the contract and bond approved as to form by the Legal Department, and certificate of insurance acceptable to the Engineering Department; and each subcontractor is hereby granted permission to work on said improvement.



**Roll Call Number**

22-0646

**Agenda Item Number**

60A

DATE April 18, 2022

BE IT FURTHER RESOLVED: That the Director of Finance is hereby authorized to encumber this contract amount against the funds as identified below, and to acquire Builder's Risk Insurance, if appropriate, for the above referenced improvement.

(City Council Communication Number 22-165 attached)

Moved by Gatto to adopt. Second by Boesen

FORM APPROVED

FUNDS AVAILABLE

s/Kathleen Vanderpool  
Kathleen Vanderpool  
Deputy City Attorney

s/Nickolas J. Schaul  
Nickolas J. Schaul  
Director of Finance

SLN  
PW

Funding Source: 2022-23 CIP, Page 49, Police Building Improvements, BL062, G.O. Bonds

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
MANDELBAUM	✓			
SHEUMAKER	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

I, P. Kay Cmelik, City Clerk of said City Council, hereby certify that at a meeting of the City Council, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

J. M. Franklin Cownie  
Mayor

P. Kay Cmelik  
City Clerk

Department of Engineering  
City of Des Moines, Iowa



**CONTRACTOR'S ANTICIPATED DBE/TSB UTILIZATION**

**Police Station Exterior Masonry Repair**

**Activity ID 102022001**

On March 22, 2022, TNT Tuckpointing and Building Restoration, L.L.C., Joshua L. Smyser, Member, 202 Iowa Street, Stockton, IA 52769 submitted a proposal for construction of the Police Station Exterior Masonry Repair, Activity ID 102022001, which the City Council has determined to be the lowest responsible, responsive bid for said project in the amount of \$244,000.00. The proposal included a statement that the Disadvantaged Business Enterprise/Targeted Small Business (DBE/TSB) Program shall not apply to this project.

The Engineering Department has prepared this report summarizing the information that TNT Tuckpointing and Building Restoration, L.L.C., has submitted indicating that it anticipates utilizing the following DBE/TSB companies on this project:

<u>DBE/TSB Name</u>	<u>Description of Work</u>	<u>Estimated Amount</u>
None	N/A	\$0.00
	Estimated DBE/TSB Participation	\$0.00
	TNT Tuckpointing and Building Restoration, L.L.C. Amount	\$244,000.00
	Percentage of DBE/TSB Participation	0.00%

*Copy*  
*60A*

### PERMISSION TO SUBLET

**Project** Police Station Exterior Masonry Repair  
**Contractor** TNT Tuckpointing and Building Restoration, L.L.C.  
**Federal Tax ID** 391898798      **Contract No.** 15966      **Sublet Request No.** 1

<b>ITEM TO BE SUBLET</b>	<b>ORGANIZATION TO PERFORM WORK</b>	<b>DBE Y/N</b>	<b>COST OF SPECIALTY ITEMS</b>	<b>TOTAL COST OF WORK SUBLET</b>
Sheet Metal Flashing	Academy Roofing & Sheet Metal of the Midwest, Inc. dba Academy Roofing & Sheet Metal Co. 6361 NE 14th Street Des Moines, IA 50313 (515) 964-2345 Federal Tax ID 262559067	No		\$130,000.00

	<b>Previous Request</b>	<b>This Request</b>	<b>Total To Date</b>	
Cost of Items Sublet		\$130,000.00	\$130,000.00	(a)
Cost of Specialty Items Sublet				(b)
Cost of Sublet Items Less Specialty Items				(c)
Contract Amount			\$244,000.00	(d)
Contract Amount Less Total Specialty Items (d-			\$244,000.00	(e)
Percentage of Contract Sublet to Date (c/e)			53.28%	

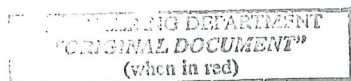
The prime contractor's request for Permission to Sublet the above items of work is approved with the understanding that the prime contractor shall be held responsible for the subcontractors' full compliance of all terms of the contract.

Attachment: Contractor's Letter  
Requesting Subletting

Form Routing: Project Engr. - City Engr. -  
Engr. Admin. - City Clerk/City Manager -  
Engr. Admin. - Distribution

Form Distribution Original - Project File  
Copy - Project Engineer  
Copy - Prime Contractor

22-      4/18/22  
Roll Call No.      Date



**Stroud, Jackie L.**

---

**From:** Josh Smyser <josh@tnttuckpointing.com>  
**Sent:** Monday, March 28, 2022 7:53 AM  
**To:** Knudtson, Jake P.  
**Subject:** Sheet metal subcontractor for DM PD

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jake,

Our sheet metal contractor is:

Academy Sheet Metal - \$130,000

Will need to revisit the sheet metal flashing material though as the material specified is only supplied by one manufacturer and has a current lead time of 22 weeks.

Thanks!

**Josh Smyser**  
**Owner, TNT Tuckpointing & Building Restoration, LLC**  
**Office: 563-785-0120 Fax: 888-461-7027**

ENGINEERING DEPARTMENT  
"ORIGINAL DOCUMENT"  
(when in red)

ENGINEERING DEPARTMENT  
CITY OF DES MOINES, IOWA

CONTRACT NO.  
DATE  
ROLL CALL NO.

15966  
4/18/2022  
22-0646

**CONTRACT**

THIS CONTRACT, made and entered into at Des Moines, Iowa, on April 18, 2022, by and between the City of Des Moines, by its Mayor, upon order of its City Council, hereinafter called the "Jurisdiction", and TNT Tuckpointing and Building Restoration, L.L.C., hereinafter called the "Contractor".

WITNESSETH:

The Contractor hereby agrees to complete the work comprising the below referenced improvement as specified in the contract documents, which are officially on file with the Jurisdiction, in the Des Moines City Engineer's Office. This contract includes all contract documents. The work under this contract shall be constructed in accordance with the SUDAS Standard Specifications, 2021 Edition; and as further modified by the supplemental specifications and special provisions included in said contract documents, and the Contract Attachments attached hereto. The Des Moines City Engineer is the Engineer. The Contractor further agrees to complete the work in strict accordance with said contract documents, and to guarantee the work as required by law, for the time required in said contract documents, after its acceptance by the Jurisdiction.

This contract is awarded and executed for completion of the work specified in the contract documents for the bid prices shown on the Contract Attachment: Item 2: Bid Items, Quantities and Prices which were proposed by the Contractor in its proposal submitted in accordance with the Notice to Bidders for the following described improvements:

Police Station Exterior Masonry Repair, 102022001

The improvement includes tuckpointing of joints and stone repair to the Police Station buildings; all in accordance with the contract documents, including Plan File No. 634-042/048, located at 25 E. 1st Street, Des Moines, Iowa

The Contractor agrees to perform said work for and in consideration of the Jurisdiction's payment of the bid amount of Two Hundred Fourty Four Thousand and 00/100 dollars (\$244,000.00) which amount shall constitute the required amount of the performance, payment, and maintenance bond. The Contractor hereby agrees to commence work under this contract on or after the date a written Notice to Proceed is issued by the Jurisdiction and to fully complete the project not later than September 2, 2022; and to pay liquidated damages for noncompliance with said completion provisions in the amount of Five Hundred and 00/100 dollars (\$500.00), for each calendar day thereafter that the work remains incomplete.

IN WITNESS WHEREOF, the Parties hereto have executed this instrument, in triplicate on the date first shown written.

JURISDICTION:

By T. M. Franklin Cownie  
 T. M. Franklin Cownie, Mayor

(Seal)  
 ATTEST:

\_\_\_\_\_  
 P. Kay Cmelik, City Clerk

FORM APPROVED BY:  
Kathleen Vanderpool  
 Kathleen Vanderpool, Deputy City Attorney

CONTRACTOR:

TNT Tuckpointing and Building Restoration, L.L.C.  
 Contractor

By JLS  
 Signature Joshua L. Smyser

\_\_\_\_\_  
 Member

\_\_\_\_\_  
 Title

202 Iowa Street  
 \_\_\_\_\_  
 Street Address

Stockton, IA  
52769  
 \_\_\_\_\_  
 City, State - Zip Code

(563) 785-0120 / josh@tnttuckpointing.com  
 Telephone Number / Email Address





**CONTRACT ATTACHMENT: ITEM 1: GENERAL**

1. The Contractor acknowledges and agrees:
  - To comply with the Equal Employment Opportunity Program included in the City of Des Moines Contract Compliance Program, which is available at the following website [http://www.dmgov.org/Departments/Engineering/PDF/Contract%20Compliance%20Program%20\(June%202017\).pdf](http://www.dmgov.org/Departments/Engineering/PDF/Contract%20Compliance%20Program%20(June%202017).pdf) or from the City Engineer's Office.
  - To comply with any and all applicable provisions of the Des Moines Human Rights Ordinance, Chapter 62, of the Des Moines Municipal Code.
  - Not to discriminate against any employees, or applicants for employment, on the basis of age, race, religion, creed, color, sex, sexual orientation, national origin, ancestry, disability, familial status or gender identity.
  - To include this provision in all subcontracts for this project.
2. The Contractor agrees to comply with the requirements of the City of Des Moines Contract Compliance Program as referenced in the proposal. Final acceptance of the project will not be made until the Contractor has submitted to the City Engineer a notarized summary of payments to and scope of work by all DBE/TSB subcontractors.
3. The City of Des Moines Master Construction Safety Packet (Safety Plan) is available at <http://www.dmgov.org/Departments/Engineering/PDF/MasterConstructionSafetyPacket.pdf> and is also available upon request from the Engineering Department. The Engineering Department will make available a copy of the City of Des Moines Safety Plan to the Contractor when the contract is awarded. The Contractor understands and agrees that said Safety Plan is for the Contractor's information only and that it is the Contractor's sole responsibility to provide, or make available, this safety information to all its Subcontractors.
4. The Contractor understands and agrees that the construction of the work included in this contract is by its nature dangerous work. The Contractor agrees:
  - That the Contractor should have a safety program; however, the Contractor need not submit a safety program to the City of Des Moines, and City of Des Moines staff will not review or approve the Contractor's safety program. The City of Des Moines assumes that the Contractor will maintain a safe worksite; however, City of Des Moines staff will not intrude in the Contractor's responsibility for safety issues.
  - That until the work is accepted by the Jurisdiction; the work shall be in the custody of and under the charge, care, and control of the Contractor.
  - That the Contractor is responsible for the project area or work site.
  - That the Contractor is solely responsible for the safety of everyone on its work site.
  - That it is the Contractor's sole responsibility to provide as safe a working site as possible given the nature of the work.
  - That it is the Contractor's responsibility to notify and advise its employees, subcontractors, suppliers, and everyone on the worksite of the dangers associated with the work, and provide them with appropriate safety information to protect them from those dangers.
5. The Contractor acknowledges and agrees that no contract shall be binding upon the City of Des Moines until said contract has been executed by the Bidder, and shall have been approved by the City Council and executed by the Mayor and attested to by the City Clerk.

6. The Contractor agrees that sixty (60) days shall constitute a reasonable time within which it shall be required to make progress payments or final payment to subcontractors after each subcontractor's satisfactory performance of its work, all as required by Section 573.12 2.b.(2) of the Code of Iowa.

**CONTRACT ATTACHMENT: ITEM 2 - BID ITEMS, QUANTITIES AND PRICES: 1 of 1**

This contract is awarded and executed for completion of the work specified in the contract documents for the bid price tabulated below as proposed by the contractor in its proposal submitted in accordance with notice to bidders and notice of public hearing. All quantities are subject to revision by the Jurisdiction. Quantity changes which amount to twenty (20) percent or less of the amount bid shall not affect the unit bid price of that item.

Activity ID 10-2022-001

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNITS</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
1 *	Police Station Exterior Masonry Repair, complete as specified and described in contract documents.	LS	1.00	\$240,000.00	\$240,000.00
2 *	Stone Repointing, complete as specified and described in contract documents.	LF	100.00	\$40.00	\$4,000.00
TOTAL CONSTRUCTION COST					\$244,000.00
					*TOTAL= \$244,000.00

\*Item does not have to be included in 4-year maintenance bond but shall be covered by a 1-year maintenance bond.

NOTE: It is understood that the above quantities are estimated for the purpose of this bid. All quantities are subject to revision by the City. Quantity changes which amount to twenty (20) percent or less of the total bid shall not affect the unit price of that item.

**PERFORMANCE, PAYMENT & MAINTENANCE BOND**

KNOW ALL BY THESE PRESENTS:

That we, TNT Tuckpointing and Building Restoration, L.L.C. , as Principal (the "Contractor" or "Principal"), and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Des Moines, as Obligee (the "Jurisdiction"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of Two Hundred Forty Four Thousand and 00/100 dollars (\$244,000.00), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representatives and assigns, jointly and severally, firmly by these presents.

The conditions of the above obligations are such that whereas the Contractor entered into a contract with the Jurisdiction, bearing the date of April 18, 2022, (the "Contract") wherein the Contractor undertakes and agrees to construct the following described improvements:

Police Station Exterior Masonry Repair, 102022001

The improvement includes tuckpointing of joints and stone repair to the Police Station buildings; all in accordance with the contract documents, including Plan File No. 634-042/048, located at 25 E. 1st Street, Des Moines, Iowa

and to faithfully perform all the terms and requirements of the Contract within the time specified, in a good and workmanlike manner, and in accordance with the Contract Documents. Provided however, that one year after the date of acceptance by the Jurisdiction as complete, of the work under the above referenced Contract, the maintenance portion of this Bond shall continue in force but the penal sum for maintenance shall be reduced to the sum of zero and 00/100 dollars (\$0.00), which is the cost associated with those items shown on the Proposal and in the Contract which require a maintenance bond period in excess of one year.

It is expressly understood and agreed by the Contractor and Surety that the following provisions are a part of this Bond and are binding upon the Contractor and Surety, to-wit:

1. **PERFORMANCE:** The Contractor shall well and faithfully observe, perform, fulfill and abide by each and every covenant, condition and part of the Contract and Contract Documents, by reference made a part hereof, and shall indemnify and save harmless the Jurisdiction from all outlay and expense incurred by the Jurisdiction by reason of the Contractor's default or failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT:** The Contractor and Surety on this bond hereby agree to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the contract price which the Jurisdiction is required to retain until completion of the improvement, but the Contractor and Surety shall not be liable unless the claims have been established as provided by law. The Contractor and Surety hereby bind themselves to the obligations and conditions set forth in Iowa Code Chapter 573.

3. MAINTENANCE: The Contractor and the Surety shall, at their own expense:
- A. Remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of one (1) year(s) from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of the work;
  - B. Keep all work in continuous good repair; and
  - C. Pay the Jurisdiction's reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's and Surety's obligation extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time the work was accepted.

4. GENERAL: Every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:
- A. To consent without notice to any extension of time to the Contractor in which to perform the Contract;
  - B. To consent without notice to any change in the Contract or Contract Documents, that increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than twenty percent of the total contract price, and that this Bond shall then be released as to such excess increase; and
  - C. To consent without notice that this Bond shall remain in full force and effect until the contract is completed, whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed and liquidated damages are being charged against the Contractor.
5. The Contractor and every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:
- A. That no provision of this Bond or of any other contract shall be valid which limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.
  - B. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the Jurisdiction including interest, benefits and overhead as applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorneys fees (including overhead expenses of the Jurisdiction's staff attorneys), and all costs and expenses of litigation as they are incurred by the Jurisdiction. It is intended the Contractor and Surety will defend and indemnify the Jurisdiction on all claims made against the Jurisdiction on account of Contractor's failure to perform as required in the Contract and Contract Documents, that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the Jurisdiction will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.

- C. In the event the Jurisdiction incurs any "outlay and expense" in defending itself with respect to any claim as to which the Contractor or Surety should have provided the defense, or in the enforcement of the promises given by the Contractor in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the Contractor and Surety in this Bond, the Contractor and Surety agree that they will make the Jurisdiction whole for all such outlay and expense, provided that the Surety's obligation under this Bond shall not exceed 125% of the penal sum of this Bond.

In the event that any actions or proceedings are initiated with respect to this Bond, the parties agree that the venue thereof shall be Polk County, State of Iowa. If legal action is required by the Jurisdiction to enforce the provisions of this Bond or to collect the monetary obligation accruing to the benefit of the Jurisdiction, the Contractor and Surety agree, jointly and severally, to pay the Jurisdiction all outlay and expense incurred by the Jurisdiction. All rights, powers, and remedies of the Jurisdiction hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers and remedies given to the Jurisdiction, by law. The Jurisdiction may proceed against the Surety for any amount guaranteed hereunder whether action is brought against the Contractor or whether or not the Contractor is joined in the action.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall faithfully perform all of the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

When a word, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract, or the Contract Documents; second, if not defined in the Bond, Contract, or Contract Documents, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract and Contract Documents are hereby made a part of this Bond.

Witness our hands, in triplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

<p>PRINCIPAL:</p> <p>TNT Tuckpointing and Building Restoration, L.L.C.</p> <hr/> <p style="text-align: center;">Contractor</p> <p>By _____</p> <p>Signature Joshua L. Smyser</p> <p>Member _____</p> <p style="text-align: center;">Title</p> <p>FORM APPROVED BY:</p>  <p>_____</p> <p>Kathleen Vanderpool Deputy City Attorney</p>	<p>SURETY:</p> <p>_____</p> <p>Surety Company</p> <p>By _____</p> <p>Signature Attorney-in-Fact/Officer</p> <p>_____</p> <p>Name of Attorney-in-Fact/Officer</p> <p>_____</p> <p>Company Name</p> <p>_____</p> <p>Company Address</p> <p>_____</p> <p>City, State Zip Code</p> <p>_____</p> <p>Company Telephone Number</p>
---	---

**NOTE:**

1. All signatures on this performance, payment & maintenance bond must be original signatures in ink; copies or facsimile of any signature will not be accepted.
2. This bond must be sealed with the Surety's raised, embossed seal.
3. The Certificate or Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.
4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.
5. This bond form must be utilized as printed; no additions/deletions/alterations are permitted, other than providing the required information.

**PERFORMANCE, PAYMENT & MAINTENANCE BOND**

**KNOW ALL BY THESE PRESENTS:**

That we, TNT Tuckpointing and Building Restoration, L.L.C. , as Principal (the "Contractor" or "Principal"), and Granite Re, Inc. , as Surety, are held and firmly bound unto the City of Des Moines, as Obligee (the "Jurisdiction"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of Two Hundred Forty Four Thousand and 00/100 dollars (\$244,000.00), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representatives and assigns, jointly and severally, firmly by these presents.

The conditions of the above obligations are such that whereas the Contractor entered into a contract with the Jurisdiction, bearing the date of April 18, 2022, (the "Contract") wherein the Contractor undertakes and agrees to construct the following described improvements:

Police Station Exterior Masonry Repair, 102022001

The improvement includes tuckpointing of joints and stone repair to the Police Station buildings; all in accordance with the contract documents, including Plan File No. 634-042/048, located at 25 E. 1st Street, Des Moines, Iowa

and to faithfully perform all the terms and requirements of the Contract within the time specified, in a good and workmanlike manner, and in accordance with the Contract Documents. Provided however, that one year after the date of acceptance by the Jurisdiction as complete, of the work under the above referenced Contract, the maintenance portion of this Bond shall continue in force but the penal sum for maintenance shall be reduced to the sum of zero and 00/100 dollars (\$0.00), which is the cost associated with those items shown on the Proposal and in the Contract which require a maintenance bond period in excess of one year.

It is expressly understood and agreed by the Contractor and Surety that the following provisions are a part of this Bond and are binding upon the Contractor and Surety, to-wit:

1. **PERFORMANCE:** The Contractor shall well and faithfully observe, perform, fulfill and abide by each and every covenant, condition and part of the Contract and Contract Documents, by reference made a part hereof, and shall indemnify and save harmless the Jurisdiction from all outlay and expense incurred by the Jurisdiction by reason of the Contractor's default or failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT:** The Contractor and Surety on this bond hereby agree to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the contract price which the Jurisdiction is required to retain until completion of the improvement, but the Contractor and Surety shall not be liable unless the claims have been established as provided by law. The Contractor and Surety hereby bind themselves to the obligations and conditions set forth in Iowa Code Chapter 573.





3. **MAINTENANCE:** The Contractor and the Surety shall, at their own expense:
- A. Remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of one (1) year(s) from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of the work;
  - B. Keep all work in continuous good repair; and
  - C. Pay the Jurisdiction's reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's and Surety's obligation extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time the work was accepted.

4. **GENERAL:** Every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:
- A. To consent without notice to any extension of time to the Contractor in which to perform the Contract;
  - B. To consent without notice to any change in the Contract or Contract Documents, that increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than twenty percent of the total contract price, and that this Bond shall then be released as to such excess increase; and
  - C. To consent without notice that this Bond shall remain in full force and effect until the contract is completed, whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed and liquidated damages are being charged against the Contractor.
5. The Contractor and every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:
- A. That no provision of this Bond or of any other contract shall be valid which limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.
  - B. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the Jurisdiction including interest, benefits and overhead as applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorneys fees (including overhead expenses of the Jurisdiction's staff attorneys), and all costs and expenses of litigation as they are incurred by the Jurisdiction. It is intended the Contractor and Surety will defend and indemnify the Jurisdiction on all claims made against the Jurisdiction on account of Contractor's failure to perform as required in the Contract and Contract Documents, that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the Jurisdiction will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.

- C. In the event the Jurisdiction incurs any "outlay and expense" in defending itself with respect to any claim as to which the Contractor or Surety should have provided the defense, or in the enforcement of the promises given by the Contractor in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the Contractor and Surety in this Bond, the Contractor and Surety agree that they will make the Jurisdiction whole for all such outlay and expense, provided that the Surety's obligation under this Bond shall not exceed 125% of the penal sum of this Bond.

In the event that any actions or proceedings are initiated with respect to this Bond, the parties agree that the venue thereof shall be Polk County, State of Iowa. If legal action is required by the Jurisdiction to enforce the provisions of this Bond or to collect the monetary obligation accruing to the benefit of the Jurisdiction, the Contractor and Surety agree, jointly and severally, to pay the Jurisdiction all outlay and expense incurred by the Jurisdiction. All rights, powers, and remedies of the Jurisdiction hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers and remedies given to the Jurisdiction, by law. The Jurisdiction may proceed against the Surety for any amount guaranteed hereunder whether action is brought against the Contractor or whether or not the Contractor is joined in the action.



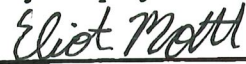
**NOW THEREFORE**, the condition of this obligation is such that if the Principal shall faithfully perform all of the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

When a word, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract, or the Contract Documents; second, if not defined in the Bond, Contract, or Contract Documents, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.



Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract and Contract Documents are hereby made a part of this Bond.

Witness our hands, in triplicate, this 18th day of April, 2022

<p><b>PRINCIPAL:</b></p> <p><u>TNT Tuckpointing and Building Restoration, L.L.C.</u></p> <p style="text-align: center;">Contractor</p> <p>By <u></u></p> <p>Signature <u>Joshua L. Smyser</u></p> <p>Member _____</p> <p style="text-align: center;">Title</p> <p><b>FORM APPROVED BY:</b></p> <p><u></u></p> <p>Kathleen Vanderpool Deputy City Attorney</p>	<p><b>SURETY:</b></p> <p><u>Granite Re, Inc.</u></p> <p>Surety Company</p> <p>By <u></u></p> <p>Signature Attorney-in-Fact/Officer Eliot Motu</p> <p>Name of Attorney-in-Fact/Officer <u>J. Ryan Bonding, Inc.</u></p> <p>Company Name <u>2920 Enloe Street, Suite 103</u></p> <p>Company Address <u>Hudson, WI 54016</u></p> <p>City, State Zip Code <u>(800) 535-0006</u></p> <p>Company Telephone Number</p>
---	---

**NOTE:**

1. All signatures on this performance, payment & maintenance bond must be original signatures in ink; copies or facsimile of any signature will not be accepted.
2. This bond must be sealed with the Surety's raised, embossed seal.
3. The Certificate or Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.
4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.
5. This bond form must be utilized as printed; no additions/deletions/alterations are permitted, other than providing the required information.



**GRANITE RE, INC.**  
**GENERAL POWER OF ATTORNEY**

**Know all Men by these Presents:**

That GRANITE RE, INC., a corporation organized and existing under the laws of the State of MINNESOTA and having its principal office at the City of OKLAHOMA CITY in the State of OKLAHOMA does hereby constitute and appoint:

MICHAEL J. DOUGLAS; CHRIS STEINAGEL; CHRISTOPHER M. KEMP; KARLA HEFFRON; SAMUEL DUCHOW; ROBERT DOWNEY; JULIA DOUGLAS; CONNIE SMITH; KORY MORTEL; ELIOT MOTU its true and lawful Attorney-in-Fact(s) for the following purposes, to wit:

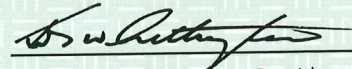
To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said GRANITE RE, INC. a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said GRANITE RE, INC. through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said:

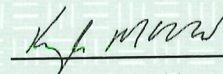
MICHAEL J. DOUGLAS; CHRIS STEINAGEL; CHRISTOPHER M. KEMP; KARLA HEFFRON; SAMUEL DUCHOW; ROBERT DOWNEY; JULIA DOUGLAS; CONNIE SMITH; KORY MORTEL; ELIOT MOTU may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said GRANITE RE, INC. has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its President and Assistant Secretary, this 3<sup>rd</sup> day of January, 2020.

STATE OF OKLAHOMA )  
                                  ) SS:  
COUNTY OF OKLAHOMA )



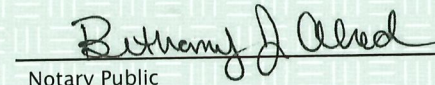
  
\_\_\_\_\_  
Kenneth D. Whittington, President

  
\_\_\_\_\_  
Kyle P. McDonald, Assistant Secretary

On this 3<sup>rd</sup> day of January, 2020, before me personally came Kenneth D. Whittington, President of the GRANITE RE, INC. Company and Kyle P. McDonald, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said, that they, the said Kenneth D. Whittington and Kyle P. McDonald were respectively the President and the Assistant Secretary of GRANITE RE, INC., the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their name thereto by like order as President and Assistant Secretary, respectively, of the Company.

My Commission Expires:  
April 21, 2023  
Commission #: 11003620



  
\_\_\_\_\_  
Bethany J. Alred  
Notary Public

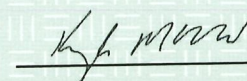
**GRANITE RE, INC.**  
Certificate

THE UNDERSIGNED, being the duly elected and acting Assistant Secretary of Granite Re, Inc., a Minnesota Corporation, HEREBY CERTIFIES that the following resolution is a true and correct excerpt from the July 15, 1987, minutes of the meeting of the Board of Directors of Granite Re, Inc. and that said Power of Attorney has not been revoked and is now in full force and effect.

“RESOLVED, that the President, any Vice President, the Assistant Secretary, and any Assistant Vice President shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the Company in the course of its business. On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the Company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking.”

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate and affixed the corporate seal of the Corporation this  
18<sup>th</sup> day of April, 2022.



  
\_\_\_\_\_  
Kyle P. McDonald, Assistant Secretary









TNTTUCK-01

KRISTIN

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/31/2022

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 Lee Agency 200 Ford Ave Muscatine, IA 52761	CONTACT NAME:	PHONE (A/C, No, Ext): (563) 263-9252	FAX (A/C, No): (563) 263-9282
	E-MAIL ADDRESS:		
INSURED TNT Tuckpointing & Building Restoration LLC Joshua Smyser 202 Iowa St Stockton, IA 52769	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: West Bend Mutual Ins Company		15350
	INSURER B:		
	INSURER C:		
	INSURER D:		
INSURER E:			
INSURER F:			

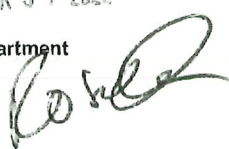
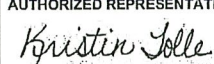
COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL 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 checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X	X	A405014	3/1/2022	3/1/2023	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	A405014	3/1/2022	3/1/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			A405014	3/1/2022	3/1/2023	EACH OCCURRENCE	\$ 1,000,000
							AGGREGATE	\$ 1,000,000
								\$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)    Y/N <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below		X	A405036	3/1/2022	3/1/2023	<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	Commercial Equipment			A405014	3/1/2022	3/1/2023	Installation Fltr	50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Project: Police Station Exterior Masonry Repair Activity ID: 10-2022-001.  
 City of Des Moines is an additional insured as respects to general liability and auto liability policies when required by written contract and pursuant to and subject to the policy's terms, definitions, conditions and exclusions and when required by written contract. Waiver of Subrogation applies to City of Des Moines including their respective elected and appointed officials, agents, employees and volunteers and others working on their behalf from and again any and all liability or responsibility to the contractor or anyone claiming through and under the contractor when required by written contract, as respects to general liability, auto and workers compensation policies, pursuant to and subject to the policy's terms, definitions, conditions and exclusions. Governmental Immunities endorsement applies. 30-Day cancellation applies.

APPROVED

<b>CERTIFICATE HOLDER</b>  City of Des Moines Engineering Department 400 Robert D. Ray Drive Des Moines, IA 50309  	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  

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

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US (WAIVER OF SUBROGATION) –  
AUTOMATIC**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
ELECTRONIC DATA LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES  
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EARLIER NOTICE OF CANCELLATION AND/OR NONRENEWAL

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

Notice of Cancellation and/or Nonrenewal to other Person(s) or Organization(s)

### SCHEDULE

<b>Name of Person(s) or Organization(s):</b> City Of Des Moines		
400 Robert D Ray DR DES MOINES, IA, 50309		
Notice of Cancellation Other Than Nonpayment	Number of Days Notice	<u>30</u>
Notice of Cancellation Nonpayment of Premium	Number of Days Notice	<u>0</u>
Notice of Nonrenewal	Number of Days Notice	<u>                    </u>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

As indicated in the Schedule above, we will mail or deliver written Notice of Cancellation for a statutorily permitted reason and/or Notice of Nonrenewal to the person(s) or organization(s) shown.

Unless a specified number of Days Notice is shown above, the Notice of Cancellation and/or Notice of Nonrenewal does not apply.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**ADDITIONAL INSURED – CONTRACTOR'S BLANKET**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. WHO IS AN INSURED (Section II)** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement.

The written contract or written agreement must be:

1. Currently in effect or becoming effective during the term of this policy; and
2. Signed by all parties to the written contract or written agreement prior to the "bodily injury," "property damage," "personal injury and advertising injury."

**B.** The insurance provided to the additional insured is limited as follows:

1. That person or organization is only an additional insured with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused in whole or in part, by:
  - a. Your premises; or
  - b. Your negligent acts or omissions in connection with "Your work" for that additional insured.

However:

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
  - b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the written contract or written agreement to provide such additional insured.
2. The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations for this policy, whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits of Insurance shown in the Declarations.
  3. Except when required by written contract or written agreement, the coverage provided to the additional insured by this endorsement does not apply to:

a. "Bodily injury" or "property damage" occurring after:

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

b. "Bodily injury" or "property damage" arising out of acts or omissions of the additional insured other than in connection with the general supervision of "your work."

4. The insurance provided to the additional insured does not apply to "bodily injury," "property damage," "personal injury and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including;

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

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

C. As respects the coverage provided under this endorsement, Paragraph 4.b. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended with the addition of the following:

**4. Other insurance**

**b. Excess insurance**

This insurance is excess over:

Any other valid and collectible insurance procured by or on behalf of the additional insured whether primary, excess, contingent or on any other basis unless a written contract specifically requires that this insurance be either primary or primary and noncontributing. Where required by written contract, we will consider any other insurance procured by the additional insured for injury or damage covered by this endorsement to be excess and noncontributing with this insurance.

If no written contract specifically requires primary or noncontributory coverage, then this insurance is excess and as a condition of coverage, the additional insured shall be obligated to tender the defense and indemnity of every claim or suit to all other insurers that may provide coverage to the additional insured, whether on a contingent, excess or primary basis.

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

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

**IOWA GOVERNMENTAL IMMUNITIES ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Name of Governmental Jurisdiction(s):**

City of Des Moines

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

**Nonwaiver of Governmental Immunity**

We expressly agree and state that the purchase of this policy and including the governmental jurisdiction(s) shown in the schedule as an additional insured does not waive any of the defenses of governmental immunity available to the jurisdiction(s) under Code of Iowa Section 670.4 as it now exists and it may be amended from time to time.

**Claims Coverage**

We further agree that this policy shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.

**Assertion of Government Immunity**

The governmental jurisdiction(s) shown in the schedule shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of us. Nothing contained in this endorsement shall prevent us from asserting the defense of governmental immunity on behalf of the governmental jurisdiction(s) shown in the schedule.

**Non-Denial of Coverage**

We shall not deny coverage under this policy and we shall not deny any of the rights and benefits accruing to the governmental jurisdiction(s) shown in the schedule under this policy for reasons of governmental immunity unless and until a court competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the governmental jurisdiction(s) shown in the schedule.

**No Other Change in Policy**

We and the governmental jurisdiction(s) shown in the schedule agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

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

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

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

Schedule

Any party with whom the insured agrees to waive subrogation in a written contract.

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 03-01-2022	Policy No.	Endorsement No.
Insured	A405036	Premium Included
TNT Tuckpointing & Building Restoration, LLC	Countersigned by _____	
Insurance Company		

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

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

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

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

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

**Named Insured:** TNT Tuckpointing & Building Restoration, LLC

**Endorsement Effective Date:** 03-01-2022

**SCHEDULE**

**Name(s) Of Person(s) Or Organization(s):**

Any party with whom the insured agrees to waive subrogation in a written contract.

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

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.



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

## **DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

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

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

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<p><b>Named Insured:</b> TNT Tuckpointing &amp; Building Restoration, LLC</p> <p><b>Endorsement Effective Date:</b> 03-01-2022</p>
--

### **SCHEDULE**

<p><b>Name of Person(s) or Organization(s):</b> Any party for whom the insured is required to provide designated insured status.</p>
--

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

- A.** Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** Covered Autos Coverages of the Auto Dealers Coverage Form.
- B.** The following is added to the Other Insurance Condition in the Business Auto and Auto Dealers Coverage Forms and the Other Insurance – Primary And Excess Insurance Provisions in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" shown in the schedule provided that:

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

## INSTALLATION FLOATER COVERAGE

---

### AGREEMENT

---

In return for "your" payment of the required premium, "we" provide the coverage described herein subject to all the "terms" of the Installation Floater Coverage. This coverage is also subject to the "schedule of coverages" and additional policy conditions relating to assignment or transfer of rights or duties, cancellation, changes or modifications, inspections, and examination of books and records.

Endorsements and schedules may also apply. They are identified on the "schedule of coverages".

Refer to Definitions for words and phrases that have special meaning. These words and phrases are shown in quotation marks or bold type.

---

### DEFINITIONS

---

1. The words "you" and "your" mean the persons or organizations named as the insured on the declarations.
2. The words "we", "us", and "our" mean the company providing this coverage.
3. "Earth movement" means any movement or vibration of the earth's surface (other than "sink-hole collapse") including but not limited to earthquake; landslide; mudflow; mudslide; mine subsidence; or sinking, rising, or shifting, of earth.
4. "Flood" means flood, surface water, waves, tidal water, or the overflow of a body of water, all whether driven by wind or not. This includes spray that results from these whether driven by wind or not.
5. "Fungus" means:
  - a. a fungus, including but not limited to mildew and mold;
  - b. a protist, including but not limited to algae and slime mold;
  - c. wet rot and dry rot;
  - d. a bacterium; or
  - e. a chemical, matter, or compound produced or released by a fungus, a protist, wet rot, dry rot, or a bacterium, including but not limited to toxins, spores, fragments, and metabolites such as microbial volatile organic compounds.
6. "Jobsite" means any location, project, or work site where "you" are involved in an installation or construction project.
7. "Limit" means the amount of coverage that applies.
8. "Pollutant" means:
  - a. any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste. Waste includes materials to be recycled, reclaimed, or reconditioned, as well as disposed of; and
  - b. electrical or magnetic emissions, whether visible or invisible, and sound emissions.
9. "Schedule of coverages" means:
  - a. all pages labeled schedule of coverages or schedules that pertain to this coverage; and
  - b. declarations or supplemental declarations that pertain to this coverage.

West Bend Mutual Insurance Company  
West Bend, Wisconsin 53095

Contains material copyrighted by AAIS, with its permission.  
Copyright, American Association of Insurance Services, 2004

10. "Sinkhole collapse" means the sudden settlement or collapse of earth supporting the covered property into subterranean voids created by the action of water on a limestone or similar rock formation. It does not include the value of the land or the cost of filling sinkholes.

11. "Specified perils" means aircraft; civil commotion; explosion; falling objects; fire; hail; leakage from fire extinguishing equipment; lightning; riot; "sinkhole collapse"; smoke; sonic boom; vandalism; vehicles; "volcanic action"; water damage; weight of ice, snow, or sleet; and windstorm.

Falling objects does not include loss to:

- a. personal property in the open; or
- b. the interior of buildings or structures or to personal property inside buildings or structures unless the exterior of the roofs or walls are first damaged by a falling object.

Water damage means the sudden or accidental discharge or leakage of water or steam as a direct result of breaking or cracking of a part of the system or appliance containing the water or steam.

12. "Terms" means all provisions, limitations, exclusions, conditions, and definitions that apply.

13. "Volcanic action" means airborne volcanic blast or airborne shock waves; ash, dust, or particulate matter; or lava flow.

Volcanic action does not include the cost to remove ash, dust, or particulate matter that does not cause direct physical loss to the covered property.

---

## PROPERTY COVERED

---

"We" cover the following property unless the property is excluded or subject to limitations.

1. **Coverage** -- "We" cover direct physical loss caused by a covered peril to materials, supplies, machinery, fixtures, and equipment that "you" are installing, constructing, or rigging as part of "your" installation or construction project.

2. **Coverage Limitations** -- "We" only cover:

- a. materials, supplies, machinery, fixtures, and equipment that will become a permanent part of "your" completed installation or construction project; and
- b. an installation or construction project at "your" "jobsite".

3. **Materials, Supplies, Machinery, Fixtures, And Equipment Means** -- Materials, supplies, machinery, fixtures, and equipment means:

- a. "your" materials, supplies, machinery, fixtures, and equipment; and
- b. similar property of others that is in "your" care, custody, or control.

---

## PROPERTY NOT COVERED

---

1. **Airborne Property** -- "We" do not cover property while airborne except while in transit on a regularly scheduled airline flight.

2. **Buildings, Structures, And Land** -- "We" do not cover buildings, structures, or land.

However, "we" do cover property that is part of "your" installation or construction project and is in connection with any building or structure.

3. **Contraband** -- "We" do not cover contraband or property in the course of illegal transportation or trade.
4. **Machinery, Tools, Equipment** -- "We" do not cover machinery, tools, equipment, or similar property that will not become a permanent part of "your" installation or construction project.
5. **Money And Securities** -- "We" do not cover accounts, bills, currency, food stamps, or other evidences of debt, lottery tickets not held for sale, money, notes, or securities.
6. **Trees, Shrubs, Or Plants** -- "We" do not cover trees, shrubs, plants, or lawns.
7. **Waterborne Property** -- "We" do not cover property while waterborne except while in transit in the custody of a carrier for hire.

---

## COVERAGE EXTENSIONS

---

### Provisions That Apply To Coverage Extensions -

- The following Coverage Extensions indicate an applicable "limit". This "limit" may also be shown on the "schedule of coverages".

Unless otherwise indicated, the coverages provided below are part of and not in addition to the applicable "limit" for coverage described under Property Covered.

The "limit" provided under a Coverage Extension cannot be combined or added to the "limit" for any other Coverage Extension or Supplemental Coverage including a Coverage Extension or Supplemental Coverage that is added to this policy by endorsement.

If coinsurance provisions are part of this policy, the following coverage extensions are not subject to and not considered in applying coinsurance conditions.

1. **Debris Removal** --
  - a. **Coverage** -- "We" pay the cost to remove the debris of covered property that is caused by a covered peril.
  - b. **We Do Not Cover** -- This coverage does not include costs to:
    - 1) extract "pollutants" from land or water; or
    - 2) remove, restore, or replace polluted land or water.
  - c. **Limit** -- "We" do not pay any more under this coverage than 25% of the amount "we" pay for the direct physical loss. "We" will not pay more for loss to property and debris removal combined than the "limit" for the damaged property.
  - d. **Additional Limit** -- "We" pay up to an additional \$5,000 for debris removal expense when the debris removal expense exceeds 25% of the amount "we" pay for direct physical loss or when the loss to property and debris removal combined exceeds the "limit" for the damaged property.
  - e. **You Must Report Your Expenses** -- "We" do not pay any expenses unless they are reported to "us" in writing within 180 days from the date of direct physical loss to covered property.

West Bend Mutual Insurance Company  
West Bend, Wisconsin 53095

Contains material copyrighted by AAIS, with its permission.  
Copyright, American Association of Insurance Services, 2004

2. **Emergency Removal --**

- a. **Coverage** -- "We" cover any direct physical loss to covered property while it is being moved or being stored to prevent a loss caused by a covered peril.
- b. **Time Limitation** -- This coverage applies for up to ten days after the property is first moved. Also, this coverage does not extend past the date on which this policy expires.

3. **Limited Fungus Coverage --**

- a. **Coverage** -- "We" pay for direct physical loss to covered property caused by or relating to the existence of or any activity of "fungus".
- b. **Coverage Limitation** -- "We" only cover loss caused by "fungus":
  - 1) when the "fungus" is the result of:
    - a) a "specified peril" other than fire or lightning; or
    - b) "flood" (if the Flood Coverage is provided under this policy);that occurs during the policy period; and
  - 2) if all reasonable steps were taken to protect the property from additional damage at and after the time of the occurrence.
- c. **Limit** -- The most "we" pay for all losses at all installation or construction projects is \$15,000. The Limited Fungus Limit applies regardless of the number of claims made.

The Limited Fungus Limit applies regardless of the number of locations, buildings or structures, or projects insured under this policy.

The Limited Fungus Limit is the most that "we" pay for the total of all loss or damage arising out of all occurrences of "specified perils", other than fire or lightning, or "flood" (if applicable) during each separate 12-month period beginning with the inception date of this policy.

- d. **If The Policy Period Is Extended** -- If the policy period is extended for an additional period of less than 12 months, this additional period will be considered part of the preceding period for the purpose of determining the Limited Fungus Limit.
- e. **Recurrence And Continuation Of Fungus** -- Limited Fungus Limit is the most that "we" pay with respect to a specific occurrence of a loss which results in "fungus" even if such "fungus" recurs or continues to exist during this or any future policy period.
- f. **Limit Applies To Other Costs Or Expenses** -- Limited Fungus Limit also applies to any cost or expense to:
  - 1) clean up, contain, treat, detoxify, or neutralize "fungus" on covered property or remove "fungus" from covered property;
  - 2) remove and replace those parts of covered property necessary to gain access to "fungus"; and
  - 3) test for the existence or level of "fungus" following the repair, replacement, restoration, or removal of damaged property if it is reasonable to believe that "fungus" is present.
- g. **Loss Not Caused By Fungus** -- If there is a covered loss or damage to covered property not caused by "fungus", loss payment will not be limited by the "terms" of this coverage extension. However, to the extent that "fungus" causes an increase in the loss, that increase is subject to the "terms" of this coverage extension.

---

## SUPPLEMENTAL COVERAGES

---

**Provisions That Apply To Supplemental Coverages** -- The following Supplemental Coverages indicate an applicable "limit". This "limit" may also be shown on the "schedule of coverages".

Unless otherwise indicated, a "limit" for a Supplemental Coverage provided below is separate from, and not part of, the applicable "limit" for coverage described under Property Covered.

The "limit" available for coverage described under a Supplemental Coverage:

- a. is the only "limit" available for the described coverage; and
- b. is not the sum of the "limit" indicated for a Supplemental Coverage and the "limit" for coverage described under Property Covered.

The "limit" provided under a Supplemental Coverage cannot be combined or added to the "limit" for any other Supplemental Coverage or Coverage Extension including a Supplemental Coverage or Coverage Extension that is added to this policy by endorsement.

If coinsurance provisions are part of this policy, the following supplemental coverages are not subject to and not considered in applying coinsurance conditions.

### 1. Contract Penalty --

- a. **Coverage** -- "We" pay for the cost of contractual penalties for non-completion that "you" are assessed or are required to pay because "you" are unable to complete work on a covered installation or construction project in accordance with the terms or conditions of the installation or construction contract.
- b. **Coverage Limitation** -- "Your" inability to complete "your" installation or construction project on time must be as a direct result of a loss by a covered peril to a covered installation or construction project.
- c. **Limit** -- The most "we" pay in any one occurrence for all contractual penalties is \$5,000.

### 2. Earthquake Coverage --

If coverage is indicated on the "schedule of coverages", "we" cover direct physical loss caused by earthquake and volcanic eruption to covered property.

### 3. Flood Coverage --

If coverage is indicated on the "schedule of coverages", "we" cover direct physical loss caused by "flood" to covered property.

### 4. Pollutant Cleanup And Removal --

- a. **Coverage** -- "We" pay "your" expense to extract "pollutants" from land or water if the discharge, dispersal, seepage, migration, release, or escape of the "pollutants" is caused by a covered peril that occurs during the policy period.
- b. **Time Limitation** -- The expenses to extract "pollutants" are paid only if they are reported to "us" in writing within 180 days from the date the covered peril occurs.
- c. **We Do Not Cover** -- "We" do not pay the cost of testing, evaluating, observing, or recording the existence, level, or effects of "pollutants".

West Bend Mutual Insurance Company  
West Bend, Wisconsin 53095

Contains material copyrighted by AAIS, with its permission.  
Copyright, American Association of Insurance Services, 2004

However, "we" pay the cost of testing which is necessary for the extraction of "pollutants" from land or water.

- d. **Limit** -- The most "we" pay for each location is \$10,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12-month period of this policy.

5. **Sewer Backup Coverage** --

- a. **Coverage** -- "We" cover direct physical loss to a covered installation or construction project caused by:

- 1) water that backs up through a sewer or drain; or
- 2) water below the surface of the ground including water that exerts pressure on or flows, seeps, or leaks through or into a covered building or structure.

- b. **Limit** -- The most "we" pay in any one policy year for loss caused by sewer backup and water below the surface regardless of the number of occurrences, is \$5,000.

6. **Storage Locations** --

- a. **Coverage** -- "We" cover direct physical loss caused by a covered peril to materials, supplies, machinery, fixtures, and equipment that will become a permanent part of "your" installation or construction project while they are at a storage location that is not described on the "schedule of coverages".

- b. **Limit** -- The most "we" pay in any one occurrence for loss to property at a storage location is \$5,000, unless a higher limit is shown on the declarations.

7. **Testing** --

- a. **Coverage** -- "We" cover direct physical loss to covered property caused by a covered peril that results from testing.

Testing includes start-up, performance, stress, pressure, or overload testing of materials, supplies, machinery, fixtures, and equipment that will become a permanent part of a covered installation or construction project.

- b. **Limit** -- The most "we" pay in any one occurrence for loss resulting from testing is \$5,000.

8. **Transit** --

- a. **Coverage** -- "We" cover direct physical loss caused by a covered peril to materials, supplies, machinery, fixtures, and equipment that will become a permanent part of "your" installation or construction project while they are in transit.

- b. **Limit** -- The most "we" pay in any one occurrence for loss to property in transit is \$5,000, unless a higher limit is shown on the declarations.

---

**PERILS COVERED**

---

"We" cover risks of direct physical loss unless the loss is limited or caused by a peril that is excluded.

---

**PERILS EXCLUDED**

---

- 1. "We" do not pay for loss or damage caused directly or indirectly by one or more of the following excluded causes or events. Such loss or damage is excluded regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.

- a. **Civil Authority** -- "We" do not pay for loss caused by order of any civil authority, including seizure, confiscation, destruction, or quarantine of property.

"We" do cover loss resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this coverage.

- b. **Earth Movement Or Volcanic Eruption** -- Except as provided under Supplemental Coverages - Earthquake Coverage, "we" do not pay for loss caused by any "earth movement" (other than "sinkhole collapse") or caused by eruption, explosion, or effusion of a volcano.

"We" do cover direct loss by fire, explosion, or "volcanic action" resulting from either "earth movement" or eruption, explosion, or effusion of a volcano.

This exclusion does not apply to covered property while in transit.

- c. **Flood** -- Except as provided under Supplemental Coverages - Flood Coverage, "we" do not pay for loss caused by "flood".

"We" do cover direct loss by fire, explosion, or sprinkler leakage resulting from "flood".

This exclusion does not apply to covered property while in transit.

- d. **Fungus** -- Except as provided under Coverage Extensions - Limited Fungus Coverage, "we" do not pay for loss, cost, or expense caused by or relating to the existence of or any activity of "fungus".

But if "fungus" results in a "specified peril", we cover loss or damage caused by that "specified peril".

This exclusion does not apply to:

- 1) loss that results from fire or lightning; or
- 2) collapse caused by hidden decay.

- e. **Nuclear Hazard** -- "We" do not pay for loss caused by or resulting from a nuclear reaction, nuclear radiation, or radioactive contamination (whether controlled or uncontrolled; whether caused by natural, accidental, or artificial means). Loss caused by nuclear hazard is not considered loss caused by fire, explosion, or smoke. Direct loss by fire resulting from the nuclear hazard is covered.

- f. **Ordinance Or Law** -- "We" do not pay for loss or increased cost caused by enforcement of any code, ordinance, or law regulating the use, construction, or repair of any building or structure; or requiring the demolition of any building or structure including the cost of removing its debris.

"We" do not pay for loss regardless if the loss is caused by or results from the:

- 1) enforcement of any code, ordinance, or law even if a building or structure has not been damaged; or
- 2) increased costs that "you" incur because of "your" compliance with a code, ordinance, or law during the construction, repair, rehabilitation, remodeling, or razing of a building or structure, including the removal of debris, following a direct physical loss to the property.

- g. **Penalties** -- Except as provided under Supplemental Coverages - Contract Penalty, "we" do not pay for loss caused by penalties for non-completion or non-compliance with any contract terms or conditions.



h. **Sewer Backup And Water Below The Surface** -- Except as provided under Supplemental Coverages - Sewer Backup Coverage, "we" do not pay for loss caused by:

- 1) water that backs up through a sewer or drain; or
- 2) water below the surface of the ground, including but not limited to water that exerts pressure on or flows, seeps, or leaks through or into a covered building or structure.

"We" do cover direct loss by fire, explosion, or theft resulting from either water that backs up through a sewer or drain or water below the surface of the ground.

This exclusion does not apply to covered property while in transit.

i. **War And Military Action** -- "We" do not pay for loss caused by:

- 1) war, including undeclared war or civil war; or
- 2) a warlike action by a military force, including action taken to prevent or defend against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or
- 3) insurrection, rebellion, revolution, or unlawful seizure of power including action taken by governmental authority to prevent or defend against any of these.

With regard to any action that comes within the "terms" of this exclusion and involves nuclear reaction, nuclear radiation, or radioactive contamination, this War and Military Action Exclusion will apply in place of the Nuclear Hazard Exclusion.

2. "We" do not pay for loss or damage that is caused by or results from one or more of the following:

- a. **Contamination Or Deterioration** -- "We" do not pay for loss caused by contamination or deterioration including corrosion, decay, rust, or any quality, fault, or weakness in covered property that causes it to damage or destroy itself.

But if contamination or deterioration results in a covered peril, "we" do cover the loss or damage caused by that covered peril.

- b. **Criminal, Fraudulent, Dishonest Or Illegal Acts** -- "We" do not pay for loss caused by or resulting from criminal, fraudulent, dishonest, or illegal acts committed alone or in collusion with another by:

- 1) "you";
- 2) others who have an interest in the property;
- 3) others to whom "you" entrust the property;
- 4) "your" partners, officers, directors, trustees, joint venturers, or "your" members or managers if "you" are a limited liability company; or
- 5) the employees or agents of 1), 2), 3), or 4) above, whether or not they are at work.

This exclusion does not apply to acts of destruction by "your" employees, but "we" do not pay for theft by employees.

This exclusion does not apply to covered property in the custody of a carrier for hire.

c. **Defects, Errors, And Omissions** -- "We" do not pay for loss caused by:

- 1) an act, defect, error, or omission (negligent or not) relating to:
  - a) design or specifications;
  - b) workmanship or construction; or
  - c) repair, renovation, or remodeling; or
- 2) a defect, weakness, inadequacy, fault, or unsoundness in materials.

But if a defect, error, or omission as described above results in a covered peril, "we" do cover the loss or damage caused by that covered peril.

d. **Electrical Currents** -- "We" do not pay for loss caused by arcing or by electrical currents other than lightning.

But if arcing or electrical currents other than lightning result in a covered peril, "we" do cover the loss or damage caused by that covered peril.

However, this exclusion does not apply to loss resulting from testing as specifically provided under Supplemental Coverages - Testing.

e. **Explosion, Rupture, Or Bursting** -- "We" do not pay for loss caused by explosion, rupture, or bursting of steam boilers, steam or gas turbines, steam pipes, or steam engines.

This exclusion applies only to loss or damage to the steam boilers, steam or gas turbines, steam pipes, or steam engines in which the loss occurred.

f. **Loss Of Use** -- "We" do not pay for loss caused by or resulting from loss of use, delay, or loss of market.

g. **Mechanical Breakdown** -- "We" do not pay for loss caused by mechanical breakdown or rupturing or bursting of moving parts of machinery caused by centrifugal force.

But if a mechanical breakdown or rupturing or bursting of moving parts of machinery caused by centrifugal force results in a covered peril, "we" do cover the loss or damage caused by that covered peril.

However, this exclusion does not apply to loss resulting from testing as specifically provided under Supplemental Coverages - Testing.

h. **Missing Property** -- "We" do not pay for missing property where the only proof of loss is unexplained or mysterious disappearance of covered property, or shortage of property discovered on taking inventory, or any other instance where there is no physical evidence to show what happened to the covered property.

This exclusion does not apply to covered property in the custody of a carrier for hire.

i. **Pollutants** -- "We" do not pay for loss caused by or resulting from release, discharge, seepage, migration, dispersal, or escape of "pollutants":

- 1) unless the release, discharge, seepage, migration, dispersal, or escape is caused by a "specified peril"; or
- 2) except as specifically provided under the Supplemental Coverages - Pollutant Cleanup and Removal.

"We" do cover any resulting loss caused by a "specified peril".

j. **Temperature/Humidity** -- "We" do not pay for loss caused by dryness, dampness, humidity, or changes in or extremes of temperature.

But if dryness, dampness, humidity, or changes in or extremes of temperature results in a covered peril, "we" do cover the loss or damage caused by that covered peril.

k. **Voluntary Parting** -- "We" do not pay for loss caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretense.

l. **Wear And Tear** -- "We" do not pay for loss caused by wear and tear, marring, or scratching.

But if wear and tear, marring, or scratching results in a covered peril, "we" do cover the loss or damage caused by that covered peril.

m. **Weight of Load** -- "We" do not pay for loss caused by the weight of a load which, under the operating conditions at the time of a loss, exceeds the registered lifting capacity of any equipment or machine.

3. **Proof Of Loss** -- "You" must send "us", within 60 days after "our" request, a signed, sworn proof of loss. This must include the following information:

a. the time, place, and circumstances of the loss;

b. other policies of insurance that may cover the loss;

c. "your" interest and the interests of all others in the property involved, including all mortgages and liens;

d. changes in title of the covered property during the policy period; and

e. estimates, specifications, inventories, and other reasonable information that "we" may require to settle the loss.

4. **Examination** -- "You" must submit to examination under oath in matters connected with the loss as often as "we" reasonably request and give "us" sworn statements of the answers. If more than one person is examined, "we" have the right to examine and receive statements separately and not in the presence of others.

5. **Records** -- "You" must produce records, including tax returns and bank microfilms of all canceled checks relating to value, loss, and expense and permit copies and extracts to be made of them as often as "we" reasonably request.

6. **Damaged Property** -- "You" must exhibit the damaged and undamaged property as often as "we" reasonably request and allow "us" to inspect or take samples of the property.

7. **Volunteer Payments** -- "You" must not, except at "your" own expense, voluntarily make any payments, assume any obligations, pay or offer any rewards, or incur any other expenses except as respects protecting property from further damage.

8. **Abandonment** -- "You" may not abandon the property to "us" without "our" written consent.

---

## WHAT MUST BE DONE IN CASE OF LOSS

---

1. **Notice** -- In case of a loss, "you" must:

a. give "us" or "our" agent prompt notice including a description of the property involved ("we" may request written notice); and

b. give notice to the police when the act that causes the loss is a crime.

2. **You Must Protect Property** -- "You" must take all reasonable steps to protect covered property at and after an insured loss to avoid further loss.

a. **Payment Of Reasonable Costs** -- "We" do pay the reasonable costs incurred by "you" for necessary repairs or emergency measures performed solely to protect covered property from further damage by a peril insured against if a peril insured against has already caused a loss to covered property. "You" must keep an accurate record of such costs. "Our" payment of reasonable costs does not increase the "limit".

b. **We Do Not Pay** -- "We" do not pay for such repairs or emergency measures performed on property which has not been damaged by a peril insured against.

West Bend Mutual Insurance Company  
West Bend, Wisconsin 53095

Contains material copyrighted by AAIS, with its permission.  
Copyright, American Association of Insurance Services, 2004

9. **Cooperation** -- "You" must cooperate with "us" in performing all acts required by this policy.

---

## VALUATION

---

1. **Actual Cost To Repair, Replace, Or Rebuild** --
  - a. **The Value Will Be Based On** -- The value of covered property will be based on the lesser of the following amounts:
    - 1) The actual cost to repair, replace, or rebuild the covered property with materials of like kind and quality. The actual cost may include material, labor, reasonable overhead and profit, and delivery charges.
    - 2) The amount "you" actually spend to repair, replace, or rebuild the covered property.
  - b. **Payment Limitation** -- In no event will "we" pay more than the "limit" indicated on the "schedule of coverages".
2. **Pair Or Set** -- The value of a lost or damaged article that is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set. The loss is not considered a total loss of the pair or set.
3. **Loss To Parts** -- The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace it.

---

## HOW MUCH WE PAY

---

1. **Insurable Interest** -- "We" do not pay for more than "your" insurable interest in any property.
2. **Deductible** -- "We" pay only that part of "your" loss over the deductible amount indicated on the "schedule of coverages" in any one occurrence.
3. **Earthquake Period** -- All earthquakes or volcanic eruptions that occur within a 168-hour period will be considered a single loss. This 168-hour period is not limited by the policy expiration.
4. **Loss Settlement Terms** -- Subject to paragraphs 1., 2., 3., 5., 6., and 7. under How Much We Pay, "we" pay the lesser of:
  - a. the amount determined under Valuation;
  - b. the cost to repair, replace, or rebuild the property with material of like kind and quality to the extent practicable; or
  - c. the "limit" that applies to the covered property.
5. **Coinsurance** --
  - a. **When Coinsurance Applies** -- "We" only pay a part of the loss if the "limit" is less than the percentage of the value of the covered property that is indicated on the "schedule of coverages".
  - b. **How We Determine Our Part Of The Loss** -- "Our" part of the loss is determined using the following steps:
    - 1) multiply the percent indicated on the "schedule of coverages" by the value of the covered property at the time of loss;

- 2) divide the "limit" for covered property by the result determined in b.1) above;
- 3) multiply the total amount of loss, after the application of any deductible, by the result determined in b.2) above.

The most "we" pay is the amount determined in b.3) above or the "limit", whichever is less. "We" do not pay any remaining part of the loss.

- c. **If There Is More Than One Limit** -- If there is more than one "limit" indicated on the "schedule of coverages" for this coverage part, this procedure applies separately to each "limit".
  - d. **If There Is Only One Limit** -- If there is only one "limit" indicated on the "schedule of coverages" for this coverage, this procedure applies to the total of all covered property to which the "limit" applies.
  - e. **When Coinsurance Does Not Apply** -- Conditions for coinsurance do not apply unless a coinsurance percentage is indicated on the "schedule of coverages".
6. **Insurance Under More Than One Coverage** -- If more than one coverage of this policy insures the same loss, "we" pay no more than the actual claim, loss, or damage sustained.
  7. **Insurance Under More Than One Policy** --
    - a. **Proportional Share** -- "You" may have another policy subject to the same "terms" as this policy. If "you" do, "we" will pay "our" share of the covered loss. "Our" share is the proportion that the applicable "limit" under this policy bears to the "limit" of all policies covering on the same basis.

- b. **Excess Amount** -- If there is another policy covering the same loss, other than that described above, "we" pay only for the amount of covered loss in excess of the amount due from that other policy, whether "you" can collect on it or not. But "we" do not pay more than the applicable "limit".

---

## LOSS PAYMENT

---

### 1. Loss Payment Options --

- a. **Our Options** -- In the event of loss covered by this coverage form, "we" have the following options:
  - 1) pay the value of the lost or damaged property;
  - 2) pay the cost of repairing or replacing the lost or damaged property;
  - 3) rebuild, repair, or replace the property with other property of equivalent kind and quality, to the extent practicable, within a reasonable time; or
  - 4) take all or any part of the property at the agreed or appraised value.
- b. **Notice Of Our Intent To Rebuild, Repair, Or Replace** -- "We" must give "you" notice of "our" intent to rebuild, repair, or replace within 30 days after receipt of a duly executed proof of loss.

### 2. Your Losses --

- a. **Adjustment And Payment Of Loss** -- "We" adjust all losses with "you". Payment will be made to "you" unless another loss payee is named in the policy.

West Bend Mutual Insurance Company  
West Bend, Wisconsin 53095

Contains material copyrighted by AAIS, with its permission.  
Copyright, American Association of Insurance Services, 2004

b. **Conditions For Payment Of Loss** -- An insured loss will be payable 30 days after:

- 1) a satisfactory proof of loss is received; and
- 2) the amount of the loss has been established either by written agreement with "you" or the filing of an appraisal award with "us".

3. **Property Of Others** --

a. **Adjustment And Payment Of Loss To Property Of Others** -- Losses to property of others may be adjusted with and paid to:

- 1) "you" on behalf of the owner; or
- 2) the owner.

b. **We Do Not Have To Pay You If We Pay The Owner** -- If "we" pay the owner, "we" do not have to pay "you". "We" may also choose to defend any suits brought by the owners at "our" expense.

The appraisers will then determine and state separately the amount of each loss.

The appraisers will also determine the value of covered property items at the time of the loss, if requested.

If the appraisers submit a written report of any agreement to "us", the amount agreed upon will be the amount of the loss. If the appraisers fail to agree within a reasonable time, they will submit only their differences to the umpire. Written agreement so itemized and signed by any two of these three, sets the amount of the loss.

Each appraiser will be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire will be paid equally by "you" and "us".

2. **Benefit To Others** -- Insurance under this coverage will not directly or indirectly benefit anyone having custody of "your" property.

3. **Conformity With Statute** -- When a condition of this coverage is in conflict with an applicable law, that condition is amended to conform to that law.

4. **Estates** -- This provision applies only if the insured is an individual.

a. **Your Death** -- On "your" death, "we" cover the following as an insured:

- 1) the person who has custody of "your" property until a legal representative is qualified and appointed; or
- 2) "your" legal representative.

This person or organization is an insured only with respect to property covered by this coverage.

b. **Policy Period Is Not Extended** -- This coverage does not extend past the policy period indicated on the declarations.

5. **Liberalization** -- If a revision of a form or endorsement which would broaden this coverage without an additional premium is adopted during the policy period, or within six months before this coverage is effective, the broadened coverage will apply.

---

## OTHER CONDITIONS

---

1. **Appraisal** -- If "you" and "we" do not agree on the amount of the loss or the value of covered property, either party may demand that these amounts be determined by appraisal.

If either makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers will then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, "you" or "we" can ask a judge of a court of record in the state where the property is located to select an umpire.

West Bend Mutual Insurance Company  
West Bend, Wisconsin 53095

Contains material copyrighted by AAIS, with its permission.  
Copyright, American Association of Insurance Services, 2004

6. **Misrepresentation, Concealment, Or Fraud --** This coverage is void as to "you" and any other insured if, before or after a loss:

a. "you" or any other insured have willfully concealed or misrepresented:

- 1) a material fact or circumstance that relates to this insurance or the subject thereof; or
- 2) "your" interest herein.

b. there has been fraud or false swearing by "you" or any other insured with regard to a matter that relates to this insurance or the subject thereof.

7. **Policy Period --** "We" pay for a covered loss that occurs during the policy period.

8. **Recoveries --** If "we" pay "you" for the loss and lost or damaged property is recovered, or payment is made by those responsible for the loss, the following provisions apply:

- a. "you" must notify "us" promptly if "you" recover property or receive payment;
- b. "we" must notify "you" promptly if "we" recover property or receive payment;
- c. any recovery expenses incurred by either are reimbursed first;
- d. "you" may keep the recovered property but "you" must refund to "us" the amount of the claim paid or any lesser amount to which "we" agree; and
- e. if the claim paid is less than the agreed loss due to a deductible or other limiting "terms" of this policy, any recovery will be prorated between "you" and "us" based on "our" respective interest in the loss.

9. **Restoration Of Limits --** Except as indicated under Limited Fungus Coverage, a loss "we" pay under this coverage does not reduce the applicable "limits".

10. **Subrogation --** If "we" pay for a loss, "we" may require "you" to assign to "us" "your" right of recovery against others. "You" must do all that is necessary to secure "our" rights. "We" do not pay for a loss if "you" impair this right to recover.

"You" may waive "your" right to recover from others in writing before a loss occurs.

11. **Suit Against Us --** No one may bring a legal action against "us" under this coverage unless:

- a. all of the "terms" of this coverage have been complied with; and
- b. the suit has been brought within two years after "you" first have knowledge of the loss.

If any applicable law makes this limitation invalid, then suit must begin within the shortest period permitted by law.

12. **Territorial Limits --** "We" cover property while it is in the United States of America, its territories and possessions, Canada, and Puerto Rico.

13. **Carriers For Hire --** "You" may accept bills of lading or shipping receipts issued by carriers for hire that limit their liability to less than the actual cash value of the covered property.

---

## ADDITIONAL COVERAGE LIMITATIONS

---

**When Coverage Ceases --** Coverage ends when one of the following first occurs:

1. this policy expires or is canceled;
2. the covered installation or construction project is accepted by the purchaser;

West Bend Mutual Insurance Company  
West Bend, Wisconsin 53095

Contains material copyrighted by AAIS, with its permission.  
Copyright, American Association of Insurance Services, 2004

3. "your" insurable interest in the covered property ceases;
4. "you" abandon the installation or construction project with no intent to complete it;
5. the installation or construction project has been completed for more than 30 days; or
6. the covered property has been put to its intended use. However, this does not apply to roofs or walls.

West Bend Mutual Insurance Company  
West Bend, Wisconsin 53095

Contains material copyrighted by AAIS, with its permission.  
Copyright, American Association of Insurance Services, 2004